STATE OF MICHIGAN
BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST

Complaint No. 103

Hon. Tracy Green
3rd Circuit Court
Detroit, MI

DISCIPLINARY COUNSEL'S REPLY TO RESPONDENT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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INTRODUCTION

Respondent's Proposed Findings of Fact and Conclusions of Law ask the Court to accept uncritically her denials of important events and her explanations for those events she does not deny. In support of her request, she minimizes her conduct and downplays her false statements and inconsistencies, while asking the Court to reject all evidence that contradicts her. Disciplinary counsel's proposed findings of fact demonstrate why the majority of her effort is misguided. This reply addresses those of respondent's claims that our proposed findings have not already addressed, and cites the relevant pages of our proposed findings for those of respondent's claims we have addressed.

Paragraphs 15 and 23 of respondent's proposed findings assert that there was no evidence prior to June 24, 2018 that Max and Russell were victims of child abuse. Paragraphs 54-56 assert that there is no evidence that respondent was aware of the abuse. She is wrong as to both. A witness's testimony is evidence. Max and Russell both testified that they were victims of child abuse before June 24, 2018, and repeatedly informed respondent of that fact. In addition, several of respondent's admissions, when those admissions are stripped of her minimization (such as her admissions that the abuse was not "this bad," and her awareness of beltings and spankings) show that the boys were victims of child abuse before June 24, 2018, and she knew it.

Paragraphs 54-56 also argue that there were no witnesses who were aware the boys were victims of child abuse. The absence of other witnesses is addressed on pages 46-47 of disciplinary counsel's proposed findings.

Paragraphs 54-56 and paragraph 71 argue that there was no corroboration of the boys' statements that they were victims of child abuse. Respondent is simply wrong. As written on pages 2 and 37-40 of disciplinary counsel's proposed findings, the boys' statements that are consistent

with each other, their strongly fearful reaction on the day of their rescue at the possibility that they would have to stay with respondent, and respondent's own statements, all corroborate their testimony in multiple ways. Finally, their father was convicted of abuse that occurred between 2015 and June 24, 2018, as noted on page 38 of disciplinary counsel's proposed findings.[1]

Paragraph 16 of respondent's proposed findings asserts that Max and Russell did not testify to "specific factual details" that establish by a preponderance of the evidence that they were victims of child abuse before June 24, 2018. There are two claims within this assertion, both of which are wrong: 1) For the reasons stated in disciplinary counsel's proposed findings at pages 29-37, the boys' testimony was credible and should be believed; 2) The boys' credible testimony did provide sufficient specificity to establish by a preponderance of the evidence that they were abused.

When assessing respondent's claim, it is important to focus on the precise charges against her. She is not charged with having been aware that on a date certain a certain specific incident of abuse took place. If that were the charge, her claim that the boys' testimony was insufficient to show whether the incident happened on this date or that date might have some force. Rather, she is charged with having been aware of the abuse over a period of years. The record is replete with the boys' testimony about events and incidents that occurred while in their father's care, culminating with the abuse they suffered on June 24, 2018.

The boys provided the level of detail one can reasonably expect children to recall about respondent's repeated but collateral role in abuse they suffered, on numerous occasions, at the hands of someone other than respondent. Their testimony establishes by a preponderance of the evidence that respondent was aware of the abuse over a range of time, and that she attempted to

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[1] *See also*, *People v Gary Davis-Headd,* Unpublished per curiam opinion issued January 6, 2022, (Docket no. 351635) p 8.

conceal it over a range of time. Nothing more is required to demonstrate this aspect of respondent's misconduct.

Paragraph 17 claims there must be an adjudication of child abuse before respondent can be responsible for covering up evidence of child abuse, and notes that there had been no adjudication as of the time respondent concealed anything. Respondent's claim that there must be a prior adjudication of abuse is wrong. She only need be aware of *evidence* of child abuse, not an adjudication of abuse, before she becomes responsible for covering up evidence of child abuse.

The illogic of respondent's position can be seen by two illustrations, each based on the assumption that she is correct:

- If respondent were correct, she could watch her son take a club to her grandsons until they are unconscious, and help to clean up the blood and conceal the bruises and dispose of the club, but not have committed misconduct because there had not been any adjudication of child abuse at that point.
- The crime of evidence tampering is a crime that is committed *before* there is an adjudication of criminality. Under respondent's logic, she cannot be guilty of misconduct for evidence tampering, because there had not yet been a conviction for the underlying crime at the time she tampered with the evidence.

In any event, there *has* been an adjudication that the children were victims of child abuse. The judge who presided over the trial found Gary Davis-Headd guilty of two counts of Child Abuse in the Second Degree. (Apple, 9-24-21, p 1327/20-22; Green, 11-19-21, p 2032/14-21)

Paragraphs 19 and 20 of respondent's proposed findings note that two of Max's teachers, Ms. Minnis and Ms. Noffsinger, did not see evidence of a handprint on Max's face nor any other abusive marks on him. Disciplinary counsel agree. However, as noted in disciplinary counsel's

proposed findings at pages 46-47, these teachers never saw Max with bare arms, legs or body. They would only have seen Max on school days, which make up only half of the year, and they did not even testify that Max had perfect attendance. They could not know whether his father kept him from school on days when the abuse was visible, nor could they know what abuse was revealed on the days when there was no school. Indeed, the boys were home schooled for the last six months before they were rescued. Finally, young boys are frequently bruised from play. Max's teachers would have no reason to make a mental note of bruises, unless they were primed to be suspicious or they frequently had a chance to observe them.

Paragraph 21 of respondent's proposed findings asserts that respondent did not consider the one slap she acknowledges being aware of, and the resulting handprint, "child abuse." As noted at page 21 of disciplinary counsel's proposed findings, respondent previously admitted that the infliction of the handprint was "totally inappropriate and unacceptable" and that it was not "reasonable parental discipline." Although she did not admit that it was "child abuse," it is difficult to see how it was not.

More important, respondent's claim rests entirely on rejecting all the evidence that she was aware of a great deal of other abuse. If she was aware that the boys were abused on other occasions, she was well aware that the one handprint she acknowledges was yet another instance of abuse.

Paragraph 22 of respondent's proposed findings asserts that her expert witness, Nancy Diehl, testified that she had never seen a case in which a slap to the face of a child that left a red mark was found to be child abuse. As noted on page 21 of disciplinary counsel's proposed findings, whether or not such a case has ever been prosecuted is not the right question. A single slap to the face of a child is not the kind of abuse likely to be prosecuted because there are other ways to provide services to that family, but it is nonetheless child abuse if it causes harm to the child.

Paragraphs 24-26 of respondent's proposed findings claim there must be evidence that respondent had actual knowledge of the existence of child abuse, and observe that she denies she had that knowledge. Although that is certainly respondent's claim, as noted above the record is replete with evidence that the boys told her about the abuse and showed her the evidence of it. She admitted that she was told Russell was about to get a "whooping" by his father. She admitted she was told about spankings, although she now claims she was only aware of them before 2015, and of the use of a belt, although she now claims she only knew about that after June 24, 2018. Pages 7-8 of disciplinary counsel's proposed findings show why her caveats on the timeframe of her awareness are not plausible. When respondent told Ms. Apple she did not think the abuse was "this bad," she implicitly admitted that she was aware of the abuse. See disciplinary counsel's proposed findings at pages 15-16.

Paragraphs 27-30 of respondent's proposed findings attempt to explain why Police Officer Melissa Adams's testimony does not establish that respondent was aware that her grandsons were being abused. She notes that Officer Adams did not record the boys' reaction to the possibility of going with respondent in her nine-page report about the incident. As discussed on pages 2 and 52-53 of disciplinary counsel's proposed findings, Officer Adams has an independent recollection of the boys' frightened reaction and Max's words when he was told it was possible respondent would take custody of him. Ms. Apple had the same recollection. Officer Adams's testimony is credible.

Paragraphs 31-32 of respondent's proposed findings correctly note that Theodius Cross testified he did not see any marks on the boys' faces or bodies. Interestingly, respondent notes that Mr. Cross was the person who transported the children from their home the day they were rescued – that is, the day they had signs of abuse that Ms. Apple characterized as an "11" on a scale of 1-10. Yet Mr. Cross said he did not see evidence of abuse on the boys even on that day. (Cross, 10-

13-21, pp 1747/8-13, 1748/22-1749/8) This is either a) a classic example of how children can have severely abusive marks on their bodies that are not visible because their clothing covers it, and therefore also explains why respondent's other witnesses may not have seen evidence of abuse, or b) evidence that this friend of the boys' father was not credible.

Pages 46-47 of disciplinary counsel's proposed findings discuss the significance of the testimony on which respondent relies in paragraphs 33-40 of her proposed findings.

Paragraph 41 of respondent's proposed findings calls Max a "self-acknowledged and confirmed liar." Respondent is wrong. Max never admitted being a "liar." He did admit that while under exceptionally difficult circumstances he lied about the origin of the "Dear Uncle John" letter. See disciplinary counsel's proposed findings at pages 35-37. That does not make him an "admitted and confirmed liar," any more than any other person's single lie makes them a "confirmed liar." Indeed, as noted at page 36 of disciplinary counsel's proposed findings, it was with respondent's implicit approval that Max lied to disciplinary co-counsel about the origin of the letter.

Paragraph 42 of respondent's proposed findings wrongly assert that Max's "series of lies" about the letter spanned nearly three months. This is badly exaggerated at best. The envelope for the "Dear Uncle John" letter that respondent's son told him to write is dated April 3, 2021, just more than two months before he came clean. (Max, 6-28-21, pp 548/25-549/9) He did not misrepresent the origin of the letter until May 12, and his lies about the origin spanned just three instances within just one month, from his May 12, 2021 interview at KidsTalk until he revealed his misrepresentations to disciplinary co-counsel on June 11, 2021. See pages 35-36 of disciplinary counsel's proposed findings. Importantly, as noted above, Max lied on the last two of those occasions with respondent's implicit blessing.

Paragraph 43 of respondent's proposed findings cites pages of the transcript that show Max lashed out at respondent's counsel. That is correct, and may speak poorly of Max's temper. It says nothing about his credibility. Moreover, when considering Max's outbursts it is important to remember that he was only 13 years old when he testified; he was raised in a dysfunctional home; his cross-examination was long and grueling, and included many instances of having his credibility questioned with a certain tone of voice; and he was being asked to testify against his grandmother, very much against his will. It is difficult for a mature adult to be cross-examined for hours and hours over multiple days, having every defect in his memory characterized as deception. It is unrealistic to expect a 13-year-old child maturely to tolerate what Max endured.

Paragraph 45 of respondent's proposed findings asserts that Max is not credible. Pages 33-37 of disciplinary counsel's proposed findings demonstrate why Max *is* a credible witness. For the reasons stated throughout disciplinary counsel's proposed findings, Max was a credible witness – far more credible than respondent.

Paragraph 46 of respondent's proposed findings note that Russell's memory at the hearing was poor. However, she fails to acknowledge all of Russell's prior statements, which were admitted as substantive evidence. Those statements include his interviews at KidsTalk on June 28, 2018 and August 15, 2018, his Juvenile Court testimony in March of 2019, his criminal court testimony in August of 2019, his interview with disciplinary co-counsel on September 9, 2019, and his pre-hearing interview on Zoom on June 10, 2019. When one considers Russell's statements in their entirety, his recollection is generally consistent, to the best of his young memory. Finally, it is important to remember again that it is not the level of detail that matters in this case; it is whether certain events happened at all. If the boys showed respondent their bruises multiple times, it does not matter whether they did so in 2016 or 2017 or 2018, whether they showed her at her

house or their house, or in what rooms the disclosures took place. It only matters that respondent was aware of them, and being aware, sometimes tried to conceal them, and on later dates made false statements about her awareness.

Paragraphs 47-48 and 50 of respondent's findings note that Russell's recollection about respondent putting makeup on him is inconsistent. That is precisely why this allegation was removed from the Amended Complaint. Again, whether or not Russell could accurately recollect whether this one incidence occurred is not a reason to doubt his otherwise consistent recollections that other incidents occurred.

Paragraph 49 of respondent's proposed findings makes two misleading statements. First, she erroneously claims that Russell admitted teasing Max about having a handprint on his face. In support, she cites page 315 of the transcript. Here is the complete relevant testimony:

> Q. Did you ever tease your brother Max that he had a handprint on his face caused by your father?
>
> A. Maybe I joked about it once, but, no I don't think so.
>
> Q. Did you ever tell your grandmother that you teased Gary about having a slap mark on his face?
>
> A. No.

"Joking about" is a far cry from "teasing." Joking can be a shared misery. Teasing is to inflict misery on someone else. Further, in giving this testimony the spin she does, respondent ignores all the other statements Russell made at the hearing in which he denied that he and Max ever teased each other. Those statements are identified on page 18 of disciplinary counsel's proposed findings.

The second misleading statement in Paragraph 49 is that Russell never said or testified that respondent put makeup on him to conceal abuse until his father's August 30, 2019 criminal trial,

after he had been living with his mother for a year and after having had multiple discussions with his mother about makeup. While that is technically true, it ignores the fact that there is no evidence that Russell was ever asked about respondent's use of makeup until then. As noted on pages 31-32 of disciplinary counsel's proposed findings, the focus of Russell's two KidsTalk interviews and his Juvenile Court testimony was his father's and Katy's conduct, *not* respondent's conduct. Russell testified he told his mom about the makeup but neither his Mom, his brother, nor anyone else told him to say respondent put makeup on him. (Russell, 6-28-21, p 315/12-25) Respondent's observation that Russell did not say anything to an official before he was living with his mom loses its force once it is put into context.

Paragraphs 51-52 of respondent's proposed findings claim that Russell's testimony is replete with inconsistencies, impeachment, and admissions, and therefore, is not credible. Again, respondent ignores the substantive evidence of Russell's prior statements to KidsTalk, the Juvenile Court jury, the criminal court judge, and disciplinary co-counsel, as discussed in response to Paragraph 46, above. The reality is that with respect to the central question, which is whether he and Max were abused and whether respondent was aware of the abuse, Russell's statements over time have been quite consistent, and any inconsistencies do not call that central consistency into question. For the reasons stated at pages 30-33 of disciplinary counsel's proposed findings, Russell is credible.

Paragraph 53 of respondent's proposed findings states that disciplinary counsel did not present testimony that anyone saw marks on the boys before June 24, 2018. That is only true with respect to people other than the boys themselves and respondent. As discussed on page 47 of disciplinary counsel's proposed findings, for a variety of reasons it is not significant that respondent's witnesses did not see or acknowledge that the boys were abused; especially since

their father would not let them leave the family if they had abusive marks on their bodies. Unlike most defense witnesses, respondent was a part of the family, visited with the boys weekly (Exh. 3, p 6), and came into their home.

Paragraphs 57-59 of respondent's proposed findings summarize her testimony. Her summary is accurate. The important question is whether her testimony is worthy of belief. Pages 42-50 of disciplinary counsel's proposed findings explain the reasons to find her not credible. Those reasons, along with the evidence that contradicts her from the boys, Ms. Apple, and Officer Adams, all show why her testimony should not be believed.

Paragraphs 65-66 of respondent's proposed findings summarize her testimony and argument that she did not know the boys were being spanked by their father in violation of Judge Cox's order prohibiting corporal punishment. Pages 6-9 of disciplinary counsel's proposed findings address this argument.

Paragraph 67 of respondent's proposed findings complains that she is required to prove a negative about her testimony in the Juvenile Court – that she did not put makeup on any bruises when Max testified she did so. She says we alleged that "Judge Green made false statements when she did not simply accept and agree with statements made by others." The significance of her claim is not clear. The burden is always on disciplinary counsel to show by a preponderance of evidence that her statements were deliberately false, whether they are claims that she was unaware or are something else. A knowingly false claim that she was unaware of an event is just as unethical as any other knowingly false claim. Respondent was not charged with testifying falsely in Juvenile Court merely because she disagreed with Max. She was charged because the totality of the evidence shows that her claim was false. Pages 25 and 45-46 of disciplinary counsel's proposed findings show that respondent's Juvenile Court testimony was knowingly false.

Paragraph 68 of respondent's proposed findings argues that her statements about applying makeup to Max's face have been consistent since "day one." This is not true, as demonstrated at pages 45-46 of disciplinary counsel's proposed findings.

Paragraph 69 of respondent's proposed findings asserts that this case is a credibility contest between Russell and Max on the one side and respondent on the other. That is accurate with respect to Counts I and II. It is not accurate with respect to Count III, which has nothing to do with the boys' testimony, as discussed at page 53 of disciplinary counsel's proposed findings.

Paragraph 70 of respondent's proposed findings notes that the Amended Complaint is premised upon statements made when the boys were both younger than eleven. The fact that the boys were young when they were abused does not make them incompetent or call their testimony into doubt. It is an unfortunate fact that children all-too-commonly have to testify about being abused, and children as young as four years old testify in the criminal courts of this state, where the burden of proof is beyond a reasonable doubt. Many criminal convictions are based on the testimony of very young children.

Paragraph 73 of respondent's proposed findings attempts to make an issue of Mr. Elrick's testimony. The challenge is irrelevant. The only purposed to Mr. Elrick's testimony was to authenticate the video that recorded respondent's own words. (Exh. 7) There is nothing about her own words that she can blame on Mr. Elrick or anyone other than herself.

Paragraphs 75(d) and (e) of respondent's proposed findings claim that disciplinary counsel did not provide legal support for the claim that "denying the truth of a statement [made by Max and Russell] is 'conduct' contemplated by Canon 2(A)." She is correct that disciplinary counsel provided no authority, but wrong to suggest authority is necessary. A statement is as much "conduct" as is any other action. Falsely "denying the truth" is "improper conduct."

Respondent cites four Michigan ethics opinions for the proposition that false speech, or denying the truth, is not "conduct" that violates Canons 2(A) and 2(B). Her argument is confusing, because none of the four opinions she cites has anything to do with false statements, denying the truth, speech, or the definition of "conduct."

Likewise, respondent takes issue with the allegation that she violated Canon 2(B). The canon states:

> A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect.

Respondent argues that the word "manner" in the second sentence relates only to the manner in which a judge should treat a person (from the third sentence), and therefore, that denying the truth of a statement is not what is contemplated by "manner."

Respondent provides no authority to support her argument, and it fails as a matter of simple statutory construction. Canon 2(B) clearly imposes three separate and unrelated requirements on judges: observe the law, promote confidence in the integrity and impartiality of the judiciary, and treat all people fairly. The word "manner" only modifies the second requirement, that a judge uphold public confidence in the judiciary.

Respondent is charged with making misrepresentations. There is clear Supreme Court precedent that a judge violates Canons 2(A) and (B) when she makes misrepresentations to the Commission under oath or at a hearing. *In re Adams*, 494 Mich 162 (2013); *In re James*, 492 Mich 553 (2012). Further, MCR 9.202(B) is explicit that false and misleading statements of *all* types are misconduct.

Paragraph 78 of respondent's proposed findings poses the following purportedly rhetorical question about whether she told Ms. Apple in 2018 that she applied makeup to Max's facial

handprint: “If it were a false statement that she knowingly made in December 2020, why would she not have simply maintained that position throughout the case?” Her question is not rhetorical. She ignores the ways in which her statement became untenable between the time she made it and the time she testified. Thus, she contends that her claim to have told Ms. Apple that she put makeup on Max was always going to present a “respondent v Ms. Apple” issue in the case, and suggests that this never changed. That is simply untrue. On December 31, 2020, when respondent first claimed that she had told Ms. Apple this, the Child Protection Law made it very unlikely that Ms. Apple would testify about any detail of this case; and respondent would have known that. Respondent notes that Ms. Apple did testify on the first day of the hearing, but she omits the critical fact that as of then the Child Protection Law *still* forbade her to testify about any particulars of this case, just as it had on December 31, five months earlier. Respondent did not face the risk of having Ms. Apple contradict her until Ms. Apple was finally cleared to testify in mid-September of 2021.

Paragraphs 79, 81, 83, and 85 of respondent’s proposed finding argue that CPS investigative reports are not reliable. Her attack is on the general accuracy of CPS reports. There is no need to rely on the general accuracy of CPS reports in this case, though, because the reports that matter are those authored by Ms. Apple, and she testified to their accuracy with respect to information from respondent. Four CPS reports were admitted – Exhibits 16, 17, 18 and 42.

- Among other things, Exhibit 16 records Ms. Apple’s telephone conversation with respondent after the family team meeting on June 26, 2018. (Apple, 9-24-21, pp 1260/4-1261/2) Ms. Apple testified there was nothing inaccurate in the report. (*Id*. at p. 1261/3-4)

- Ms. Apple also testified to the accuracy of Exhibit 18, a second report she authored, concerning a complaint on August 6, 2018. (*Id* at p 1291/4-12) The report includes Ms. Apple’s telephone call with respondent three days later. (*Id* at pp 1288/21-1289/13, 18-19)

The four CPS reports were admitted for the limited purpose of showing that they did *not* record that respondent told anyone at CPS that she put makeup on her grandsons' injuries. The absence of any such documentation in Ms. Apple's reports is consistent with her testimony. As written on page 56 of disciplinary counsel's proposed findings, she testified that had respondent told her she put makeup on an injury on Max's face, she would have found that important, she would have remembered it, and she would have included it in her report. She does not remember it and her report does not include that information because respondent never told her about the makeup.

Respondent attempts to show that CPS reports are generally unreliable and therefore Ms. Apple's reports are also unreliable. From this she suggests that Ms. Apple's reports erroneously omit respondent's statement that she told Ms. Apple she put makeup on Max's facial injury. Respondent attacks the reliability of the reports on five grounds: 1) there are different versions of the same report; 2) only one of the reports contains respondent's concerns about Ms. Bressler; 3) none of the reports have information about Ms. Apple's investigation of those concerns; 4) some of the reports are unsigned; and 5) the dates written at the end of the reports do not comport with when the investigation was completed.

For the reasons stated below, most of respondent's grounds for questioning the reports are mistaken. To the extent they legitimately suggest that CPS has bureaucratic problems, they do not call into question the reliability of the substance of CPS reports and do not undermine the significance of the fact that nothing in them shows that respondent told Ms. Apple she applied makeup to Max's facial injury. They also do not negate the testimony from Ms. Apple that her record of the two telephone conversations documented in Exhibits 16 and 18 were accurate. Those

conversations described respondent's admitted knowledge of facts or circumstances relating to the abuse of her grandsons.

It is true that there are multiple versions of some reports, but the important question is whether having multiple versions somehow makes the reports unreliable. It does not. Though Ms. Apple could not explain why there are multiple versions of her reports (*id*. at pp 1365/3-6, 1366/ 15-16) – she explained that there could be multiple versions for the same complaint date if the case was reassigned to another investigator and that investigator wrote a report (*id*. at pp 1264/3-16, 1266/3-4, 1267/24-1268/2) – she still authenticated the accuracy of the parts of her reports that are relevant to this case.

Ms. Ferguson testified that having multiple reports for the same investigation does not cause her to lose confidence in the information provided in those reports. (Ferguson, 9-27-21, p 1485/11-14) Likewise, Mr. Baker testified that the fact that there are four CPS reports spread over two investigations does not make him doubt the accuracy of the information in any of the reports. (Baker, 9-27-21, pp 1544/17-20, 1545/1) He explained there could be multiple reports for the same complaint if two different section managers pulled up the case and it saved in the system on two different dates. (*Id*. at p 1541/ 18-24) He also explained that the statements written in the two reports that relate to the June 24, 2018 complaint are both legitimate. (*Id*. at p 1542/1-25) Multiple versions of the same report are only a problem if there are inconsistencies between them. Respondent has not identified any.

Respondent expresses concern that only one of the CPS reports discusses her concerns about Ms. Bressler. Ms. Apple explained that Exhibit 16 was concerned about the complaint on June 24, 2018 – i.e., the physical abuse of the boys by their father. (Apple, 9-24-21 at p 1260/4-8) She said Exhibit 42 was also concerned with that complaint, though she did not claim to have

authenticated this exhibit. (Apple, 9-24-21, p 1406/13-16) Exhibit 17 related to the August 6, 2018 complaint.[2] (*Id*. at p 1336/4-6) This report *did* include respondent's concerns about Ms. Bressler. (*Id*. at p 1361/13-25) Exhibit 18 was also focused on the August 6 complaint, but Ms. Apple did not author it. (*Id*. at p 1264/3-21) There is nothing suspicious about the fact that only one of the two reports concerning the June 24 investigation that Ms. Apple authored contained respondent's concerns about Ms. Bressler. One would not expect a report that was focused on the father's abuse of the children to include respondent's concerns about Ms. Bressler.

Respondent also takes issue with the fact that none of the four reports show that Ms. Apple investigated her concerns about Ms. Bressler. But Ms. Apple did investigate those concerns and did put the information into her investigative report. (*Id*. at p 1364/18-23) She cannot explain why it is not there.[3] (*Id*. at pp 1353/11, 1364/2-15, 1371/13-1372/5, 1373/2-9, 1384/12-1385/6) While the removal of information from Ms. Apple's report is troubling, this does not negate what is and is not in the reports regarding Ms. Apple's communications with respondent, since Ms. Apple independently corroborated that information.

It also is insignificant that some reports are not signed. The fact that a report printed from a database is not signed does not demonstrate that the report is inaccurate.

Finally, the dates at the end of the CPS reports do not matter to the reliability of the content of the reports. Ms. Apple explained that the date typed at the end of the investigative reports is the

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[2] The record does not show what the August 6 complaint was about. That information remained protected by the confidentiality provision of the Child Protection Law.

[3] Although Ms. Apple cannot explain why her report does not include all the information she put in it, she was troubled by the sequence of events. Respondent attended a meeting with the district manager, Mr. Baker, and other members of upper management. (*Id*. at pp 1255/20-1256/2; 1426/14-23)After the meeting Ms. Apple was reassigned from the case and ttold to relinquish her file. The first time she realized her entries in her investigative report were missing was during this hearing, when she saw her report for the first time. (*Id* at pp. 1385/23-1386/2) She believes it is suspicious that the information she put in her report was deleted. (*Id*. at p 1428/9-15) She had never seen that happen before and does not believe it is due to a computer glitch. (*Id*. at pp 1428/23-1429/8)

day the worker gives the report to her supervisor for review. (Apple, 9-24-21, 1422/10-1423/3) It is not the date the report is finalized. (*Id*., at pp 1422/10-1423/3)

In Paragraph 80, respondent asserts that Ms. Apple's testimony was not credible because she denies that respondent told her she put makeup on Max's handprint. The mere fact that Ms. Apple's testimony differs from respondent's hardly demonstrates that Ms. Apple is the one who is not credible. That is especially the case since respondent herself testified that she was not certain she told Ms. Apple about the makeup, as is discussed at pages 56-57 of disciplinary counsel's proposed findings.

Respondent also claims Ms. Apple is biased. Her argument is that it is Ms. Apple's bias that caused her not to record that respondent had admitted to her that respondent concealed a handprint with makeup. But had respondent actually made such an admission in 2018, it would hardly have cast her in a good light then – her admission would have raised concerns about her role in the abuse and might have rendered her ineligible to obtain custody of the boys. It is only the subsequent events in this case that have now made it useful to respondent's defense for her to claim that she told Ms. Apple about the makeup four years ago. This means that if Ms. Apple was biased against respondent, her motive would have been to play up any admission by respondent, rather than ignore it.

Pages 49-50 of disciplinary counsel's proposed findings show why respondent is wrong to allege that Ms. Apple was biased. Respondent notes that CPS reassigned the case to a new investigator, which is true. However, there is no indication that the reassignment was due to concern that Ms. Apple was biased, and to the contrary, the record shows that Ms. Apple's supervisors did *not* find evidence of bias. Ms. Apple received an award for her work on this case with Mr. Baker's approval. (*Id*., at pp 1536/9-1537/10) She was not disciplined, demoted, or given

a salary reduction, as might be expected had she demonstrated bias in her work. (*Id*., at p 1538/2-4)

Respondent expressed concern to CPS management that Ms. Apple did not adequately investigate Ms. Bressler. There is no reason to think that any inadequate investigation would be due to bias in favor of Ms. Bressler, and certainly no indication that it would be due to bias against respondent. In any event, the subsequent investigation by the new investigator did not reveal anything of concern about Ms. Bressler's home that Ms. Apple had not already discovered. (*Id*. at pp 1596/23-1597/1)

Paragraph 81 of respondent's proposed findings state that there is "no way to tell if [respondent's statement that she put makeup on Max] had been communicated and recorded in one of the versions of the reports but subsequently revised or deleted." Respondent is simply wrong. As noted above, Ms. Apple contradicted respondent. That is the most direct "way to tell." Although respondent raised suggestive questions about changes to reports and multiple reports, the actual evidence does not support her doubting tone.

There is also no concern that Ms. Apple initially put respondent's alleged statement into her report and it was later erroneously redacted. Ms. Ferguson, who is the head of the redaction unit, reviewed the *unredacted* copies of the reports, and did not find any record in them that respondent admitted putting makeup on an injury on Max's face. (Ferguson, 9-27-21, p 1473/7 – 1485/10) She also testified that she has confidence in the accuracy of the reports. (*Id*. at p 1485/11-14) There has been absolutely no evidence that the contents of the CPS reports relating to whether respondent told Ms. Apple she applied makeup to Max's facial injury are unreliable or that any information favorable to respondent or supportive of her position was omitted or redacted.

Paragraph 84 of respondent's proposed findings asserts that it is evidence of Ms. Apple's bias against respondent that Ms. Apple put her on the Central Registry but she was subsequently removed. However, Mr. Baker testified that *he* approved of the initial decision to put respondent on Central Registry, as did Ms. Apple's supervisor. (Baker, 9-27-21, pp 1534/20-25, 1557/10-18) Mr. Baker also testified to the obvious – that reasonable minds can differ about whether a person should be put on Central Registry. (*Id*. at p 1605/20-25) It is not evidence of bias that reasonable minds can differ. The mere fact that respondent was eventually removed from Central Registry does not prove that it was bias that caused Ms. Apple to put her there in the first place.

Paragraphs 86 and 87 of respondent's findings relate to Ms. Bressler's expression of dislike of respondent. Disciplinary counsel discussed this allegation on page 52 of our proposed findings.

Paragraphs 88 and 89 of respondent's proposed findings argue that the emails between Ms. Bressler and her sons show a plan for Ms. Bressler to regain custody of her children or to prevent respondent from gaining custody. Assuming there were such a plan, it would not indicate that the boys were coached to say anything false about respondent, which is the only relevant question here. Such a plan would only indicate that Ms. Bressler was concerned for the welfare of her children who were being abused.

In any event, a fair reading of the emails does not support respondent's argument. She notes an email that said: "Me and Gary will tell them everything there you will be there to guild us."[4] (Exh. 11b) This email suggests nothing more than that Ms. Bressler was trying to encourage the boys to report their danger to CPS – something any mother in her situation would do. Respondent also points to an email in which Russell tells his mother: "I'm so sorry!!!!!!" (Exh. 11b) When

[4] This email was not authenticated by either Russell or Max. (Russell, Exh. 46, 6-10-21, at 27:08-24; Russell, 6-28-21, pp 300/1-5, 380/18-381/5; Max, 6-28-21, p 511/8-25)

read in the context of the other emails, it is clear Russell was only apologizing to his mother for not telling CPS about the abuse when CPS investigators went to the boys' home at his mother's request. In fact, Russell testified to that effect. (Russell, 6-28-21, p 298/1-16)

Respondent also finds the wrong significance in another email Russell sent to his mother, which said: "The only reason I was scared was because if it didn't work." Respondent suggests that email relates to Russell's and Ms. Bressler's plan for her to regain custody. Her sinister inference ignores Russell's entirely natural explanation. He has explained that he was referring to what would happen if he told CPS but CPS nonetheless left him with his father – his father would be mad at him for telling CPS and he would get beat. (Russell, Exh. 46, 6-10-21, at 28:16 – 28:29) That is precisely the fear that would be paramount in the mind of any child who is contemplating the bold move of reporting parental abuse to authorities. The only plan that is demonstrated by the emails between Ms. Bressler and the boys is a plan for the boys to tell CPS what was occurring so that they would be removed to a place of safety.

Paragraphs 89-93 of respondent's proposed findings argue that Ms. Bressler coached the boys to lie. Pages 50-52 of disciplinary counsel's proposed findings show that there is no support for this speculation. Paragraphs 90 and 92 of respondent's proposed findings argue that the boys did not make any disparaging statements about respondent until the day they were rescued. While that is true, it is insignificant. Before that date the boys had also not made any disparaging statements about their father and the abuse he inflicted upon them to anyone other than respondent. More important, while respondent's conduct is central to this proceeding, it was completely collateral to the abuse the boys suffered; she failed to help the boys and sometimes concealed the abuse. In the minds of the children suffering from abuse, respondent would have been a minor

footnote. They would have had no reason to say anything negative about her unless asked, and no one asked.

Paragraph 93 of respondent's proposed findings takes issue with the fact that Ms. Apple did not include in her investigative report that Ms. Bressler abandoned the children for three years. Ms. Apple testified that she and her supervisors were aware of and discussed Ms. Bressler's reasons – that respondent's son was physically abusive to her. That was a factor in the decision not to file a petition against her for abandonment. (Apple. 9-24-21, p 1421/12-21) The decision was a collective decision, and not any evidence of bias. In any event, any abandonment is of no consequence to this case. It was not CPS that placed the children with Ms. Bressler; a circuit court judge did. (Exh. 49)

Paragraphs 95 and 96 of respondent's proposed findings claim that the evidence does not show that respondent made a "knowingly" false statement about whether she told Ms. Apple she applied makeup to Max's facial injury. Pages 11 and 55-60 of disciplinary counsel's proposed findings address this.

Paragraphs 98-100 of respondent's proposed findings summarize what her witnesses testified to about her good character. Pages 42-50 of disciplinary counsel's proposed findings balance that perspective of respondent's character and her lack of loyalty to her grandsons.

CONCLUSION

Respondent has not called into serious question any fact on which disciplinary counsel's proposed findings rest. Those facts show that respondent clearly committed the misconduct with which he is charged. We urge the Master to so find.

Respectfully submitted,

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