STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION

IN RE HON. TRACY GREEN

3rd Circuit Court
Wayne County, MI

FC 103

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DISCIPLINARY COUNSEL'S BRIEF IN SUPPORT OF AND IN OPPOSITION TO MASTER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW, and DISCIPLINARY ANALYSIS

INTRODUCTION

The amended complaint alleges in three counts that respondent violated various canons of judicial ethics, court rules, and statutes. The Master found that the preponderance of evidence proved certain facts alleged in Count I and Count II, and proved that respondent committed misconduct as charged in those counts. On the other hand, the Master did not address whether respondent committed one of the acts charged in Count I, and did not address whether the misconduct she found respondent had committed violated two criminal laws, a court rule, and a Rule of Professional Conduct. With respect to Count II, the Master did not explicitly find whether respondent made several of the false statements that were charged, and did not address whether respondent's false statements violated Canons 2(A) and 2(B).

Disciplinary counsel endorse the Master's findings that respondent did the acts charged in Counts I and II that the Master found either explicitly or implicitly. With respect to those findings, the primary purpose of this brief is to provide supporting citations to the record. Disciplinary counsel also ask that the Commission find the alleged fact, and find that respondent violated the laws, that Count I charged but the Master did not address. Disciplinary counsel also ask that the Commission find that respondent made the false statements and violated the ethical standards that Count II charged, but that the Master either rejected or did not explicitly address.

Disciplinary counsel agree with the Master's findings that respondent made the false statements that are charged in Count III, but disagree with her conclusion that the preponderance of the evidence did not establish that respondent's statements were *intentionally* false. Disciplinary counsel ask the Commission to find that the evidence establishes that respondent did intend to deceive as alleged in Count III.

BACKGROUND[1]

In 2015 respondent's son, Gary Davis-Headd, and his wife, Choree Bressler, divorced. They had a lengthy trial regarding custody of their children, Gary, Jr. (Max)[2] and Russell. Hon. Kevin Cox awarded custody to Mr. Davis-Headd and gave supervised visitation rights to Ms. Bressler. After hearing the evidence, Judge Cox ordered that neither parent use corporal punishment on the boys. Respondent was aware of this order

From April 2015 through June 24, 2018, Max and Russell lived with respondent's son and his wife, Katy. The issues in this case all revolve around respondent's knowledge that her son was abusing her grandsons during that time, and her actions and statements regarding that abuse.

During those three years, respondent was informed that her son physically abused Katy. Respondent's son physically abused the boys multiple times as well. Respondent saw them at least once a week during that time, and the boys told her about the abuse. She did nothing to prevent it, and sometimes helped conceal it.

Child Protective Services (CPS) came to the boys' home at least three times prior to June 24, 2018, but never took action. The morning of June 24 a neighbor reported suspected child abuse at the home. The police came, but again left without seeing the boys or intervening in any way.

Shortly after noon that same day, CPS workers flagged down a police car and asked the officers to accompany them to the Davis-Headd home. This time, CPS investigator Leslie Apple and Police Officer Melissa Adams spoke with the boys, and the boys showed them injuries they said their father had inflicted.

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[1] Record citations for the information in this background and additional detail concerning the background events are in disciplinary counsel's Proposed Findings of Fact at pp 1-2.

[2] Gary Davis Headd, Jr. was addressed as Max during his testimony and is so identified in this document.

At some point, respondent and her husband arrived. One of the CPS workers told Max and Russell that respondent offered to take custody of them. Both boys immediately reacted in a strongly negative way. Despite the fact that respondent was his grandmother, Max told Ms. Apple and Officer Adams that he did not want to go with her because "she knew about what the dad was doing to them, about the abuse," and would allow the dad to get them back. Ultimately, CPS decided to place the boys with someone other than respondent.

The boys' rescue triggered a CPS investigation into their living conditions. During the following days and months, respondent made statements about her knowledge of the abuse and about her actions to CPS, during a Juvenile Court hearing about the abuse, and to the media. Respondent was campaigning for her first term in office during that time. She was elected in November 2018 and took the bench in January of 2019. The Commission began investigating in September 2019, during which respondent made numerous additional statements regarding her actions and knowledge.

The Commission filed a complaint against respondent in late 2020. The Master presided over the hearing on 12 days between late May and late November, 2021.

Count I

Count I of the complaint charged that while respondent was a lawyer, before she took the bench, she was aware that her son had abused Katy and the boys and took actions to conceal that abuse. The Master found that respondent did each act that was charged in Count I, as summarized below, except she was silent on the allegation of Paragraph 10(h). That is, the Master found that respondent was aware of, and concealed, nearly all of the abuse her son inflicted on Max and Russell as charged in the complaint. Disciplinary counsel endorse those findings, and the Master's conclusions that respondent thereby violated certain court rules and Rules of Professional Conduct

that are identified below. Disciplinary counsel object to the Master's report concerning Count I, to the extent the Master did not address paragraph 10(h) of the complaint, and did not determine whether respondent's actions also violated other laws and standards that were charged in Count I and that are discussed at the end of this section.

The Master found the following facts that were charged in Count I:

A. Respondent knew that between 2015 and June 24, 2018, her son slapped and choked his then-wife, Katy. (Report, p 7; Proposed Findings, pp 3-5)[3]

B. Respondent was aware during this same time that Davis-Headd used court-prohibited corporal punishment on Max and Russell. (Report, p 7; Proposed Findings, pp 6-16)

C. Respondent admitted knowing, prior to June 24, 2018, that her son was a "very stern disciplinarian." The Master found in the context in which respondent made this statement, the statement demonstrated respondent's awareness that her son used corporal punishment on Max and Russell. (Report, pp 7, 9-10; Proposed Findings, pp 5-6)

D. Respondent was aware that on at least one occasion between 2015 and June 24, 2018, her son smacked Max across the face hard enough to leave a handprint. In addition, the Master found that instead of inquiring of the boys whether they had been subjected to any more corporal punishment besides the single slap to Max's face, she concealed this handprint with makeup. The Master stated that even if respondent only did so on this one occasion, as she claimed, one time was too many. (Report, pp 7, 15; Proposed Findings, pp 6, 11, 17)

[3] This brief generally refers to pages in Disciplinary Counsel's Proposed Findings of Fact (Proposed Findings) to supply the citations to the record that support the Master's findings. That is because the Proposed Findings have citations to the record that support the Master's findings, while the Master's report does not, and the Proposed Findings also have the explanation for why those cites are significant to the issues in the case.

For the same reasons, this brief often cites to the Proposed Findings as a shorthand way to support the assertions in this brief that are in addition to those found by the Master.

E. Despite respondent's claim that she had only concealed one wound with makeup, the Master found that in fact she had put makeup on Max on multiple occasions to cover marks that were due to his being hit or slapped by respondent's son. Against that backdrop, the Master considered respondent's admission to having put makeup on a handprint on Max's face only once, and determined instead that Max's testimony that respondent put makeup on him *multiple* times to be credible. The Master noted that the application of makeup is something Max would remember, and also noted Max's statements that he had an aversion to wearing makeup to school because he did not think it to be manly. The Master further noted that Max has consistently testified, over the course of years, that respondent used makeup to conceal marks on his face on multiple occasions. (Report, p 14) The Master concluded that Max was more credible than respondent with respect to how often respondent concealed the abuse. (Report, pp 14-15; Proposed Findings, pp 17-19)

F. The Master found that between 2015 and June 24, 2018 respondent was aware that her son spanked the boys and used a belt on them. (Report, pp 7, 10; Proposed Findings, pp 6-9)

G. The Master found that between 2015 and June 24, 2018 Max and Russell told respondent their concern about what their father would do to them physically when they returned home. Respondent denied having this knowledge before the Master. Rather, she testified, when the boys mentioned their concern she assumed they were concerned about exclusively *non*-physical punishment by their father. Respondent acknowledged that she had never asked the boys whether their father was using corporal punishment on them. The Master found that in light of the many indicia of physical abuse of which respondent was aware, it was not reasonable or convincing that respondent concluded that their concerns

were non-physical punishment without even asking whether their father was using corporal punishment. (Report, pp 7, 9; Proposed Findings, p 10)

H. The Master found that on at least one occasion, when he was about eight years old, Russell told respondent that he was about to be spanked. (Report, pp 7, 10-11; Proposed Findings, pp 12-13) This was one more thing that put respondent on notice that the boys were receiving corporal punishment in violation of a court order.

I. The Master found that despite evidence that her son was using corporal punishment on Max and Russell in violation of a court order, respondent declined to make any attempt to independently verify whether he was doing so. (Report, pp 7, 9; Proposed Findings, pp 13-14)

The only factual allegation in Count I of the complaint that the Master did not address in her report was Paragraph 10(h): "On more than one occasion, Russell showed respondent bruises on his body and told respondent they had been inflicted by his father." The evidence was clear that Russell showed respondent his bruises and told her about the injuries inflicted by his father. (Proposed Findings pp 6, 7, 11, 12) The Master found Russell to be credible in other respects, never found him not to be credible with respect to anything, and gave no reason for not addressing this allegation. (Report, pp 11, 14) Disciplinary Counsel urge the Commission to find that the evidence established the allegation made in paragraph 10(h).

The Master made another important finding – that on June 24, 2018, as the boys were being removed from the Davis-Headd home, Max told Officer Adams of the Detroit Police Department and Ms. Apple of Child Protective Services that he did not want to go with his grandmother because "she knew about what the dad was doing to them, about the abuse" and would allow her son to get the boys back. (Report, pp 7, 11; Proposed Findings, pp 1-2)

Disciplinary counsel endorse the Master's finding of these facts. The Master concluded that respondent violated MCR 9.104(1) and MRPC 8.4(c), by engaging in conduct prejudicial to the proper administration of justice; MCR 9.104(2), by engaging in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach; and MCR 9.104(3), by engaging in conduct that was contrary to justice, ethics, honesty, or good morals. Disciplinary counsel endorse these conclusions.

The Master did not explicitly address whether the facts summarized above established that respondent also violated other statutes and court rules that were charged in Count I. For example, the Master did not explicitly find whether respondent was an accessory after the fact to, and tampered with evidence of, child abuse, in violation of MCL 750.505 and MCL 750.483(a)(5)(a). She seems to have done so implicitly, by finding that respondent concealed marks that were caused by her son's violence toward Max. (Report p 7 ¶ I) Because the complaint charged respondent with being an accessory after the fact by concealing abuse, and with tampering with evidence of abuse, these are findings that need to be made explicitly. Disciplinary counsel ask the Commission to make them.

It is clear that respondent's son abused the boys. He was convicted of Child Abuse in the Third Degree. MCL 750.136b(5)(a) states: "A person is guilty of child abuse in the third degree if . . . The person knowingly or intentionally causes physical harm to a child." "Physical harm" is any injury to a child's physical condition. MCL 750.136(e). (Proposed Findings, pp 20-22) The marks respondent's son left on the boys establish that he caused them physical harm.

The Master found that respondent was aware that her son was belting and spanking the boys in violation of Judge Cox's order, and was leaving marks on them that she sometimes found

it necessary to conceal. Those marks were clear indications that respondent's son caused injuries to the boys' physical condition. Respondent was therefore aware that her son abused the boys.

Respondent's concealment of her son's child abuse in these circumstances made her an accessory after the fact to her son's crimes. Michigan has no specific statute that prohibits being an accessory after the fact, but MCL 750.505 makes criminal those offenses that were indictable under common law. Michigan common law makes it criminal to be an accessory after the fact to a crime. *People v Beard*, 171 Mich App 538, 545 (1988), held: "A person is an accessory after the fact when, after having obtained knowledge of the principal's guilt after the completion of the principal's crime, he renders assistance in an effort to hinder the detection, arrest, trial, or punishment of the principal." *People v. Lucas*, 402 Mich. 302, 262 N.W.2d 662 (1978).

As the Master found, respondent was aware of her son's use of corporal punishment against his sons, and she put makeup on Max's facial injuries multiple times to conceal that corporal punishment when it was severe enough to be abusive. Respondent thereby rendered "assistance in an effort to hinder the detection, arrest, trial, or punishment of the principal." (*Beard*, at p. 545) Disciplinary counsel urge the Commission to find that respondent violated MCL 750.505 by being an accessory after the fact to her son's child abuse.

In addition, MCL 750.483(a)(5)(a) prohibits tampering with evidence:

> "[a] person shall not . . . knowingly or intentionally remove, alter, conceal destroy, or otherwise tamper with evidence to be offered in a present or future official proceeding."

People v Sara Ruth Ylen, unpublished COA No 320861 (July 30 2015), illustrates how respondent's concealing abuse with makeup was tampering with evidence. The defendant in *Ylen* manufactured evidence to support her claim that she had been sexually assaulted. She painted fake bruises on her face and inflicted wounds on her body. She made a false police report and provided

the police with false evidence. Because there was no prosecution for the concocted sexual assault, defendant argued she could not be convicted under MCL 483a(5)(a) because there was no "official proceeding." The court rejected that argument and affirmed defendant's conviction, holding that no pending "official proceeding" was required for conviction under this statute.

Respondent did the opposite. Rather than *manufacture* evidence before there was an official proceeding, respondent *concealed* evidence before there was an official proceeding. The evidence she concealed – evidence that her son had abused Max – is certainly evidence of a crime that would have been admitted in an official proceeding, had that crime been discovered. In fact, the very purpose of respondent's concealment was to prevent that crime being discovered.

As a family law lawyer who knew there was a court order prohibiting corporal punishment, and a grandmother who was directly informed about the beatings her grandsons were receiving, respondent's concealment of the evidence of the abuse was knowing and intentional. As in *Ylen*, the fact that there was no prosecution or "official proceeding" at the time respondent concealed the abuse (which was before the boys were rescued from their father) does not provide respondent with a defense to concealing evidence of abuse. Respondent unlawfully tampered with what was clearly evidence that would have been relevant to a criminal proceeding.

Because respondent committed two crimes, she also violated MCR 9.104(5) and Michigan Rule of Professional Conduct 8.4(b). MCR 9.104(5) states: "conduct that violates a criminal law of a state" is professional misconduct. Similarly, MRPC8.4(b) provides that it is misconduct for a lawyer to: "engage in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer." Respondent's violations of criminal law to conceal crimes

were conduct involving dishonesty and misrepresentation. Her doing these things absolutely reflects adversely on her honesty, trustworthiness, and fitness as a lawyer.

Disciplinary counsel urge the Commission to determine that respondent's misconduct, as found by the Master, violated the criminal statutes, court rule, and rule of professional conduct charged in Count I that the Master did not address.

Count II

Count II of the complaint charged respondent with making several false statements in connection with the Juvenile Court hearing on the abuse of her grandsons, and in connection with the Commission's investigation into her misconduct. The Master explicitly found that respondent made several of those false statements and implicitly found that she made others, as discussed below.

The evidence was clear that respondent's statements were false. The central question with respect to each false statement is whether respondent knew it was false at the time she made it.

The Master's repeated assessment that respondent was not credible during these proceedings is a very helpful starting point for assessing whether she knowingly and deliberately made the particular false statements that were charged in the complaint. (See, e.g., Report, pp 9, 10) Although the Master did not say in so many words that respondent is simply not believable, her report makes at least 12 determinations that respondent was not believable with respect to a certain statement or event, while it makes *no* determinations that respondent *was* believable.

For example, when discussing respondent's claim that she was not "aware" that her son abused his then-wife, Katy, the Master wrote: "[Respondent's] testimony evidences both a pattern of Respondent's asserting nonbelief in things that she is told about [her son's] behavior and Respondent's careful use of language showing an attempt to avoid admitting any knowledge that

would lead to liability." (Report, pp 8-9) After discussing the evidence pertaining to Count II, the Master wrote:

> Respondent's testimony, admissions, and other statements of her knowledge and actions related to abuse in this case, when taken together paint a portrait of a legal professional using a sophisticated mastery of language to mislead or misinform CPS, the Juvenile Court, and the Commission about her knowledge of [her son's] treatment of Max and Russell while still attempting to preserve plausible deniability concerning false statements. (Report, p 23)

The Master described several specific unbelievable statements respondent made. For instance, Ms. Apple, the CPS worker assigned to the boys' case, testified that when the boys were rescued their injuries were an "11" on a scale of one to ten. (Apple, 9-24-21, p 1318/1-6) Just days after the rescue, Ms. Apple spoke with respondent about the severe physical abuse the boys had suffered. In that context, respondent admitted to Ms. Apple that she considered her son to be a "very stern disciplinarian." (Report, p 7; Proposed Findings, pp 5, 39) As the Master noted, respondent made a very similar statement while testifying in a Juvenile Court hearing that was focused on this same, very physical, abuse. (Report, p 9; Proposed Findings, p 6) Since Ms. Apple and the Juvenile Court were inquiring into severe *physical* abuse, respondent's statements appeared to be an explanation that her son's *physical* discipline was an aspect of his "very stern" discipline.

For several reasons, it would have been very damaging to respondent in these misconduct proceedings to acknowledge that she was aware of any abuse as it was occurring. At the hearing before the Master, respondent tried to avoid this damage, by claiming that what she meant by "very stern disciplinarian" when she used the phrase with Ms. Apple and in Juvenile Court was only that her son imposed unreasonable *non*-physical discipline on the boys, such as lengthy timeouts. (Proposed Findings, pps 5-6) The Master found respondent's contention – that "in the middle of a conversation with Ms. Apple about physical abuse, respondent claimed that she used the term 'very

stern disciplinarian' to refer exclusively to the removal of privileges and giving long time-outs" – to be not believable. (Report, p 9)

Respondent made a similar statement to Ms. Apple that the evidence equally shows was false, thought the Master did not address it. While respondent spoke with Ms. Apple a few days after the boys were rescued about the harsh physical abuse the boys had endured in their father's home, she told Ms. Apple that she did not think "it" was "this bad." In the context of the conversation, Ms. Apple understood respondent to be saying that she had not known that the physical abuse was as bad as it turned out to be. (Apple, 9-24-21, p 1306/6-23) The clear implication was that respondent was aware of physical abuse, just not aware that it was as severe as it really was.

As is noted repeatedly above, throughout the Commission's investigation, respondent has consistently denied having been aware of any physical abuse whatsoever prior to the boys' rescue. Ms. Apple's interpretation of respondent's statement, and its implication that respondent *was* aware of the abuse prior to the rescue, would have torpedoed respondent's denials. Consistent with those denials, respondent claimed to the Master that Ms. Apple got it wrong when she said "it" referred to child abuse. (Green, 11-19-21, pp 2034/23-2035/22) Rather, she claimed, by "it was not this bad" she only meant to say that she did not know her son had imposed so many timeouts and other *non*-physical discipline on the boys.

The Master did not address whether this aspect of respondent's testimony was false, but it is nearly identical to respondent's attempt to minimize what she meant by "very stern disciplinarian." When respondent said she did not know "it" was "this bad" in a conversation that was only about severe physical abuse, she was clearly referring to physical abuse and not to lengthy timeouts. (Proposed Findings, pp 15-16). Though not mentioned by the Master, this is another

false statement by respondent during these proceedings that should be considered when assessing her credibility.

Another false statement the Master found respondent made concerned the timing of her knowledge that her son was using corporal punishment on her grandsons. In these proceedings, the relevant period for respondent's awareness of that was between Judge Cox's order prohibiting corporal punishment in 2015 and the boys' rescue on June 24, 2018. During the Commission's investigation and these proceedings, respondent has consistently denied any knowledge of abuse or corporal punishment during that period. Rather, she testified at this hearing, she was aware her son used corporal punishment on her grandsons only *before* Judge Cox imposed his 2015 court order prohibiting the use of corporal punishment, and was not aware that he used corporal punishment *after* the order was imposed. (Proposed Findings, pp 7-9) The Master found that this was false; that respondent *was* aware that her son spanked the boys and used a belt on them during the relevant period. (Report, p 7; Proposed Findings, p 7)

The Master noted that at the Juvenile Court hearing, respondent testified she knew her son spanked the boys "in the past." Because that hearing was focused on the abuse the boys suffered in June 2018, in context, respondent's testimony appeared to mean she was aware of the spankings during the period prior to when the boys were rescued; that is, well after Judge Cox's order and during the relevant period. Certainly respondent knew the Juvenile Court proceedings were focused on her son's abuse of the boys just before their rescue, and she never qualified her Juvenile Court testimony to say that by "in the past" she was referring exclusively to the time *before* Judge Cox's 2015 order.

With respect to respondent's testimony that by "in the past" she meant only prior to 2015, the Master wrote: "The Master does not believe Respondent's claim that she was exclusively

referring to a timeframe outside the scope of the Juvenile Court hearing but neglected to mention this fact on the stand." (Report, p 10) The Master further noted, a little elliptically, that the record supports a finding that respondent was aware that her son used corporal punishment on the boys after 2015, and that respondent's denial that she knew this was "dubious at best." (Report, p 21)

The Master also observed that respondent even contradicted *herself* with respect to her knowledge of the abuse. She noted that respondent's testimony at this hearing "either directly contradicted" or was "incompatible with her earlier testimony of her statements to the Commission, especially regarding her knowledge of the fact that her son had been using corporal punishment on the boys during the time period in question and her application of makeup to bruises on Max's face." (Report, pp 19-20) The Master also noted that two of respondent's answers to the Commission's questions about her awareness that her grandsons were being spanked and abused were inconsistent with each other. Although respondent admitted in answer # 14 of Exhibit 3 that she was told her son slapped Max and she saw the handprint and was told by her grandsons about being spanked for misbehavior, her answer # 38 denied that she had knowledge that her grandsons were victims of abuse or that her grandsons were being spanked.

The Master made another finding that significantly undercuts respondent's credibility – that she committed very serious misconduct that was not charged in the complaint, after the complaint was filed and prior to the beginning of the hearing before the Master.

The misconduct took place in early 2021. The original complaint was filed in November of 2020. Paragraphs 34 and 35 of it informed respondent that she was charged with having falsely claimed to the Commission that the reason she concealed a handprint on Max was to prevent teasing by Russell. Respondent denied this allegation in her answer to the complaint.

To appreciate the significance of this allegation and respondent's denial, it is important to note that by then she had acknowledged concealing one handprint. When she did so, she also minimized the significance of her doing that by adding that she had only done so to stop Russell from teasing Max about it. (Report, p 11; Proposed Findings, pp 18-19) Although respondent had no business concealing abuse under any circumstances, her doing so is much more benign if her purpose was to protect Max from teasing, as she claimed, rather than to protect her son from having his abuse discovered.

Max began to call respondent out of the blue in January, February or March of 2021, after they had not been in touch with each other for three years. (Max, 6-28-21, p 485; Max, 8-23-21, p 1042/17-19) This would have been three or four months after the complaint put respondent on notice that she was charged with lying about her reason for putting makeup on the handprint, and two or three months before the hearing began. During one of their calls, which had nothing to do with this case, respondent told Max that she had concealed a handprint on his face to stop Russell from teasing him. (Report p 16; Proposed Findings, pp 47-48) That is, respondent told Max her version of why she put makeup on him, knowing that she was accused of lying about it, and knowing that Max was going to be a witness about that event.

Respondent denied that this conversation even took place. (Report, p 15; Proposed Findings, pp 47-48) The Master rejected her denial, believed Max that it did take place, and found that respondent attempted to influence Max by making the statement. (Report, p 15) The Master wrote:

> Respondent reintroduced her explanation for the makeup in a conversation with Max *during the course of these proceedings.* [Emphasis in Master's report] The fact that Respondent would take advantage of Max's obvious desire to maintain a relationship with her and use it to influence him with her theory of the case seems particularly troubling and also evidences an intentional attempt to cover up her concealment of evidence of abuse.

(Report, p 16; Proposed Findings, pp 47-48)

It is strongly indicative of, and very damaging to, respondent's credibility both that she attempted to implant this story in Max's mind in the first place, and that she falsely denied that the conversation took place when it came to light before the Master.

The Master found others of respondent's excuses and explanations to be unreasonable or unconvincing. These findings are a further negative commentary on respondent's truthfulness. For example, the Master found that Max and Russell had told respondent they were apprehensive about what would happen to them physically when they returned home. (Report, pp 7, 9; Proposed Findings, p 10) Respondent acknowledged that they expressed concern about what would happen to them, but testified she "assumed that the boys were concerned about exclusively non-physical punishment." (Report, p 9; Proposed Findings, pp 5-6, 10) Respondent admitted that she made this assumption without even asking the boys if they were being physically disciplined, despite the many indicia that her son was abusive. (Proposed Findings, p 14) The Master did not consider respondent's explanation "to be reasonable or Respondent's testimony in this area to be convincing." (Report, p 9)

The Master also found that on at least one occasion, when he was about 8, Russell told respondent that he was about to be spanked. (Report, pp 7, 10; Proposed Findings, pp 12-13) This was significant to this case, because the spanking would have violated Judge Cox's order prohibiting corporal punishment and would have shown that respondent was aware of the violation. Again, respondent admitted that she never attempted to determine whether her son was, in fact, violating that order. (Proposed Findings, p 14) Respondent claimed before the Master that she did not believe a spanking was imminent at the time Russell told her this, and testified that after being told about Russell's concern she got her son to agree not to spank him. She further

testified that she believed her son when he told her he only intended to scare Russell by threatening a spanking. The Master expressed skepticism about respondent's explanation:

> Setting aside the question of whether such a threat would have been an effective scare tactic if Davis-Headd had truly ceased using corporal punishment on the boys in 2015, the Master is skeptical of Respondent's uncritical acceptance of Davis-Headd's assurance that Russell's concern was unfounded. Respondent's unsupported assumptions in favor of Davis-Headd, in the context of his history with the boys, are indicative more of an intentional attempt to avoid discovering, knowing, or being responsible for incriminating information about Davis-Headd than of either naiveté or a concern for the wellbeing of Max and Russel, even if that required actively refusing to believe non-contested reports about Davis-Headd's behavior that were consistent with his past practice.
> (Report, pp 10-11)

A deliberate attempt to avoid learning the truth, and then denying awareness of that truth, is no different than lying about that truth. Respondent's "intentional attempt to avoid discovering, knowing, or being responsible for incriminating information about [her son]" while ignoring all evidence to the contrary (Proposed Findings, p 13), shows that her denial that she knew of her son's abusive tendencies was false. Indeed, that her denial is false is conclusively demonstrated by the Master's finding that respondent *was* aware that her son was spanking and belting the boys, and otherwise hitting Max aggressively enough that she felt compelled to conceal the marks with makeup. (Report, pp 7, 9)

Against that backdrop of finding that respondent was not credible in multiple respects, the Master found either explicitly or implicitly that respondent made several of the false statements charged in Count II of the complaint. Perhaps the Master's most significant single finding with respect to those false statements is that respondent falsely denied that she put makeup on Max several times when he was nine or ten years old in order to conceal marks that, as she was informed and was otherwise aware, had been inflicted by her son. (Report, pp 14, 15; Proposed Findings, pp 17-19) The Master's finding was well supported by Max and Russell's repeated and consistent

testimony that they told respondent about the abuse and showed her abusive marks on their bodies. (Proposed Findings, pp 6-7, 11-12) The Master found Max credible and respondent not credible on this question.[4] (Report, p 14)

The implication of this finding is that each of the statements respondent was charged with making in paragraphs 19-20 and 24-26 of the complaint, all of which deny respondent's knowledge of the abuse or marks or hitting, were knowingly false. Although the Master did not state this explicitly for each of these statements, this conclusion follows from the findings the Master did make.[5]

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[4] The Master did not make a finding about Russell's credibility on this issue, but Russell's testimony corroborated Max's testimony. (Proposed Findings, pp 36-37)

[5] Paragraph 27 of the complaint alleged that the statements respondent made that were alleged in paragraphs 19-26, each of which asserted in one way or another that respondent was not aware of spankings, corporal punishment or abuse, were false. The evidence conclusively showed that respondent made each charged statement in her cited answers to the Commission's request for comment, Exhibit 3. Speaking generally rather than with respect to a particular paragraph of the complaint, the Master found, using somewhat indirect language, that respondent's denial that she was aware of the abuse was not believable. She wrote: "the Master does not find that Respondent's assertion of her nonbelief in uncontradicted reports of her son's bad behavior constitutes a lack of awareness of that behavior." (Report, p 8) This, together the evidence that is cited in each bullet point below, and with the Master's finding that respondent concealed marks of abuse on Max's face on multiple occasions, demonstrates that the Master implicitly found each of the following statements to be false, and that those findings were correct:

- Paragraph 19 charged that in her answer #17 in Exhibit 3, respondent stated that none of her grandchildren had ever told her they had been abused. (Report, p 17; Proposed Findings, pp 22-23)
- Paragraph 20 charged that in her answer #19 in Exhibit 3, respondent stated, "I was, and remain, unaware of any alleged 'abuse' of my grandchildren by my son." (Report, p 17; Proposed Findings, pp 22-23)
- Paragraph 24 charged that in her answer #15 in Exhibit 3, respondent denied knowing that Max had been hit by his father. (See, Report, p 18) The Master found that respondent was aware that Max and Russell had been hit by their father. (Report, pp 7, 10; Proposed Findings pp 6, 7) She wrote that she found respondent's denial that the boys told her that their father spanked or belted them not convincing. (Report, p 9) The record substantiates her finding. (Proposed Findings, pp 6, 7, 11, 12) This is directly contrary to what respondent told the Commission, as charged in Paragraph 24 of the complaint.
- Paragraph 25 charged that in her answers ##14(b)(v), 18, and 18(a) in Exhibit 3, respondent stated that she did not see marks on her grandsons' bodies, excluding one slap mark she once saw on Max's face. (Report, p 18; Proposed Findings, pp 22-23)
- Paragraph 26 charged that in her answer #14(b)(v) in Exhibit 3, respondent stated she was not "advised" that any marks had been left on her grandsons' bodies by her son, excluding one slap mark she saw on Max's face. (See, Report, p 18) Respondent's statement is clearly recorded in Exhibit 3, pp 8-9, Q 14(b)(v) and in her answer to the complaint, paragraph 26.

The Master suggested that she believed there was insufficient evidence to conclude that respondent made the false statement charged in paragraph 21. (Report, p 21) That paragraph alleged that in paragraph 38 of Exhibit 3 (respondent's answer to the Commission's questions during the investigation), respondent stated:

> I was never, under any circumstances or in any respect aware of, or told by anyone, the details of alleged abuse of my grandsons at the hand of their father. Specifically, I was never advised about alleged abuse by my grandsons.

The Master found respondent's answer too vague to permit the conclusion that she had lied about being aware of the abuse, writing that respondent's word choice "[did] not preclude a general awareness of 'alleged abuse.'"[6] (Report, p 21)

There is not so much ambiguity as the Master feared. These sentences clearly and unequivocally assert that respondent was not aware that her son abused her grandsons. Contrary to the Master's perception, her words *do* "preclude a general awareness of alleged abuse." If respondent was aware "under any circumstance" or "in any respect" that her son abused the boys, her statement in paragraph 38 was false.

As is noted above, the Master found that respondent was aware her son left marks on Max's body on multiple occasions, and concealed handprints on Max's face on multiple occasions. (Report, pp 14-15; Proposed Findings, pp 17-19) As noted at p 7, above, the evidence also showed that respondent was aware of abusive marks on Russell's body. These marks showed "abuse" by any reasonable definition – including the criminal law definition that "abuse" is inflicting physical harm on a child. Respondent's statement charged in paragraph 21 of the complaint was knowingly false.

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[6] The Master appeared to be stating that respondent could have been aware of abuse and yet accurately written paragraph 38, and therefore, even if respondent was aware of abuse, paragraph 38 was not false.

Paragraph 22 of the complaint charged that a different part of respondent's answer #38 in Exhibit 3 was false. In the last half of that answer, respondent stated:

> I have no recall of any specific occasion that [being spanked] was mentioned by my grandsons. I was not, however, aware of any specific situation or complaint from my grandchildren concerning being spanked for misbehavior. Further, I never saw any signs that my grandchildren had been spanked by their father.

Exhibit 3 establishes that respondent made the statement. Although artfully crafted, the only reasonable interpretation of it is that respondent denied that she was aware of times her grandchildren were spanked. The Master suggested that the evidence did not show that this denial was knowingly false. (Report, p 21)

To the contrary, the evidence shows that it clearly was false, and if false, had to be knowingly false. As noted above, the Master found that respondent *was* aware that her son spanked the boys and used a belt on them during the relevant period. (Report, p 7; Proposed Findings, p 7) Respondent need not have recalled the precise date and location when she became aware of these events to have been aware of "specific situations . . . concerning being spanked for misbehavior."

Support for this conclusion comes from respondent's repeated statements in her Juvenile Court testimony and during the Commission's investigation that she was aware her son spanked her grandsons "in the past." During these proceedings respondent has claimed that "in the past" referred to the time before the court order prohibiting corporal punishment. The Master found respondent's answer "dubious at best," but gave her the benefit of the doubt as to whether "in the past" included the period after 2015 because the Commission did not ask clarifying questions after she gave her answer. (Report, pp 20-21)[7]

[7] Actually, the Commission did ask respondent that clarifying question. (Ex. 3, p 17, #30) She did not answer it.

As the Master found, the evidence showed that respondent was aware of spankings after the court order prohibiting them. (Report, p 7 ¶E; p 10) That evidence shows that respondent's denials that she was aware of spankings were false, and it establishes the charge in paragraph 22. Respondent's statements that she was aware of spankings "in the past," and that this meant only prior to the order prohibiting spankings, is only relevant if respondent's explanation is a reason to doubt whether she really was aware of the spankings, contrary to what the other evidence shows. Because respondent's explanation was "dubious at best," it is not a reason to question *any* contrary evidence.[8]

The Master did not make any findings whether respondent's statements as charged in paragraphs 24 and 28 of the complaint were knowingly false. Paragraph 24 alleges, in part, that respondent denied witnessing Max being hit. Similarly, paragraph 28 alleges: "Respondent's November 21, 2019 answers to questions 14(b), 14(b)(viii), and 15 from the September 17, 2019 request for comment asserted that she never witnessed her son strike Max. Her answers were false or misleading, in that she did hear her son strike Max at least one time . . . ."

The statements charged in paragraphs 24 and 28 come directly from Exhibit 3 – there is no doubt that respondent made them. The evidence shows that those statements were false. That is, the credible evidence was that respondent was at her son's home when he hit Max in the face, she heard the slap, and she saw the resulting handprint. She then drove Max to her home to apply makeup to his face to conceal the handprint. (Proposed Findings, pp 44, 53) Disciplinary counsel

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[8] The Master is also mistaken as to whether "in the past" was ambiguous in the first place. Respondent was perfectly clear that whenever she referred to her knowledge of spankings "in the past," she meant prior to Judge Cox's order. (Green, 11-19-21, pp 1963/21-24, 2029/20-23) That removes whatever ambiguity may have been present when respondent used that phrase in Juvenile Court or during the investigation.

In fact, as the Master's findings that respondent knew about corporal punishment between 2015 and 2018 demonstrate, respondent's testimony at this hearing that "in the past" meant only "prior to Judge Cox's 2015 order prohibiting corporal punishment" was itself false or misleading. That false testimony was not charged as misconduct in the complaint, but is an additional indication that respondent is generally not a credible person.

urge the Commission to find that respondent was lying when she denied having witnessed this, and therefore to find that the evidence establishes this portion of paragraphs 24 and 28 as well.

The Master strongly suggested that respondent was not credible when she asserted that the reason she put makeup on Max was that Russell was making fun of him for being slapped by his father, as charged in paragraphs 29 and 33 of the complaint, but the Master did not state whether she found this statement knowingly false. (Report, pp 11, 15; Proposed Findings pp 18, 19) Again, Exhibit 3 makes clear that respondent made this statement. While the Master also did not explicitly find that respondent's excuse for putting makeup on Max was false, she did find Max's denial that the makeup was to prevent teasing more credible than respondent's claim that it was (Report, pp 14-15). Also, as noted above at page 16, she did find that respondent injected this excuse into a conversation with Max in "an intentional attempt to cover up her concealment of evidence of abuse." (Report, p 16) The Master's conclusion – that respondent tried to implant in Max the story that she concealed abuse to prevent teasing in order to cover up her concealment of evidence of abuse – is a strong indication that the Master found the teasing story false. In any event, the evidence shows that the answer *was* false. (Proposed Findings, pp 18-19) Disciplinary counsel urge the Commission to so find.

Paragraph 31 of the complaint charged that respondent made several false statements during her Juvenile Court testimony, including:

- That there were not times that Max showed her bruises on his body.
- That she did not use makeup to conceal Max's bruises.
- That Max's testimony that respondent did conceal bruises on his face with makeup was a lie.

The Master did not make a finding whether respondent made these statements and whether she knew they were false when she made them.

The transcript of respondent's Juvenile Court testimony establishes that she did make these statements. (Exhibit 2 pp 63, 65, 66) The evidence shows that her statements were false. In later proceedings, respondent admitted that she had used makeup to conceal a handprint her son had left on Max. She attempted to eliminate the obvious tension between that admission and having told the Juvenile Court that she did *not* see bruises and did *not* use makeup to conceal bruises by claiming that she distinguished between "handprints" and "bruises." (Proposed Findings, p 25) The Master found respondent's distinction between a "handprint" and a "bruise" to be not credible, and found that her statements about not seeing or applying makeup to a bruise were false. (Report, p 21; Proposed Findings, p 25) The Master therefore implicitly found that respondent made the false statements that were charged in paragraph 31.

The details of the Master's findings with respect to paragraph 31 are indicative of respondent's credibility generally. As is noted repeatedly above, during the Commission's investigation and during these proceedings, respondent has freely admitted that on one occasion she concealed a handprint on Max's face, while simultaneously being careful to claim that she did this *only* once. (Proposed Findings, pp 17, 54) However, during her testimony in Juvenile Court, respondent said she *never* used makeup to cover Max's bruises because, she claimed, she never saw any bruises on him. (Proposed Findings, pp 18, 24-27)

During the hearing before the Master, disciplinary counsel asked respondent to explain this contradiction. She testified that when she denied using makeup during her Juvenile Court testimony, "she had simply forgotten that she had put makeup on Max and that—because she had applied makeup to a "handprint" and not a "bruise" – the line of questioning in Juvenile Court had

not sparked her memory." (Proposed Findings, pp 25-27) The Master found this explanation false. She noted that respondent had not claimed any lack of memory at the Juvenile Court hearing, and instead, had unequivocally denied seeing bruises. The Master further noted that in response to being asked in Juvenile Court whether she concealed any "bruises" with makeup, respondent did not testify that while she had not covered any "bruises," she had used makeup to cover a very similar mark that she did not consider to be a bruise, as one might expect if she were truly distinguishing between "handprints" and "bruises." The Master observed:

> for Respondent to have flatly denied ever having seen or covered a bruise on Max's face and then later admit to having both seen and covered a mark that meets the definition of a bruise appears more like an attempt to explain prior false statements without admitting to dishonesty than a reasonable nuance or misunderstanding.
> (Report p 23)

The Master also rejected respondent's claim that her memory of applying makeup to Max's handprint had not been triggered by the question in Juvenile Court that asked her about applying makeup to a bruise. The Master found that in claiming her memory had not been triggered, respondent was trying to explain away her prior false statements without admitting that she had been dishonest:

> In fact, Respondent's testimony, admissions, and other statements of her knowledge and actions related to abuse in this case, when taken together paint a portrait of a legal professional using a sophisticated mastery of language to mislead or misinform CPS, the Juvenile Court, and the Commission about her knowledge of Davis-Headd's treatment of Max and Russell while still attempting to preserve plausible deniability concerning false statements.
> (Report, p 23)

Respondent also testified in Juvenile Court that if Max had earlier testified she had put makeup on his bruises, he was "lying." The Master found it significant that in accusing her grandson of lying, respondent had not made allowance for the possibility that what *she* referred to as a "mark," Max might honestly and sincerely have referred to as a "bruise." (Report, pp 22-23;

Proposed Findings, pp 28) Disciplinary counsel note that the most probable reason for respondent so casually to label her grandson's contrary testimony a "lie," rather than a "mistake" or an "honest difference of perception," was to conceal the falsity of her own testimony.

Disciplinary counsel urge the Commission explicitly to find that respondent's testimony in Juvenile Court, as alleged in Count 31, was knowingly false.

Disciplinary counsel endorse each of the Master's explicit findings that respondent knowingly made a false statement as charged in the complaint. Disciplinary counsel also endorse each of the Master's implicit findings that respondent knowingly made a false statement that is charged in the complaint, and ask the Commission to make those findings explicitly. Finally, disciplinary counsel ask that the Commission find that respondent knowingly made the false statements identified in paragraphs 21, 22, 24 and 28, 29 and 33, and 31 that the Master did not address or was disinclined to find.[9]

Disciplinary counsel also endorse the Master's conclusions that each false statement respondent made violated MCR 9.202(B), which prohibits false or misleading statements; MCR 9.104(2), which prohibits conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach; MCR 9.104(3), which prohibits conduct that is contrary to justice, ethics, honesty, or good morals; and MRPC 8.4(b), which prohibits conduct involving dishonesty, deceit, or misrepresentation where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer.

The Master did not address the complaint's allegation that respondent's false statements also violated Canons 2(A) and 2(B). By making false and misleading statements, respondent

[9] The discussion above does not mention paragraph 23 of the complaint. The evidence does not support that paragraph.

certainly failed to avoid all impropriety and appearance of impropriety, as required by Canon 2(A), and she failed to respect and observe the law, as required by Canon 2(B). Disciplinary counsel urge the Commission to find that respondent's false and misleading statements violated these canons, as well.

Count III

Count III charged respondent with falsely asserting five separate times, in her answer to the complaint, that she had informed Child Protective Services that she had put makeup on a handprint on Max's face. The Master found that this was false; respondent never made such a disclosure to CPS.[10] (Report, p 25)

Although the Master found that respondent made the false statements charged in Count III, she concluded that the preponderance of the evidence did not establish that respondent *deliberately* made false and misleading statements, and therefore did not commit misconduct. The Master concluded that respondent's false statements on this occasion were not deliberate despite her findings that: 1) respondent *had* deliberately made several of the false statements that were charged

[10] The Master's finding was well supported by the evidence. Respondent identified Ms. Apple as the person at CPS to whom she made the statement. (Green, 9-17-21, p 1150/13-15) Ms. Apple denied that respondent told her any such thing. (Apple, 9-24-21, p 1309/21-23) In addition, none of the CPS reports prepared by Ms. Apple and her colleagues referenced any such disclosure by respondent. (Proposed Findings, p 56) The Master found that such a disclosure would have been the type of information a CPS investigator would include in a report, had it been made. (Report, p 25; Proposed Findings, p 56) Ms. Apple has now made explicit during her testimony what was implicit in her reports – that respondent did not tell her she had concealed a handprint. (Apple, 9-24-21, p 1309/21-23) As she said, it would have been a big deal had she told Ms. Apple that and Ms. Apple would remember it. (Id. at p 1309/21-25, 1310/1-2)

The fact that respondent did not really tell Ms. Apple she had concealed a handprint is obviously important to the charge in Count Three, and is also important for what it says about respondent more generally. Ms. Apple would have expected that if respondent concealed a handprint caused by physical violence to a child, respondent would volunteer, if questioned about the abuse, that she had done so, given her position as a family lawyer, a former foster care worker, and a judicial candidate who was running on a platform of child welfare and family advocacy. (Id. at pp 1310/7-10, 1311/20-25, 1312/1-25, 1313/1-7) Ms. Apple believed respondent knew that smacking a child across the face and leaving a handprint so enduring it needed to be covered is not appropriate discipline. (Id. at pp 1312/12-25, 1313/1-4) It is bad enough that respondent wrongly claimed to have informed Ms. Apple of the handprint. It is even worse that her position and experience made it incumbent on her to disclose that, and she nonetheless failed.

in Count II, as described above, so clearly found respondent not averse to lying; 2) respondent was not believable in the 2 instances the Master identified in her report, many of which were not charged in the complaint as false statements; and 3) respondent tampered with a witness, again demonstrating her willingness to be dishonest to help herself in this case.

Disciplinary counsel respectfully disagree with the Master's conclusion that respondent accidentally made the false statements charged in Count III. The context of the statements and the sequence of events show that the Master's reluctance to find that respondent knew her statements were false was unjustified.

The context for the statements charged in Count III began in 2018, when respondent told Ms. Apple that she heard her son slap Max and saw the resulting handprint. (Apple, 9-24-21, p 1307/11-13) Despite the severity of the abuse Ms. Apple observed the boys had suffered, that one slap was the only sign of her son's abusing his children that respondent acknowledged to CPS that she knew about.[11] (Proposed Findings, p 53)

In 2019 respondent testified in Juvenile Court, where she again acknowledged being aware of the handprint but denied concealing any bruises with makeup and said Max was lying if he said otherwise. (Ex. 2, p 66) Two months later, respondent gave a Fox2 News interview to reporter M.L. Elrick, during which she said it was "preposterous" to suggest she had concealed bruises or abuse. (Ex. 7) She never hinted, in Juvenile Court or during Mr. Elrick's interview, that she had, however, used makeup on a "handprint." The Commission later asked respondent whether she had

[11] As noted above, respondent also acknowledged that she was aware of spankings.(Ex. 3, pp 7,8, Q 14a, pp 10, 11, Q 16a, b, pp 16, 17, Q 29, p 17 Q 30) Without more, awareness of spankings is not awareness of "abuse."

told the truth at the Juvenile Court proceeding.[12] She said she did, thereby reaffirming her denial that she used makeup to conceal bruises.

Four months after respondent was interviewed by Mr. Elrick, disciplinary co-counsel first interviewed Russell and Max. (Exs. 27, 30, 33, 34) Both described how respondent had repeatedly concealed their father's abuse with makeup. (Exs. 27, 30, 33, 34) Two months after obtaining that information, the Commission asked respondent whether she had concealed the boys' marks and injuries with makeup. (Ex. 3, pp 12-13, Q 18)[13] She admitted to covering a handprint on Max's face one time, but denied she used makeup to cover "injuries" or that she was covering up "abuse" that could be detected by others. (Ex. 3, pp 13-14, Q 19)

Respondent's late 2019 admission to the Commission that she had concealed one handprint with makeup was the first record of her ever informing anyone in authority that she had done so.[14] (Proposed Findings, p 54) As is discussed above, she explained the tension between her admission to the Commission that she concealed a handprint and her denial in her Juvenile Court testimony that she concealed bruises or abuse by asserting that she has always distinguished between a "handprint" and a "bruise." (Answer to Complaint, paragraph 34)

The initial complaint was filed in November 2020. It alleged that respondent's claim that she distinguished between handprints and bruises in her Juvenile Court testimony and the Elrick

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12 **QUESTION NO. 32:** Did you testify in the Wayne County Juvenile Court as a witness called by your son and his attorney on March 13, 2019? **RESPONSE**: Yes. (Ex. 3, p 18)

QUESTION NO. 36: Did you testify truthfully at that proceeding? **RESPONSE:** Yes. (Ex.3, p 19)

13 **QUESTION No.18g:** Did you do anything to cover up the marks so they would be less visible to others? **RESPONSE:** Yes. Because Gary, Jr. and Russell were at an age where they were constantly teasing one another, Gary, Jr. told me that Russell was making fun of him for being slapped by his father and the mark on his cheek. I told Gary, Jr. that I could apply some liquid foundation to his cheek to make the mark go away. I applied some foundation to the cheek of Gary, Jr., but it was not successful in covering up the mark.

14 Respondent's admission provided important, though partial, corroboration of what Russell and Max had said about her concealing their marks with makeup.

interview was false. Respondent answered the complaint in December 2020. As of the time she answered, she was well aware that whether her claimed distinction was true or false was a central issue in this case.

It was in that context that respondent said – again, for the first time to anyone in authority – in her answer to the complaint that she had told CPS about concealing the handprint *before* she testified in Juvenile Court. Respondent said this once, then repeated it four more times in her answer for good measure. (Report, p 24; Answer to Complaint, paragraphs 10f, 22, 23, 24, and 26) Respondent even explained the significance of what she was asserting. She wrote that her claimed disclosure to CPS clearly demonstrated that in her later testimony in Juvenile Court and in her interview with Mr. Elrick, she was not attempting to deny that she concealed a handprint with makeup, and that her distinction between "bruises" and "handprints" was in good faith. She stated:

> Judge Green admits she was aware her son had, on a single occasion, slapped Gary, Jr. across the face hard enough to leave a handprint. Judge Green advised Child Protective Services of this fact, and that she applied some foundation to the cheek of Gary, Jr. during a CPS interview, clearly demonstrating that she was not attempting to cover up alleged evidence of child abuse or making a false statement about her knowledge." (Answer to Complaint, paragraphs 10f, 22)[15]

This was no side issue or minor claim. If her statements in the answer to the complaint were accurate, the fact that she disclosed her concealment of a "handprint" to CPS *before* she testified in Juvenile Court and *before* she was interviewed by Mr. Elrick would have been powerful evidence that she was not, in fact, trying to deceive when she later testified in Juvenile Court that she did not conceal any "bruises," and when she told Mr. Elrick that it was preposterous to suggest that she had concealed bruises. That is, no matter how implausible might be her distinction between a "handprint" and a "bruise," had she already disclosed that she concealed the handprint by the

[15] Respondent made similar statements in her answer to the complaint at paragraphs.(Answer to Complaint, paragraphs 23, 24, 26)

time of that testimony, the prior disclosure would have been a strong indication that she really did distinguish between a bruise and a handprint.

If respondent's statements in the answer were accurate, she would have neutralized some of the most serious allegations against her – allegations that she had lied under oath in Juvenile Court. This context shows that respondent's five claims that she told CPS about concealing the handprint were the opposite of casual or inadvertent – they were central to her defense of this case.

As the Master noted, respondent no longer stands by her statements that she disclosed concealing a handprint to CPS. (Report, pp 25-26) It is telling that she only altered her position after it became obvious that direct evidence from Ms. Apple would contradict those statements. Respondent made her false statements in late December of 2020. The hearing in this matter began on May 27, 2021. At least as early as June 3 of 2021 respondent was aware that the two CPS investigative records disciplinary counsel then possessed contradicted her claim that she had told Ms. Apple about her concealment with makeup. She was aware because in a motion filed that day, disciplinary counsel set forth in detail the evidence that then existed that showed that her answers in the complaint were false. *(See Disciplinary Counsel's Motion to Admit Child Protective Services Reports for Limited Purposes)* Respondent also knew as of then, that disciplinary counsel were seeking to obtain the remaining CPS investigative reports and to be allowed to present the testimony of Ms. Apple and other CPS employees, all for the purpose of addressing the accuracy of respondent's claim.

Respondent strongly resisted disciplinary counsel's efforts to get the missing CPS reports. *(See Respondent, Tracy Green's Response to Disciplinary Counsel's Motion to Admit Evidence from Child Protective Services).* Eventually, disciplinary counsel satisfied DHHS that in the context of this case, the reports and the testimony of Ms. Apple were not protected by the CPS

confidentiality statute. At that point, respondent aggressively resisted disciplinary counsel's efforts to introduce the newly obtained reports and Ms. Apple's testimony in evidence. *(See Respondent, Judge Tracy Green's Motion to Strike the CPS Reports from Evidence; Respondent, Tracy Green's Response to Disciplinary Counsel's Motion to Admit Evidence from Child Protective Services)* During this whole time, which stretched from early June until mid-September of 2021, while the hearing was progressing, she did not reveal, to the Master or to disciplinary counsel, that perhaps her claims in her answers to the complaint were not true after all – that perhaps she had *not* said anything to Ms. Apple or CPS about concealing a handprint with makeup.

In fact, respondent did not begin to change her posture – that her answer to the complaint was accurate – until disciplinary counsel had overcome significant obstacles to obtaining Ms. Apple's testimony and the Master decided to permit disciplinary counsel to make a record of that testimony. Then and only then, on September 17, 2021 – nearly nine months after respondent made her false statements, more than three months after she learned that CPS records contradicted them, and after she lost her efforts to keep the CPS evidence out of this case – she began to equivocate about her statements. (Green, 9-17-21, pp 1150/14-19, 1152/23-1153/14, 1154/22-1155/1) As the Master found, on September 17 respondent testified she "could not recall with certainty whether she had also told CPS about applying makeup on a single occasion to Max's cheek." (Report, p 25)

Respondent claimed to the Master that what prompted her to reconsider her memory was that her statements were challenged. (Id. at p 1153/3-14) But those statements had been challenged more than three months earlier. The sequence of events shows that it was actually the reality of having to face much stronger evidence of her falsity that caused her to change her recollection;

tactically, it was better for her to claim she made a mistake in her answer to the complaint than face a judgment whether she or Ms. Apple was more credible on this important question.

The Master noted that respondent did not reconsider her memory when preparing her sworn answers to the Commission's questions or at any other time before the Master's decision to admit the evidence, and that this timing undermines respondent's credibility. The Master noted about respondent's alleged lack of memory:

> [The fact that] she does not remember any specific details of abuse told to her by the boys, she did not remember that she had applied makeup to a mark on Max's face when she unequivocally denied ever having applied makeup to a bruise, and she now does not remember whether she disclosed her application of makeup to CPS until contradictory evidence was about to be introduced—further undermines Respondent's credibility. (Report, p 26)

Despite her reservations about respondent's credibility on this issue, the Master was not persuaded that respondent's statements were intentionally false. (Report, p 26) The Master was more kind to respondent than the evidence warrants.

An important thing to note about the Master's conclusion is that she did *not* base it on her personal observations of respondent's testimony, nor any finding that respondent was credible. To the contrary, she based it on her analysis of the totality of the evidence, even accepting that respondent was *not* credible. Because the Master did not rest her decision on respondent's credibility, this is not a situation in which the Master's finding is entitled to deference on the basis that she saw respondent testify first-hand.

The only way to evaluate whether a person intended to tell a lie is to look at the circumstances. The circumstances show that when respondent filed her answer to the complaint, her intent was to deceive.

First, at the time respondent provided her false answers, they were self-serving. As noted above, her false answers were central to her defense to the allegations that she had lied when she denied in Juvenile Court that she had concealed a bruise with makeup. Had her false answers not been challenged, they would have established a statement that was prior to her testimony in Juvenile Court, that would have supported her otherwise suspect claim that she distinguished between handprints and bruises.

Second, respondent was familiar with the Child Protection Law, as a practitioner of family law. Based on her experience, at the time she made the false statements in her answer to the complaint she had every reason to believe that the strict confidentiality rules of the law that generally govern CPS records would protect her falsehoods from being exposed.[16] She was very nearly right. But for a rare exception to the law that was triggered by respondent's interview with Mr. Elrick, disciplinary counsel would have been unable to obtain the critical CPS records or Ms. Apple's testimony.[17] Until shortly before she changed her story, respondent had good reason to think the CPS information would not be available to contradict her.

Third, respondent strenuously resisted disciplinary counsel's efforts to obtain and introduce evidence that would confirm or contradict the statements in her answer. If she believed her statements were truthful, she should have embraced the opportunity to have them confirmed by CPS. She consistently did the opposite.

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16 MCL 722.627(2)

17 MCL 722.627d(2)(b)(v) provides that the director of the Department of Health & Human Services may release otherwise confidential information if "[a] child abuse or neglect . . . investigation to which the report or record containing the specified information relates has been part of the subject matter of a published or broadcast media story." Had Mr. Elrick not interviewed respondent and the boys, Ms. Apple could not have testified and her reports would not have been obtainable.

Fourth, respondent did not so much as hint that perhaps she was mistaken until it became clear that Ms. Apple would testify. Rather, after she failed to keep out of evidence the initial CPS reports that contradicted her, she tried to undercut their reliability by challenging the method of their preparation, their completeness, and the adequacy of the investigation. (Apple 5-27-21, pp 150-181; Baker, 8-6-21, pp 858-911, 929-932; Ferguson, 8-6-21, pp 952-973; Apple, 9-24-21, pp 1331-1421, 1442 -1444; Baker, 9-27-21, pp 1547-1594, 1611-1614; Ferguson, 9-27-2, pp 1485-1510, 1518-1582) *Respondent, Tracy Green's Response to Disciplinary Counsel's Motion to Admit Evidence From Child Protective Services; Respondent, Judge Tracy Green's Motion to Strike the CPS Reports From Evidence; Respondent, Tracy Green's Response to Disciplinary Counsel's Motion to Move Testimony From the Separate Record to the Record)*

Fifth, respondent's claim – that she told CPS in 2018 that she had concealed a mark of abuse with makeup – is not the sort of thing a person with her experience is likely to have remembered incorrectly. Again, she was a lawyer who was practicing juvenile law at the time CPS investigated whether her grandsons were abused. She would have been well aware that concealing the very abuse that was under investigation was highly improper. She should have known that it was important to report concealing the handprint to CPS, if for no other reason than her doing so would help to illustrate to the investigators how severe the handprint was and how severely her son was abusing her grandsons. At the time respondent was swearing that her answers to the complaint were true, she could not reasonably have forgotten whether or not she had disclosed this important fact.

There is another reason respondent is not likely to have forgotten whether she did or did not make this disclosure. As Ms. Apple testified, and as respondent would have known as a juvenile law lawyer, it is a significant matter to conceal child abuse. In addition to its legal

significance, respondent also would have known that revealing this fact during her campaign to be a judge, *as a candidate who was campaigning on her dedication to protecting families*, might be used against her in her campaign. This is not the sort of fraught disclosure one forgets after just a couple of years.

Sixth, and related, this is the second time respondent claimed to have forgotten something crucial about concealing the handprint with makeup. During this hearing she excused her Juvenile Court testimony – that she never concealed a bruise with makeup – by saying she "forgot" she had applied makeup to Max's face at the time she testified. (Green, 11-19-21, p 2061/6-15) The Master did not believe this claim; rather, she found that coupled with the other things respondent claimed not to remember, it "further undermines Respondent's credibility." (Report, p 26) Just as the Master found that it is not plausible that when respondent was asked about applying makeup while testifying in Juvenile Court, she forgot that actually, she *had* concealed a mark with makeup, it is also not plausible that when she answered the complaint under oath, she forgot that actually, she had *not* told Ms. Apple anything about concealing a handprint with makeup.

The last thing to note is that respondent's statements in her answer to the complaint were not just casual statements. They were a central part of her defense to a public charge that she, a judge, had lied about concealing evidence that her grandchildren were abused. She made the statements under oath. She would have worked very hard to ensure that they were as accurate as they could be.

The evidence shows that respondent tailored her testimony and her answer to the amended complaint to explain away evidence, she never thought she would have to face. There is substantially more than a preponderance of the evidence that she knew her answers were false when she made them. Disciplinary counsel ask that the Commission make this finding.

Respondent's knowingly false statements violated:

a. MCR 9.202(B), which prohibits misleading statements to the JTC or the Master;

b. Canon 2(A), which requires that a judge avoid all impropriety or appearance of impropriety; and

c. MCR 9.202(B), which prohibits conduct prejudicial to the administration of justice.

SANCTIONS

The *Brown* Factors

The Michigan Supreme Court set forth several criteria for assessing proposed sanctions in *In re Brown*, 461 Mich 1291, 1292-1293 (1999). The criteria and their application to this case are discussed below.

(1) Misconduct that is part of a pattern or practice is more serious than isolated instances of misconduct

The evidence established that respondent had a pattern of lies and concealment that took place from 2015 through November 2021, including:

1) On multiple occasions, concealing evidence that her grandsons were physically abused.

2) Intentionally not informing a CPS investigator, who was investigating whether her grandsons had been abused, that she put makeup on a facial injury on Max's face that she knew was inflicted by her son;

3) Falsely denying during her testimony in Juvenile Court that she saw bruises on Max's face and that she covered his bruises with makeup;

4) Falsely testifying in Juvenile Court that if Max testified she put makeup on bruises, he was lying;

5) Falsely claiming during her media interview with Mr. Elrick that it was "preposterous" to suggest that she put makeup on her grandson's face to conceal abuse;

6) Misrepresenting to the Commission that she was unaware that her grandsons were being spanked by their father after Judge Cox imposed his 2015 order prohibiting corporal punishment;

7) Misrepresenting to the Commission that she was only aware that her son was hitting her grandsons with a belt when she learned of it during the CPS investigation and judicial proceedings;

8) Misrepresenting to the Master that when the children expressed concern to her about what would happen to them if they misbehaved at her home, they were only concerned about lengthy time outs rather than physical punishment;

9) Misrepresenting to the Commission and to the Master that she covered Max's facial bruising with makeup on only one occasion;

10) Misrepresenting to the Commission and to the Master that the one time she acknowledged concealing a handprint, she did so to prevent teasing by Russell;

11) Falsely stating to the Commission that her grandsons never told her they were being abused by their father;

12) Falsely stating to the Commission and the Master that her grandsons never advised her or showed her marks on their bodies;

13) Misrepresenting to the Master during the hearing that she was only aware her son used corporal punishment before the 2015 court order prohibiting the use of corporal punishment;

14) Falsely stating in her answer to the complaint that she had informed CPS that she had concealed a handprint with makeup.

15) Tampering with a witness to these proceedings.

16) Falsely denying that she tampered with a witness to these proceedings.

It is clear that respondent's concealing abuse to Max with makeup multiple times, and lying and misrepresenting her knowledge and awareness about her grandchildren's abuse, was part of a long-standing pattern and was not just an isolated incident of misconduct.

(2) <u>Misconduct on the bench is usually more serious than the same misconduct off the bench</u>

Respondent's conduct took place off the bench.

(3) <u>Misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety</u>

(4) Misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does

Respondent's misconduct was clearly prejudicial to the actual administration of justice. Respondent testified on behalf of her son at the Juvenile Court termination of parental rights hearing and was under oath. The Master found respondent was not credible and misrepresented facts when she testified there. Thus, respondent misled the Juvenile Court jury.

The Master also found respondent not to be credible on numerous occasions during her testimony before the Master. In addition, respondent lied to the Commission during its investigation and furthered those lies during her testimony in the judicial disciplinary proceedings.

(5) Misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated

All of respondent's misconduct was deliberate and premeditated. By putting makeup on Max's face multiple times, respondent was helping her son avoid the consequences of leaving abusive marks on her grandsons' faces. This conduct was premediated and deliberate. When she testified in Juvenile Court, she had been a family law attorney for many years and a judge in family court for three months. She was aware of the issues that were being litigated and even assisted her son's attorney in preparing for the trial. (Proposed Findings, pp. 43, 44) She was well aware of the questions that would be asked of her and she had the time and opportunity to consider what her answers would be before she testified. (Proposed Findings, pp 43, 44) Her omissions, denials, and misrepresentations were deliberate. When she answered the Commission's request for comments, she had the time and opportunity to consider the questions and her answers. Likewise, when she answered the complaint, she had time to think about her answers. She clearly premeditated and deliberated her false and misleading statements to the Commission and in her answer to the

complaint. Finally, respondent furthered her misrepresentations and falsehoods during her testimony before the Master.

For all these reasons, respondent's premeditation of some of the most serious offenses a judge can commit warrants an extreme sanction.

(6) Misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery.

Respondent's concealing abuse and many false statements undermined the ability of the justice system to discover the truth. As argued above, respondent made material omissions and misrepresentations under oath during her Juvenile Court testimony. This factor weighs in favor of a more extreme sanction.

(7) Misconduct that involves the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of a class of citizenship.

There is no evidence that respondent's conduct involved the unequal application of justice.

Other Considerations

The Commission has also considered other factors in past cases, as suggested by the American Judicature Society ("How Judicial Conduct Commissions Work," American Judicature Society 1999, pp. 15-16).

Impact on the judiciary

Respondent's conduct has garnered a lot of negative publicity. A search of the internet reveals articles about her inappropriate conduct on the following news sources:

- ClickonDetroit.com
- The Detroit Free Press

- The Detroit News
- WXYZ.com
- Fox2Detroit.com
- Mlive.com
- Deadlinedetroit.com
- Detroit.cbslocal.com
- Dailyadvent.com

The fact that respondent's dishonest behavior was extensively covered by news outlets has put the judiciary as a whole in a negative light.

Dishonest or Selfish Conduct

As argued above, respondent engaged in dishonest conduct by lying and misrepresenting facts to the Commission and to the Master. Her conduct was also selfish in that she was trying to save face in supporting her abusive son at the expense of her grandsons, while she ran for judge in 2018 on the platform that she was a child and family welfare advocate. (Apple, 9-24-21, at pp 1310/7-10, 1311/20-25, 1312/1-25, 1313/1-7)

The Michigan Supreme Court has consistently concluded that "dishonest or selfish conduct warrants greater discipline than conduct lacking such characteristics," and the Court has generally "imposed greater discipline for conduct involving exploitation of judicial office for personal gain." *In re Morrow*, 496 Mich 291, 302-303 (2014).

Uncharged acts of misconduct

The evidence shows that respondent was unethical in addition to the ways charged in the complaint; ways that raise significant questions about her credibility and support a severe sanction.

1. *Respondent assisted her son in violating a condition of his appellate bond*

After being convicted of two counts of Child Abuse in the Second Degree, respondent's son was sentenced to 4-10 years in prison. He was released on appellate bond with the condition that he have no contact with his children. Respondent was aware of the bond condition. Max testified that in the spring of 2021, respondent assisted him in communicating with his father by relaying messages and responses from one to the other. (Proposed Findings, pp 43-44) Respondent showed she has no respect for the appellate bond order.

2. *Respondent sought to influence Max's testimony*

Max started calling respondent in early 2021. At that time, respondent was aware that Max was a witness in the case and was aware that the complaint charged her with having lied about putting makeup on Max multiple times to prevent Russell's teasing. (Complaint, paragraph 14) During a conversation, which had nothing to do with his case and which took place three years after respondent allegedly put makeup on Max to prevent teasing and right before the hearing in this case was set to begin, respondent informed Max that she put makeup on him to prevent Russell from teasing him. (Report, p 16; (Max, 6-28-21, pp 485/16-486/10) There was no reason for her to inject this idea into their conversation other than to use Max's love for her to try to influence his testimony. As a lawyer, and as a criminal court judge who sets bonds with conditions that routinely include that a defendant have no contact with the witnesses who may testify against him at trial, respondent certainly knew how inappropriate it was for her to communicate at all with a central witness in the case against her. She definitely knew better than deliberately to inject her

challenged explanation for having put makeup on him. Her witness tampering shows she lacks respect for the judicial system's truth-seeking function.

Respondent was aware that Max lied to KidsTalk and to Disciplinary Counsel and did not instruct him to correct his lie and she did not or reveal his lie

In April of 2021, Max wrote a letter to a close friend of his father. The letter contained false exculpatory information about his father's guilt of child abuse.[18] In May 2021, Max told a forensic interviewer that the exculpatory information was false, but also falsely claimed that it was respondent who had told him to write the letter. He did so to protect his father, who was then forbidden to talk to him as a condition of the father's bond, but who had actually instructed Max to write the letter. After giving this false story to the forensic interviewer, Max informed respondent that he had lied to the interviewer and had wrongly accused respondent of being the author of the letter. (Max, 7-21-21, pp 577/19-579/5, 583/15-585/25; Green, 11-19-21, pp 2057/19-2058/9, 2058/23-2059/2, 2060/10-1)

Once disciplinary counsel became aware of the letter and Max's claim that respondent had authored it, counsel notified the Master and respondent of the potential witness tampering. (Disciplinary Counsel's Motion to Prohibit Respondent from Communicating With all Witnesses

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[18] As of May 2021 Max's father stood convicted of having abused Max and Russell. Max had been a witness during his father's trial. Between May 5 and May 13, 2021, disciplinary co-counsel received a letter written by Max to "Uncle John," a good friend of Max's father. The letter was a purported admission to Uncle John that Max had been coached by his mother to say incorrect things about his father at his father's trial. Interestingly, this claim mirrored respondent's defense in this case that Max's testimony against respondent had been coached by his mother.

A forensic interviewer at the Child Advocacy Center and co-counsel interviewed Max separately after "Uncle John" sent the letter to the prosecutor assigned to handle the father's appeal. Max told co-counsel the contents of the letter were not true. He originally claimed that it was respondent who had told him to write the letter. He said she told him to do so in order to communicate with his father. (Ex. 44, 1:05:15-1:06:43; 1:34:17–1:34:37) When confronted, Max recanted his claim that respondent had told him to write the letter, and admitted that his father had done so directly. (Max, 6-28-21, pp 548/8-18, Max, 7-21-21, p 726/9; Max, 8-23-21, pp 1072/7-1073/3)

on Disciplinary Counsel's Witness List) After investigation revealed that it was Max's father rather than respondent who authored the letter, disciplinary counsel notified respondent and the Master of their findings. (Disciplinary Counsel's Update on Evidence of Witness Tampering)

Respondent admitted she was aware of the lie. (Green, 11-19-21, p 2057/19-25) Yet, she did not instruct Max to be truthful when she first learned that he had lied. She did not tell Max to correct the lie and she did not correct it herself. *(Id*. at pp 2058/1-9, 23-2059/2) Though she was aware that disciplinary counsel were investigating Max's claim, she did nothing to alert counsel or the Master to the truth she knew. (*Id*. at p 2059/5-8) Once again, she showed her disrespect for the truth-seeking goal of the judicial system.

Respondent is not repentant

In *In re Adams*, 494 Mich 162, 181; 833 NW2d 897 (2013), the Court reasoned that a sanction may be less severe where a respondent acknowledges misconduct and is truthful throughout the disciplinary proceeding, but "where a respondent is not repentant, but engages in deceitful behavior during the course of a Judicial Tenure Commission disciplinary investigation, the sanction must be measurably greater." (Quoting *In re Noecker*, 472 Mich 1, 18; 691 NW2d 440 (2005) (Young, J., concurring). *Adams* demonstrates that respondent's dishonest conduct warrants a "measurably greater" sanction, as she not only failed to take responsibility, or express an iota of remorse, for her misconduct, she also "engaged in deceitful behavior" during the course of the Commission's investigation and the Master's hearing.

Respondent lied to the media

Respondent was interviewed by Mr. Elrick from Fox2News in May of 2019 and made the statement, on video, "I didn't put makeup on any bruises, to conceal any abuse. That is utterly preposterous. It just didn't happen." The interview and video aired publicly. Respondent has

never retracted or corrected her recorded statement. For the reasons stated above, respondent's statement was false, or at the best, misleading.

The respondent in *In re Ferrara*, 458 Mich 350 (1998), held a press conference at which she falsely stated that tape recordings of her voice making racial and ethnic slurs were "fake." In sanctioning that respondent, the Supreme Court held:

> . . . respondent . . . never exhibited true remorsefulness for her misleading comments to the public and has never shown that she understands the damage to the judiciary that occurs when a judge offers, as fact, public statements that are not reasonably supported, researched, investigated, or believed to be true. (Id. at p. 362)

The Court further ruled:

> In refusing to accept responsibility for her comments, respondent ultimately deprived herself of the opportunity to truly and sincerely apologize for her conduct. Her unsupportable denials and inconsistent statements to the media, the public, the commission, and this Court stand as clear evidence of her inability to be forthright, to avoid appearances of impropriety, and to fulfill the ethical obligations of a judicial officer, who must be "perceived to be a person of absolute integrity. When a judge's character and morals come into question not only do the people lose respect for him as a person, but worse, respect for the Court over which he presides is lost as well. *Matter of Tschirhart*, 422 Mich. at 1211 (1985)
>
> Her statements to the press and the public, as well as to the master and this Court, have clearly prejudiced the administration of justice, evidence a fundamental lack of respect for the truth-seeking process, and, furthermore, if left unrebuked, threaten to severely compromise the public's confidence in the judiciary's integrity. Accordingly, we find respondent's actions to constitute misconduct in violation of Canons 1, 2A, 2B, and MCR 9.205(C)(4). (*Id*. at pp 364-365)

The totality of respondent Ferrara's misconduct caused the Supreme Court to remove her.

In this case, respondent concealed evidence that her son abused her grandsons. She thereby violated the criminal law by tampering with evidence of a crime. She lied about having done that, and told multiple related lies in court, to the media, during the Commission's investigation, and during the hearing before the Master. She tampered with a witness and completely disrespected

the Commission's truth-seeking function. She has expressed no remorse. It is clear that consistent with *Ferrara*, the appropriate sanction is to remove respondent from the bench.

Proportionality

The Supreme Court has stated:

> This Court's overriding duty in the area of judicial discipline proceedings is to treat "equivalent cases in an equivalent manner and ... unequivalent cases in a proportionate manner."

In re Morrow, 496 Mich. at 302, quoting *In re Brown*, 461 Mich. at 1292; *In re Simpson*, 500 Mich 533, 559 (2017).

There is a great deal of precedent that removal is the appropriate sanction for a judge who lies under oath, in addition to the cases cited above. In *In re Noecker*, 472 Mich 1 (2005), Judge Noecker made false statements to the police about a crime he committed, and he made false statements to the Commission and at the judicial disciplinary hearing. The Supreme Court removed him. In *In re James*, 490 Mich 553 (2012), Judge James made false statements to the Commission and lied under oath at the judicial disciplinary hearing. The Supreme Court removed her for that as well as for other misconduct. See also *In re Ryman*, 394 Mich 637); *In re Loyd*, 424 Mich 514 (1986); *In re Nettles-Nickerson*, 481 Mich 321 (2008). In *In re Justin*, the Court stated:

> "[o]ur judicial system has long recognized the sanctity and importance of the oath. An oath is a significant act, establishing that the oath taker promises to be truthful. As the "focal point of the administration of justice," a judge is entrusted by the public and has the responsibility to seek truth and justice by evaluating the testimony given under oath. When a judge lies under oath, he or she has failed to internalize one of the central standards of justice and becomes unfit to sit in judgment of others."

490 Mich 394, 424 (2012). The Court also noted:

> *[S]ome misconduct, such as lying under oath, goes to the very core of judicial duty and demonstrates the lack of character of such a person to be entrusted with judicial privilege.*
>
> *... Lying under oath, as the respondent has been adjudged to have done, makes him unfit for judicial office*.

Id. at 424 (emphasis in original); *see also In re Ryman,* 394 Mich 637, 642-643; 232 NW2d 178 (1975); *In re Loyd,* 424 Mich 514, 516; 535-536; 384 NW2d 9 (1986); *In re Ferrara*, 458 Mich at 372-373; *In re Noecker*, 472 Mich at 3; *In re Nettles-Nickerson*, 481 321; 322; 750 NW2d 560 (2008); *In re James*, 492 Mich 553, 568-570; 821 NW2d 144 (2012).

In *In re Adams*, 494 Mich 162 (2013), the Supreme Court stated that "there is not much if anything, that is more prejudicial to the actual administration of justice than testifying falsely under oath." 494 Mich at 182. In that case, the respondent signed her attorney's name to a pleading without permission and then filed the pleading in the respondent's divorce case. In addition, the respondent lied under oath in her divorce proceedings and made misrepresentations to the Commission during its investigation. *Id* at 171, 175. While the Commission recommended that that the respondent be suspended without pay for 180 days and be ordered to pay costs, the Court "[did] not believe that such a sanction would sufficiently address the harm done to the integrity of the judiciary." *Id*. at 184. Rather, the Court concluded

> because testifying falsely under oath is 'antithetical to the role of a Judge who is sworn to uphold the law and seek the truth,' (citation omitted), and also because respondent has not demonstrated any apparent remorse for her misconduct and continues to deny responsibility for her actions, we believe that the only proportionate sanction is to remove respondent from office. *Id*. at 186-187.

The Supreme Court's precedents make clear that removal from office is the appropriate sanction in this case.

RECOMMENDATION

Respondent's most serious misconduct included tampering with evidence; making false statements under oath at the Juvenile Court proceedings, to the Commission, and during the judicial misconduct hearing, and tampering with a witness. Her misconduct was persistent and premeditated. Her misconduct is comparable to, or worse than, the misconduct that caused the Supreme Court to remove the judges in the cases cited above. Disciplinary counsel ask the Commission to recommend that respondent be removed as well.

For the reasons stated in this brief, disciplinary counsel ask that the Commission:

- Adopt the Master's report to the extent it finds that respondent committed misconduct as charged in Count I and Count II of the amended complaint;
- Find that respondent committed the misconduct charged in Counts I and II that the Master did not address;
- Find that respondent violated the rules and statutes charged in Counts I and II that the Master did not address;
- Reject the Master's finding that respondent's false statements as charged in Count III were unintentionally false, and instead find that respondent's intentionally false statements violated the rules cited in that count.

On the basis of all the evidence, disciplinary counsel then ask that the Commission recommend that the Supreme Court remove respondent from office.

FEES FOR MISREPRESENTATIONS

As noted, the Master found respondent engaged in conduct involving deceit and made intentional misrepresentations and misleading statements to the Juvenile Court, to the Commission in her written responses, and to the Master during her testimony. Respondent's false statements necessitated the bulk of the Commission's investigation, and resolving those false statements was the main focus of the hearing. Her false statements permeated all of the proceedings. A review of the motions and answers to which disciplinary counsel had to respond, listed on pages 2-4 of the Master's report, shows the amount of time and effort disciplinary counsel incurred. Accordingly, disciplinary counsel ask that the Commission recommend that respondent be ordered to pay the costs, fees, and expenses incurred by the Commission in prosecuting the complaint. *See* MCR 9.202(B).

Respectfully submitted,

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