

STATE OF MICHIGAN  
BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

HON. LISA O. GORCYCA  
6<sup>th</sup> Circuit Court  
1200 N. Telegraph  
Pontiac, MI 48341

FORMAL COMPLAINT NO. 98

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**Report of Master: MCR 9.214**

**I. Introduction**

In an order dated January 22, 2016, the Michigan Supreme Court appointed the undersigned to serve as a Special Master to conduct a hearing, make findings of fact and conclusions of law. This judicial discipline matter involving Judge Lisa O. Gorcyca arises out of a contentious divorce and child custody case in which the Examiner contends that Respondent, Judge Lisa O. Gorcyca engaged in various acts of judicial misconduct on June 24, 2015 (Count I) and made false representations in her October 23, 2015 answer to the Judicial Tenure Commission's 28-day letter (Count II). Judge Gorcyca denies any judicial misconduct including making any false representations to the Judicial Tenure Commission. The master denies Respondent's motions for directed

verdict made at the hearing. Per MCR 9.214, the Master submits the following report which contains a brief statement of the proceedings, followed by the master's findings of fact, and conclusions of law.

II. **Summary of Disciplinary Proceedings:**

The Commission's 28-day letter was issued September 1, 2015. Judge Gorcyca's answer to the 28-day letter was dated October 23, 2015,<sup>1</sup> The Commission issued its complaint on December 14, 2015. Respondent answered on January 21, 2016. The Master was appointed by the Michigan Supreme Court on January 22, 2016. The attorneys met with the Master on January 26, 2016 to prepare a scheduling order which was signed on February 15, 2016. Witness lists were exchanged on May 10 and a joint pretrial brief was filed on May 24, 2016. Proceedings began Friday, May 27, 2016 with four (4) preliminary motions and the Master issued a subsequent order addressing those four (4) preliminary matters.<sup>2</sup> The disciplinary hearing was conducted on Tuesday, May 31, 2016 and Wednesday, June 1, 2016. After opening statements, the Judicial Tenure Commission's Examiner called five (5) witnesses: Judge Lisa O. Gorcyca, Karen G. Cook, Michael P. Dean, Jeffrey G. Schwartz and Brittany Kelso and submitted a number of exhibits: Examiners Exhibits 2, 10, 12, 22, 41, 45, 46, 47, 69, 131, 138, 139, 140, and 152 which were received into evidence. Examiner exhibits 144 and 156 were marked and identified and used to refresh recollection or impeach witnesses

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<sup>1</sup> Examiner Ex 69 Respondent's answer to 28-day letter

<sup>2</sup> See May 27, 2016 order Granting Examiner's motion to strike witnesses; Denying Judge Gorcyca's motion to disqualify the examiner and JTC staff and subsequent oral request to refer this matter to the Commission; denying Judge Gorcyca's motion in limine to preclude exhibits and testimony regarding events after the June 24, 2015 hearing; and denying Examiners motion to strike the May 16, 2016 deposition of Susan Lichterman and preserving said deposition as an offer of proof of Ms. Lichterman's testimony.

Schwartz and Dean but not admitted. After the Examiner rested, Judge Gorcyca called the following six (6) witnesses: Lisa Harris, William Lansat, Keri Middleditch, Deputy Randy Maloney, Tracey Stieb, and the Hon. Lisa O. Gorcyca, and introduced the following exhibits: Respondent's Exhibits 1-35, 38, 40-41, 43-45, 48-50, 52-63, 77-78, 80/80A,82/82A, 85-88, and 114. The hearing concluded on June 1, 2016 with each side making closing arguments. The Master incorporates by reference all exhibits and testimony received at the hearings into the following findings of fact and conclusions of law.

### **III. Findings of fact**

The Master's specific charge per the complaint issued by the Judicial Tenure Commission is to determine: 1) whether Judge Lisa O. Gorcyca committed misconduct on June 24, 2015, and 2) whether Judge Gorcyca made misrepresentations in her response to the Commission's 28-Day letter, it may be helpful to review the facts of the underlying action giving rise to this allegations of judicial misconduct to put Judge Gorcyca's alleged misconduct in context.

#### **a. Summary: December 2009-August 2014**

The gravamen of the JTC's complaint relates to Judge Gorcyca's conduct and several orders<sup>3</sup> that Judge Gorcyca issued on June 24, 2015 in which she held three minor children, LT, (dob) 7/6/2001, RT, (dob) 8/29/2004, and NT, (dob) 12/13/2005, who were involved in a divorce case<sup>4</sup> before her in contempt of court. This case was filed on December 17, 2009 in the 6<sup>th</sup> Circuit Court and shortly thereafter was assigned to Judge

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<sup>3</sup> Respondent Ex. 62 June 24, 2015 orders involving LT, RT and NT.

<sup>4</sup> *Eibschitz-Tsimhoni v Tsimhoni*, Case No. 09-766749-DM

Gorcyca's docket. A Judgment of Divorce ("JOD") had been entered on August 8, 2011.<sup>5</sup> As part of the judgment, the legal custody of the minor children was awarded jointly to both parties, with physical custody to the mother and parenting-time to the father. There followed, a long, complex, and very acrimonious battle between the parties. The case had been pending before Judge Gorcyca for over five years prior to her June 24, 2015 contempt order. The Register of Actions in this case is fifty-five pages long. More than forty hearings were held and more than a hundred pleadings were filed with the Court in this case.

At least thirteen of the hearings were Motions to Show Cause filed by the Defendant Father and/or the Guardian Ad Litem against the Plaintiff Mother.<sup>6</sup> Nearly every one of the motions concerned the Plaintiff Mother's and the children's alleged refusal to comply with the Court's parenting-time orders and directives. In addition to the show cause motions, there have been numerous other motions, reports, and recommendations filed by the Guardian Ad Litem with respect to the minor children. These reports, findings, and recommendations give historical context to Judge Gorcyca's decision making process on June 24, 2015.

Several 6<sup>th</sup> Circuit Court judges (Judge Gorcyca primarily but also Judge John McDonald and Judge Cheryl Matthews when Judge Gorcyca was not available) entered no fewer than seventy-eight separate orders; approximately thirty of which relate to the three minor children and predate the June 24, 2015 hearing. The majority of those thirty orders sought to effectuate meaningful parenting time between the minor children and

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<sup>5</sup> Examiner Ex 2

<sup>6</sup> See Respondent's Exhibits 1-35, 38, 40-41, 43-45, 48-50, and 52-60.

their father. Many of the orders were ignored or thwarted by the actions of the mother and the children themselves. The children have been clinically examined and evaluated by, or had supervised parenting time with seven therapists.<sup>7</sup> The mother was represented by sixteen attorneys throughout the course of the case, six of whom have entered their appearance *after* the hearing held on June 24, 2015.<sup>8</sup> The father was represented by four attorneys, two of whom had entered their appearance after the hearing held on June 24, 2015.<sup>9</sup> The children's maternal grandmother was also represented by two lawyers.<sup>10</sup> The Guardian Ad Litem for the three minor children, attorney William Lansat (P36752), was appointed on August 25, 2010 and has been continually involved in this case since that date. Friend of the Court Family Counselor, Tracey Rae Stieb, has also been involved in this case since its inception. The current parenting time supervisor, Art Gallagher, has been involved in the case since 2013.

The predominant issue in the underlying case has been the children's failure and refusal to participate in parenting time with their father and their father's allegations of parental alienation orchestrated by the children's mother and her efforts to ostracize the children from him.

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<sup>7</sup> To protect the confidential relationship between the children and their therapists, the Master chooses not to disclose the identity of those therapists although they have been previously identified in documents submitted to the Commission.

<sup>8</sup> To protect the confidential attorney client-relationship between the parties and their attorneys, the Master chooses not to disclose the identity of those lawyers although they have been previously identified in documents submitted to the Commission.

<sup>9</sup> To protect the confidential attorney client-relationship between the parties and their attorneys, the Master chooses not to disclose the identity of those lawyers although they have been previously identified in documents submitted to the Commission.

<sup>10</sup> To protect the confidential attorney client-relationship between the children's maternal grandmother and her attorneys, the Master chooses not to disclose the identity of those lawyers although they have been previously identified in documents submitted to the Commission.

Judge Gorcyca spent nearly five years sifting through motion after motion alleging that the mother and children were failing to comply with the court's parenting time orders and trying to craft a solution to address the deep resentment the children had for their father. Judge Gorcyca has indicated that her June 24, 2015 decision to hold the children in contempt was not made lightly but "emanated from years of frustration born of Plaintiff Mother's orchestrated efforts to disobey the Court's orders to unify the children with Defendant Father while maintaining a relationship with Plaintiff Mother."<sup>11</sup> Unfortunately, the culmination of this "frustration" on June 24 resulted in Judge Gorcyca committing several acts of judicial misconduct.

**b. August 20, 2014 and August 21, 2014**<sup>12</sup>

Judge Gorcyca heavily relies on events from August 2014 to support her contention that the children had been informed earlier than June 24, 2015 that contempt was a "tool in her toolbox"<sup>13</sup> and that, in demonstrating judicial restraint, she did not employ it at that time. The evidence shows and Judge Gorcyca testified that June 24, 2015 was not the first time the children were scheduled to have parenting time with their father in Judge Gorcyca's jury room. The attorneys suggested and the judge agreed that parenting time should occur in Judge Gorcyca's courtroom as early as August 2014. Courtroom parenting time is an extremely unusual remedy that was suggested by the Guardian Ad Litem, parties and agreed to by the court in this matter to ensure that

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<sup>11</sup> Examiner Ex 69, pp 2-3 (Judge Gorcyca's answer to 28 day letter)

<sup>12</sup> Respondent Ex 77 8/21/14 transcript, Ex 78 video 8/21/14, Ex 41 8/20/14 order.

<sup>13</sup> June 1 Transcript p 321 lines 11-15

the children participated in parenting time with their father. The Court signed a stipulated order to this effect dated August 20, 2014.

In that August 20, 2014 consent order regarding parenting time,<sup>14</sup> the parties mutually agreed to, and the Court order directed that parenting time was to be held in Judge Gorcyca's jury room on the next two following days: August 21, 2014 and August 22, 2014. Although the children were technically compliant when they appeared at the Court on August 21, 2014, their behavior was completely defiant of this Court's authority.<sup>15</sup> Judge Gorcyca indicated in her testimony that it was these August 2014 events at the courthouse that satisfied her that the children had been poisoned against their father, and would go to any lengths to disregard the Court's directives.<sup>16</sup>

**c. August 21, 2014**<sup>17</sup>

When the mother and children appeared at the Court on August 21, 2014, the children refused to enter the jury room occupied by their father. All three children sat in chairs in the public hallway directly outside Judge Gorcyca's courtroom and refused, as a group, to participate in any parenting time with their father. Linking their arms together as if anchoring each other, they refused to look at or speak to anyone. All three children refused to get up from their chairs and enter the jury room where their father and the parenting-time supervisor, Art Gallagher, were waiting.

When Judge Gorcyca was notified of these developments, she entered her courtroom and observed the children's actions through a window in the courtroom door.

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<sup>14</sup> Respondent's Ex 41

<sup>15</sup> June 1 transcript pp 315-317

<sup>16</sup> Id.

<sup>17</sup> Respondent's EX 77 Transcript of 8/21/14 hearing; Respondent's Ex 78 DVD of 8/21/14 hearing.

Deputies from the Oakland County Sheriff's Office ("OCSO") were called to her courtroom and the Judge Gorcyca also requested the assistance of Assistant Prosecutor Lisa Harris who according to Judge Gorcyca's testimony was good at working with children. Ms. Harris and Mr. Lansat, the Guardian Ad Litem, encouraged the children to visit with their father in the jury room. No one forced or touched the children to obtain their compliance.

The children refused to acknowledge or respond to the Guardian Ad Litem, the deputies, or the assistant prosecutor. All of these authority figures spoke at length to the children and explained to them the significance of the court's orders and why they must be followed. They explained the potential consequences of failing to comply including the possibility that if they persisted in their refusal to comply, they could be placed in Children's Village<sup>18</sup> and that their mother could be placed in the Oakland County Jail.

Despite these efforts, and the Court's desire to impress upon the children the importance of following the court's orders, the children continued to ignore the Court's clear directives and refused even to enter the jury room for parenting time with their father. Judge Gorcyca then also enlisted the help of Ms. Stieb, the Friend of the Court Family Counselor, to persuade the children to obey the court's order, all to no avail.

Judge Gorcyca then took it upon herself to go to the hallway and advised the children that they must follow the Court's orders. She again explained to the children that they, and their mother, could be held in contempt if they continued to refuse to have contact with their father. Judge Gorcyca testified, "I had so many tools that I had already used. And in August of 2014, they – a new tool was contempt. A new tool was

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<sup>18</sup> June 1 transcript p 321

Children's Village, and it was expressed to that them that that was a tool in my toolbox by several adults that were in authority."<sup>19</sup>

After Judge Gorcyca's admonition, the children complied and reluctantly went into the jury room to begin parenting time with their father. They were accompanied by Mr. Gallagher, Ms. Stieb, and Mr. Lansat. At the conclusion of the parenting time, Mr. Lansat and Ms. Stieb both later reported to Judge Gorcyca that little progress was made.

The children technically completed their parenting time on August 21 and August 22 without further incident. As Judge Gorcyca noted in her testimony, "And then the next day [August 22] they came for jury--they came to my jury room for parenting time, and I didn't hear—I don't hear how things go unless one of the parties bring it to my attention or if I'm right there and I see it."<sup>20</sup> Judge Gorcyca claimed to later learn in a subsequent report from the GAL dated 11/3/2014 that the parenting session did not go well.<sup>21</sup>

The Master notes that in Judge Gorcyca's testimony at her disciplinary hearing on June 1, 2016 that she testified that it was on August 21, 2014 that she and others put the three children on notice that "contempt" was one of the "tools in her toolbox" for failing to comply with her parenting time orders with their father. Judge Gorcyca's testified at the disciplinary hearing regarding the August 21, 2014 events that it was Assistant Prosecutor Lisa Harris, a prosecutor who would normally have brought criminal contempt charges and recommended to Judge Gorcyca that Judge Gorcyca

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<sup>19</sup> June 1 transcript p. 321

<sup>20</sup> June 1 transcript p.319

<sup>21</sup> Respondent's Ex 43

should hold the children in contempt and that a contempt hearing could be held “that afternoon” for the children’s failure to comply. Judge Gorcyca testified “So Ms. Harris suggested that it was ridiculous, and she said: Judge, I think you need to appoint these children lawyers. Let’s have a hearing for contempt. We can do it this afternoon, in fact and Mr. Lansat says Judge, basically nobody wants these kids to go to Children’s Village. Let’s just give it one more shot. So I went out there to give it a shot.”<sup>22</sup> The Master understands that the use and differences between civil and criminal contempt are a very difficult substantive law matter.<sup>23</sup> The Master finds this testimony somewhat

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<sup>22</sup> June 1 transcript pp 317-8.

<sup>23</sup> As noted in Stumpf, Felix, *Inherent Powers of the Court, Sword and Shield of the Judiciary*, State Justice Institute, (National Judicial College 1994) the power to punish for contempt is inherent in the judiciary. The contempt power enables the courts to perform their functions without interference, to control courtroom misbehavior and **to enforce orders** and compel obedience. For an explanation of the origin of the contempt powers of a court, see Goldfarb, *The Contempt Power* (1963) and Raveson, “Advocacy and Contempt: Constitutional Limitations on the Judicial Contempt Power. Part One,” 65 Wash L. Rev 477, 485-489, fn. 21, 22 and 43 (1990) Inherent power to use the contempt power is spelled out in Standard 6-4.1 to 6-4.5 ABA Standards for Criminal Justice. The inextricable relationship between courts and their contempt power was notably stated in *Ex Parte Robinson*, 86 U.S. 505, 510 (1873): ‘The power to punish for contempt is inherent in all courts; its existence is essential to preservation of order in judicial proceedings, and **to the enforcement of the judgements, orders, and writs of the courts**, and consequently to the administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power.’” **(bold, underlined and italicized text added)**. In addition to the Michigan Bench Book on Contempt there are many other resources available that contain the black letter law of contempt. See also material prepared for the National Judicial College “*Contempt and Trial Disruption*, General Jurisdiction, 1, (National Judicial College July 2007). See also “Sir John Fox, *The History of Contempt of Court* (1927) which traces contempt power back to the 12<sup>th</sup> Century. In *Link v. Wabash RR* 370 U.S. 626 (1962) (Summary contempt case. Contempt power ‘was recognized at common law and has been since time immemorial, that courts have the inherent power to enforce their processes and orders to attain the ends of the processes and order.’ See also *Ex parte Terry* 128 U.S. 289 (1888).” In “*Contempt and Trial Disruption*, General Jurisdiction, 1-2, (National Judicial College July 2007) the distinction between civil and criminal contempt is set forth by the U.S. Supreme Court “in *Hicks ex rel Feiock v. Feiock*, 485 U.S. 624 (1988): ‘ If the relief provided is a sentence of imprisonment, it is remedial [*civil*] if ‘the defendant stands committed unless and until he performs the affirmative act required by the

troubling in certain respects. One of the issues in this matter is whether or not Judge Gorcyca subsequently followed proper protocol on June 24, 2015 when conducting the contempt proceeding be it civil or criminal. This testimony is troubling because it appears that Judge Gorcyca is testifying that she understands that a punitive criminal contempt process is properly brought by a prosecutor, and that the proceedings in August 2014 would have been a matter of criminal contempt brought by Prosecutor Harris and not a matter of civil contempt.<sup>24</sup> Judge Gorcyca also relies on this event, however, to show that although she could have acted earlier than June 24, 2015 in holding the children in contempt, that she did not, and cites this as an example of her judicial restraint under the facts and circumstances of this difficult case.

Fast forwarding through events from August 2014 to June 2015, the intervening months between the August 21, 2014 incident and the June 24, 2015 hearing were filled with a multitude of court hearings, stipulated orders, the Report and Recommendation

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court's order,' and is punitive [*criminal*] if 'the sentence is limited to imprisonment for a definite period.' If the relief provided is a fine it is remedial [*civil*] when it is paid to complainant, and punitive [*criminal*] when it is paid to the court, though a fine that would be payable to the court is also remedial [*civil*] when the defendant can avoid paying the fine simply by performing the affirmative act required by the court's order. **(Italicized and bold text added)** As noted in *United States v. United Mineworkers* 330 U.S. 258,301 (1947) the distinction between civil and criminal contempt is oftentimes not clear and the same facts may give rise to justify resorting to both coercive and punitive measures." Of further significance to this disciplinary matter, it is noted Ryan, *supra* at 8: "iii. Purging of contempt: (1) coercive sanction is civil only if given opportunity to purge, See, *United Mine Workers v. Bagwell* 512 U.S. 821 (1994). (2) In civil contempt, Defendant can purge contempt by compliance with the court's order and avoiding further sanctions. This option is **not** possible with criminal contempt. *United States v. Ayer* 866 F2d 571 (2nd Cir. 1989) *United States v. Spectro Foods* 54 F2d 1175 ( 3<sup>rd</sup> Cir. 1976). iv) Indefinite incarceration with opportunity to purge: In criminal contempt, imprisonment is punitive, not coercive, and hence term is for a fixed period of time. *United States v. Hughey* 571 F2d 111 (2<sup>nd</sup> Cir 1978), *United States v. Ayer* 866 F2d 571 (2<sup>nd</sup> Cir 1989) *United States v. North* 621 F2d 1255 (3<sup>rd</sup> Cir. 1980)."

<sup>24</sup> MCL 600.1701 et seq

of the Guardian Ad Litem filed November 3, 2014, and more motions for show cause alleging violations of parenting time. In response to father's March 2015 motion alleging such violations, the mother voluntarily went to jail and worked on the animal farm for two days beginning April 2, 2015 for said alleged violations of parenting time.<sup>25</sup>

**d. The June 23, 2015 Hearing<sup>26</sup> and Order<sup>27</sup>**

On June 23, 2015, the parties again appeared before Judge Gorcyca for a review hearing of the mother's compliance with the court-ordered parenting time. At the June 23, 2015 hearing, father's attorney and the parenting time supervisor told Judge Gorcyca that although the children appeared for scheduled visits with their father, their participation in parenting time was minimal. Judge Gorcyca told the mother on the record that if the children's participation in parenting time with their father did not improve, the mother could face additional jail time. The parties agreed, and Judge Gorcyca ordered, that the father would exercise his parenting time with 10-year-old RT and 9-year-old NT in Judge Gorcyca's jury room on June 24, 2015. The June 23, 2015, order also stated that the father's parenting time with LT was to occur July 14.<sup>28</sup>

The court speaks through its order and Respondent's Exhibit 61 which in the June 23, 2015 order is explicit: "Defendant shall exercise parenting time on 6/24/2015 in the jury room with [RT] from 9-11, lunch with [NT] and [RT] from 11-12, with [NT] from 12-2." The June 23, 2015 order did not order LT to have parenting time with Defendant on June 24. The June 23, 2015 court order issued by Judge Gorcyca expressly

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<sup>25</sup> Respondent's Ex 48-50; 52-58

<sup>26</sup> Examiner Ex10 6/23/15 transcript; Examiner Ex 138 6/23/15 DVD

<sup>27</sup> Examiner Ex 41 6/23/15 order; Respondent Ex 61 6/23/15 order

<sup>28</sup> Id.

indicated that LT was not scheduled to have parenting time with his father **until July 14**.<sup>29</sup> The order states: “Father’s additional parenting time shall be as follows (in the jury room): **7/14/2015 10a-2pm w/ [LT;]** 7/15/2015 1p-4pm w/[RT;] 7/16/2015 9a-1pm w/[NT;] 7/17/2015 10a-2pm w/ [LT].”<sup>30</sup> (Emphasis added)

**e. June 24, 2015**<sup>31</sup>

On June 24, 2015, the younger children, RT and NT, appeared as ordered for parenting time with their father. Their mother also brought along LT with his two younger siblings. RT commenced parenting time with his father in the Judge Gorcyca’s jury room at or about 9:00 AM. During the normal motion call that day, Judge Gorcyca’s secretary informed the judge that parenting time in her jury room for RT was not progressing well and was once again being thwarted by the children’s refusal to follow the Court’s June 23 order. Judge Gorcyca again contacted Ms. Stieb for her guidance and together they entered the jury room to determine the nature of the problem on this occasion.

Immediately upon entering the jury room, Judge Gorcyca saw [RT] sitting in a chair, his legs placed over a second chair with his head tucked between his legs. According to Judge Gorcyca’s testimony, RT was theatrically breathing heavily, and sobbing and panting, with a roll of toilet paper next to his shoe. Also in the room were the children’s father, the parenting time coordinator Art Gallagher, and the Guardian Ad Litem. The mother and LT were **not** in the room with RT at this time.

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<sup>29</sup> Id

<sup>30</sup> Id

<sup>31</sup> Examiner Ex 139 6/24 2014 DVD; Examiner Ex 152 6/24/15 transcript; Examiner Ex 45-47 6/24/15 orders. Respondent Ex 62 6/24/15 orders. Respondent’s Ex 85 6/24/15 transcript; Respondent Ex. 86 6/24/15 DVD

Judge Gorcyca requested that RT sit up, cease this behavior and asked RT what was wrong. RT responded that he did not want to have parenting time with his father. When Judge Gorcyca asked “why,” RT said it was because his father had assaulted him. Judge Gorcyca then told RT that the Court had already conducted a hearing regarding that issue and found that there wasn’t evidence to support that allegation. The Master notes that a hearing on the alleged assault of RT by his father was held on March 23, 2015. Despite Judge Gorcyca’s March 23 finding to the contrary, it was still clear that on June 24 that RT expressed his fear that that his father had assaulted him and for that reason RT refused to have parenting time with his father that day.

Judge Gorcyca then asked RT whether there was any other reason other than the alleged prior assault as to why RT did not want to visit with his Father. RT, through what Judge Gorcyca described as “theatrical sobs,” said, “He didn’t say happy birthday to me.” The father immediately responded, “Honey, I did say happy birthday to you.”

Judge Gorcyca testified to saying something like, “RT, this is a good thing. This shows me that you want more attention from your Dad and your Dad really wants to be in your life.” Judge Gorcyca asked RT to remind her when his birthday was, and RT stated that it had been last August (almost a year prior, and close in time, to when the children were before the court on the August 2014 parenting-time order and issue). Ms. Stieb spoke to RT about starting fresh with his father. RT said something to the effect that he did not want to do so because it wasn’t the first time his dad had been mean. RT then refused to interact or converse further with his father or with Judge Gorcyca. Judge Gorcyca told RT that there were serious consequences for his continuing refusal to follow the Court’s orders. She reminded RT that it was not up to him, or his siblings, to

decide whether they were to participate in parenting time with their father. Judge Gorcyca also reminded RT of the court's admonition in the hallway the prior August regarding the consequences of their refusal to comply, including potentially being sent to Children's Village.

After Judge Gorcyca left the jury room, she wrote a text or script that she wanted the mother to read to the children in the jury room. Judge Gorcyca testified that she had good intentions for doing so and her rationale was based upon something RT had said in the jury room to the effect that he always listened to his mother. The written statement included statements like, "kids, your dad loves you", "he will not harm you", "your dad wants to be in your life", "I want him to be in your life", "he will not harm me", and, "I want you to spend time with your dad and to have a good relationship with your Father."

Judge Gorcyca consulted with the attorneys then representing both parties concerning this idea. Judge Gorcyca told the attorneys what had just transpired in her jury room with RT. Judge Gorcyca told the attorneys that she was desirous of having their mother read the statement to the children in the presence of their father while in the jury room. Judge Gorcyca was then informed that NT had entered the jury room and also refused to interact with, or for that matter look at, her father.

After the mother privately consulted with her attorney, she agreed to read Judge Gorcyca's statement to RT and NT. Even though LT was not there that day for parenting time, the mother brought LT into the jury room as well and read the statement to all three children around 11:30 AM and then added a couple of statements to the children in Hebrew. Judge Gorcyca then left the jury room so that the family could talk to

each other with the help of the Family Counselor (Tracey Stieb), the Guardian Ad Litem (William Lansat), and the mother's attorney.

After the mother's script reading, all three children were left with their father and the Friend of the Court Family Counselor, Tracey Steib. Shortly afterward, Judge Gorcyca was informed by Ms. Stieb that the three children persisted in their refusal to communicate with their father and refused to participate in any parenting time. Recall, that only two, RT and NT, and not LT, had been ordered on June 23 to participate in June 24 parenting time. Judge Gorcyca then informed the parties and their attorneys, as well as the Guardian Ad Litem, that she was appointing attorneys for all three children. She informed the parties that, if necessary, she would be proceeding with an immediate contempt hearing regarding the children after the children had time to consult with their newly appointed attorneys.

Judge Gorcyca called for an extra sheriff anticipating she would send the children to jail and appointed Attorney G. Jeffrey Schwartz, P-32076, for LT, Attorney Michael Dean, P-32631, for RT, and Attorney Karen Cook, P-26141, for NT providing approximately half an hour for the attorneys to meet and confer with the three minor children.

#### **i. LT Contempt Hearing**

Despite the lack of an order regarding parenting time for LT on June 24, Judge Gorcyca held a contempt hearing against LT at 12:02:13 PM. During his contempt hearing, LT expressed confusion but apologized to the court. LT also told Judge Gorcyca that he did not want to apologize or speak to his father because he believed that his father was violent and because he had observed his father hit his mother. As

reflected in the video and transcript during LT's contempt hearing, Judge Gorcyca stated, among other things, that,

- a. "You are a defiant, contemptuous young man and I'm ordering you to spend the rest of the summer—and we'll review it—we'll review it when school starts, and you may be going to school there. So you're going to be—I'm ordering you to Children's Village; "[page 5 transcript]
- b. "You're supposed to have a high IQ, I which I am doubting right now because of the way you act, you're very defiant, you have no manners;" [page 6]
- c. When he told Judge Gorcyca, he was "fifteen," the prior sentence changed and Judge Gorcyca indicated to LT that "You may stay there until you graduate from high school. "[ page 7]
- d. He would live in Children's Village; [page 7]
- e. He would be going to the bathroom in public; [page 7]
- f. Judge Gorcyca also told the 15-year-old that he should do research on a mass murderer, Charlie Manson and his cult. [page7]
- g. "When he's no longer like Charlie Manson's cult" while making a circular gesture near her temple indicating that LT was crazy. [page10 transcript and DVD]. While making the above "Manson" comment to Defendant-father, Judge Gorcyca used her index finger to make a circular motion at her right temple which even Judge Gorcyca now apologetically acknowledges in her testimony and responsive pleadings could be objectively viewed by others as indicating [LT] is "crazy."

Judge Gorcyca testified that she does not insult those who come before the court, however, the Master finds that some of Judge Gorcyca's comments and gestures made to LT on the record were beyond stern language, were contrary to the code of Judicial Conduct and clearly demeaning and insulting. Degrading comments that she doubted LT had a high IQ and making the "crazy" gesture while telling him that when "he's no longer like Charlie Manson's cult" transcend the bounds of stern language and acceptable judicial behavior, violating the code.

One of the issues raised was whether Judge Gorcyca was engaged in a civil or criminal contempt hearing with the children. It really is irrelevant due to two significant problems with the proceeding that Judge Gorcyca held as it specifically relates to LT: 1) There was **no order** for parenting time between LT and his father for June 24 and in the absence of an order one cannot be held in either civil or criminal contempt, and 2) giving Judge Gorcyca the benefit of the doubt and assuming that the proceeding Judge Gorcyca conducted was a civil, and not criminal, contempt hearing, Judge Gorcyca put the "keys to the jailhouse" in Defendant father's control who she knew was leaving the country for two weeks<sup>32</sup> and those "keys to the jailhouse" were not in LT's possession as required by the substantive law of civil contempt.

It is no surprise that LT who had been ordered to parenting time on July 14 would express confusion about being held in contempt for refusing parenting time with his father on June 24. LT stated, "I didn't do anything wrong, so...But he was the one that—something wrong—how come—I thought there was like rules when—rules for

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<sup>32</sup> Respondent's EX 83 p8, lines 23-24 "My client is traveling on business for two weeks."

like not, you know, not hitting someone, why am I going to the...”<sup>33</sup> Despite the absence of a court order for LT to have parenting time with Defendant father on June 24 and without any further inquiry, Judge Gorcyca found LT in direct civil contempt, stating, “..the court finds you in direct contempt. I ordered you to have a healthy relationship with your father....I ordered you to talk to your father. You chose not to talk to your father. You defied a direct court order. It’s a direct contempt so I’m finding you guilty of civil contempt.” But, there was no such order for June 24 regarding LT and any contempt such as refusing to talk to his father outside the court’s immediate presence would have been indirect and not direct contempt. According to the express language of Judge Gorcyca’s June 23 order, LT was not scheduled for parenting time until July 14 and had only accompanied his mother to court when she brought the two younger siblings RT and NT. The Master recognizes that it is irrelevant whether Judge Gorcyca correctly understood or employed civil or criminal contempt or whether it was direct or indirect contempt. The point is that Judge Gorcyca improperly utilized her contempt power and found LT in contempt on June 24, depriving him of his liberty, and having him held in custody until July 10 for doing something that Judge Gorcyca had not ordered LT to do in the June 23 order. It is fundamental that there can be no contempt, whether it be civil or criminal, direct or indirect, if there has been no applicable court order violated and there was no such order to do so on June 23 or June 24 directed to LT. Notwithstanding, Judge Gorcyca stated to LT: “Your behavior in the hall with me months ago, your behavior in this courtroom, your behavior back there, is unlike any I’ve ever seen in any 46,000 cases. You, young man, are the worst one. So you have

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<sup>33</sup> June 24 transcript pp 5-6.

bought yourself living in Children's Village, going to the bathroom in public and maybe summer school..."

Consistent with protocol for in custody prisoners regardless of age, an Oakland County Sheriff's Deputy immediately handcuffed 13-year-old LT in open court and led him away. Judge Gorcyca ordered that while LT was at Children's Village, the mother and her family members were not permitted to have any contact with him.

As to the "keys to the jailhouse door" issue, on page 10 of the transcript, Judge Gorcyca told the father, "so dad, just let us know when that happens..." Judge Gorcyca then changed the length of LT's incarceration from September after the summer by setting a new review hearing nearly four years later "when you're 18". Judge Gorcyca stated: "And if it doesn't happen—actually, you know what, were just going to set a review hearing when you're 18. Dad, if you ever think that he has changed and therapy has helped him and he's no longer like Charlie Manson's cult, then you let us know and we can do it" thus putting the "keys to the jail house" or ability to purge the contempt in the Father's hands, not LT's. Blurring the distinctions between civil and criminal contempt, Judge Gorcyca advised LT that the matter would not be reviewed for several more years or until he turned 18 years old which would be a period of confinement more consistent with a juvenile sentencing or criminal contempt rather than civil contempt. LT was born 7/6/2001 and would have turned 18 on July 6, 2019 which means his term of incarceration would have been from June 24, 2015 until July 6 2019. By putting the "keys to the jail house" in the Father's hands, Judge Gorcyca denied LT the ability to purge any civil contempt. Moreover, the father's lawyer indicated to Judge Gorcyca the previous day, June 23, 2015, that the father would be leaving for Israel for

several weeks after June 24, and would not be returning until the July 14, 2015 parenting time. Judge Gorcyca also ordered that while LT was at Children's Village, the Plaintiff-mother and her family members were not permitted to have any contact with him.

One of the issues Judge Gorcyca has raised and testified to, as to all three children, was that no one objected to or appealed her June 24 decision finding the children in contempt. Pursuant to MCR 9.203(B), the commission may not function as an appellate court to review the decision of a court or exercise superintending control or administrative control of a court, but may examine decisions incident to a complaint of judicial misconduct, disability, or other circumstance that the commission may undertake to investigate pursuant to the Michigan Constitution and MCR 9.207. An erroneous decision by a judge made in good faith and with due diligence is not judicial misconduct.<sup>34</sup> However, the absence of an objection or appeal, does not excuse judicial misconduct. As reflected by the July 10, 2015 transcript, the appointed attorneys for the children did plan to ask for appellate counsel to appeal Judge Gorcyca's 6/24/15 contempt order, but her dismissal of the contempt charges against the children on July 10 after LT and his siblings had been held in custody for two and a half weeks rendered such an appeal moot. On July 10, LT's lawyer, Jeffrey Schwartz, noted<sup>35</sup> that his client and the other children had intended to request appellate counsel and still had several days left to file an appeal of Judge Gorcyca's June 24 order, but that any appeal was rendered moot by her decision that day to dismiss the contempt charges. Mr. Dean

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<sup>34</sup> MCR 9.203(B)

<sup>35</sup> Although pages 35 and 36 of the 7/10/2015 transcript attribute the statements to Mr. Dean the DVD reflects it is Mr. Schwartz making these comments.

nods in agreement with Mr. Schwartz's statements. On page 35, lines 10-13, Mr. Schwartz asked: "Point of clarification, your honor. First of all, I would assume them [sic] if the contempt order is now vanquished that the attorneys for the children are released?" And then later, "—and just so the record is clear, your honor, because it had occurred to me in terms of our obligations as attorneys for the children that the children actually did have a right to appeal the contempt order which would have run out on Tuesday. So it was our intention to ask the Court to appoint attorneys so to protect their right to appeal, but obviously since the order is being cancelled that's no longer necessary, but I wanted to make the record clear that all the children's attorneys did plan on doing that today." Although they had not yet appealed, the lawyers for LT and the other two children indicated they had planned to ask the court to appoint appellate counsel to challenge the June 24 order, but Judge Gorcyca reversed her decision rendering such an appeal moot after confining the children for nearly three weeks.

ii. **RT and NT Contempt Hearing**

At the same June 24 hearing at approximately 12:33 PM, Judge Gorcyca turned her attention to the two children, RT and NT, who were properly before her on June 24, 2015 and subject to her June 23, 2015 parenting time order. At 12:33, Judge Gorcyca commenced the contempt hearing as to RT and NT. Using a written note prepared with the assistance of his court appointed counsel, RT apologized to Judge Gorcyca and to his father, advised his father that he enjoys soccer and hopes to be on the soccer team, and promised that he would communicate with his father at future parenting sessions. Immediately thereafter, Judge Gorcyca addressed nine-year-old NT who had been present in the courtroom during LT's contempt hearing and saw her

brother found in contempt and taken to jail in handcuffs by the deputies. When Judge Gorcyca began to question NT, NT she was visibly shaking and crying and remained so during the entire proceeding. NT's attorney, Karen Cook, advised Judge Gorcyca that she did not have a "complete narrative" as to everything that the nine-year-old had allegedly done wrong. Apparently ignoring the NT attorney's concern about having a complete narrative, Judge Gorcyca asked NT what she had to say. When NT did not immediately answer Judge Gorcyca concluded that NT did not want to say anything. When RT tried to pass his sister the note RT had read, Judge Gorcyca did not permit NT to use the note stating, "No, no, [NT], don't read what your brother wrote. You're your own person. Do you know what? I know you're kind of religious. God gave you a brain. He expects you to use it. You have a brain; you are not your brother. You are not your big, defiant brother who's living in jail. Do you want to live in jail? Just tell me this right now." On July 10, Judge Gorcyca indicated in the prepared statement she read on the record that she never said the children were "locked up" but the June 24 record clearly reflects she referred to "living in jail." Again, Judge Gorcyca, who has claimed and testified that she does not insult those before the court, crossed the boundary of stern language by telling NT that her brother did not "have a brain."

After NT apologized to the court and stated that she would try to work with her father at visits, Judge Gorcyca told NT and RT, "Well, you're going to stay here all day and it's going to be up to your dad. I'm going to see how you two act. Maybe the three of you should go to lunch in the cafeteria? If you have any hesitation at all, you're living in Children's Village. You're living in Children's Village." Lunch with their father on June 24 is precisely what Judge Gorcyca had ordered on June 23, 2016. Judge

Gorcycya then advised RT and NT on June 24 that “I’m so upset with you, I’m so upset with you, I’m even more upset with your brother, and I won’t say what I think about your mother. I think your mom did something nice in the jury room for once. And I like your dad. And I – you have me as your judge for five and a half years.” Judge Gorcyca stated to NT: “How old will you be? Let’s see, you’re going to be a teenager. You want to have your – you want to have your birthdays in Children’s Village? Do you like going to the bathroom in front of people?” Judge Gorcyca informed RT and NT that she had placed other children at Children’s Village and warned them that they had her as a judge for the next five and a half years. After learning his brother had been taken off to “jail,” RT suddenly changed his willingness to participate in parenting time and refused to have parenting time and lunch with his father. RT stated that he wished to be with his older brother, but Judge Gorcyca stated, “You’re not even going to be with your brother. That’s cool. You won’t be in the same cell. I’ll put in there ‘Stay away from your brother.’”

It is noteworthy here, that despite Judge Gorcyca’s denial on the July 10, 2015 record, and subsequently that the children were “in jail” “locked up” and in a “cell,” the June 24 record is clear that Judge Gorcyca told NT and then RT and his attorney that he would not be in the “same cell” as LT. When NT also stated that she also did not want to have lunch with her father, Judge Gorcyca laughed on the record in open court and called the situation “ridiculous,” Judge Gorcyca told RT and NT: “You have been brainwashed. You are brainwashed...Every single adult in this courtroom thinks you have been brainwashed... When you are ready to have lunch with your dad, to have dinner with your dad, to be normal human beings, I will review this when your dad

tells me you are ready. Otherwise you are living in Children's Village until you graduate from high school."

As mentioned earlier in conjunction with LT's hearing, if this is a civil contempt hearing the keys to the jailhouse door have to be "in the hands" of the person held in contempt. By imposing a sentence until "when your dad tells me you are ready. Otherwise you are living in Children's Village til you graduate from high school. That's the order of the court. Good bye,"<sup>36</sup> Judge Gorcyca put the "keys to the jailhouse" not in the hands of NT or RT but in the hands of their father who Judge Gorcyca knew as of June 23 was going to Israel for several weeks. Otherwise, the "until you graduate from high school" sentence imposed was potentially for 7 to 9 years, respectively, until Judge Gorcyca would review it when RT or NT graduated from high school if she hasn't heard from the father before then. The keys to the jailhouse were definitely not in RT or NT hands when Judge Gorcyca declared that "the ball is in your dad's court. Your dad is in charge."

As in LT's order, Judge Gorcyca ordered that the mother and her family were not to have any contact with RT and NT and found RT and NT in contempt of court. Oakland County Sheriff Deputies handcuffed ten-year-old RT and nine-year-old NT and removed them from the courtroom in keeping with Oakland County Sheriff protocol.

Although the JTC Examiner made allegations in the 28-day letter regarding that Judge Gorcyca made statements to the children on the June 24 record that demonstrated a bias toward one of the parties and should have disqualified herself,

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<sup>36</sup> Respondent's Ex 85 page 22, lines 4-9 June 24, 2015 transcript.

the Master declines to address those allegations that were address by the Chief Judge and the SCAO assigned Chief Judge in the subsequent motion for disqualification. These statements in the June 24 transcript by Judge Gorcyca may not have been a basis for disqualification as found by the assigned Chief Judge, but many of the statements by Judge Gorcyca such as “I’m so upset with you, I’m even more upset with your brother, and I won’t say what I think about your mother. I think your mom did something nice in the jury room for once. And I like your dad” clearly disparage one of the parties in the case at the expense of another party in front of the children and also undermine the intent of paragraph 2(e) of the JOD that indicates “neither parent shall do or say anything in the presence of the children that would portray the other parent in a negative light or that would tend to discredit or damage the love that the children have for the other parent. Each party acknowledges a duty to foster, encourage and support a strong and loving relationship between each child and the other parent.” In this instance, it was not the parties making disparaging comments about one party or their brother LT in front of the children, it was Judge Gorcyca.

**f. July 10, 2015<sup>37</sup>**

The last significant event involving the incarceration of the Tsimhoni children occurred on July 10, 2015, when Judge Gorcyca held an emergency hearing at the request of the GAL, William Lansat. It is important to note that this emergency hearing was at the GAL’s request and not the father’s who had been given the “keys to the jailhouse door” and who was in Israel at the time. But for the GAL requesting a

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<sup>37</sup> Examiner Ex 12 7/10/15 Transcript; Examiner Ex 140 7/10/15 DVD. Respondent Ex 87 7/10/15 transcript and Respondent Ex 88 7/10/15 DVD.

hearing, the children would still have been incarcerated at Children's Village. At the July 10, 2015 hearing, Judge Gorcyca failed to take personal responsibility and offered a long mea culpa for what she did on June 24 and criticized the media by accusing them of causing a "hysteria" by breaking the story about the Tsimhoni children without getting the facts straight and by releasing the names and running pictures of the faces of the Tsimhoni children. At the July 10, 2015 hearing, Judge Gorcyca claimed that the media falsely reporting that the Tsimhoni children have been "locked up" despite telling NT and RT on June 24 that their brother was in "jail" and you won't be in the same "cell." At the July 10, 2015 hearing, Judge Gorcyca insisted she had not done anything wrong since no one had objected to her June 24, 2015 order placing the children in Children's Village and that no one had suggested any alternate placement options. Judge Gorcyca offered this "non-objection" justification despite the fact that the time for appealing the June 24 order had not expired, as noted by Mr. Schwartz later in the hearing. On July 10, Judge Gorcyca explained that each of the children indicated on June 24 that they would rather go to Children's Village than spend time interacting with their father. This July 10 explanation by Judge Gorcyca may have been a surprise to LT who expressed confusion on June 24 as to why he was being sent to jail and as to what he had done wrong. Judge Gorcyca explained on July 10 that her June 24 action was not carried out as punishment, and that on June 24, 2015, her primary concern was to determine what was in the best interest of the Tsimhoni children. Judge Gorcyca explained on July 10 that by placing the children at Children's Village, she was attempting to "assist" them in developing a meaningful relationship with their father. Judge Gorcyca then described Mandy's Place at Children's Village as a "non-secure safe environment on the grounds

of Children’s Village where children from difficult circumstances receive outstanding residential mental health care and other services.” It is clear that this “rosy” description of Mandy’s place offered on July 10 was not the description of the place as explained to the children on June 24. On June 24, Judge Gorcyca told the children and everyone in court that the children would go to “jail,” be “locked up” and placed in a “cell.” Judge Gorcyca also stated that while they were at Mandy’s Place, the Tsimhoni children were able to participate in fun activities including field trips, had attended school, and that they interacted with other children. At the conclusion of the July 10, 2015 hearing, Judge Gorcyca dismissed her June 24 contempt orders against the children. Judge Gorcyca also granted the GAL’s and the father’s request to have the children transferred from Children’s Village to Camp Tamarack. She further ordered intensive “re-unification therapy” for the family. At the end of the July 10 hearing and at the disciplinary hearing, Mr. Schwartz, with Mr. Dean nodding in agreement, noted that he and the other attorneys had intended that day to request appointment of appellate counsel on behalf of LT and the other children because there were still several days left for them to appeal the June 24 order, but that Judge Gorcyca’s dismissal of the contempt orders rendered such an appeal moot.

**g. Twenty -eight-day letter/ Answer/ Alleged Misrepresentations**

Following the July 10 hearing, the Judicial Tenure Commission issued a twenty-eight (28) day letter to Judge Gorcyca on September 1, 2015 listing many of the facts discussed above. Judge Gorcyca responded on October 23, 2015. The Judicial Tenure Commissioner Examiner contends that Judge Gorcyca was not truthful in her October 23, 2015 answers to the Commission’s 28-Day Letter when Judge Gorcyca

stated that when making the circles at her right temple and comparing LT to Charles Manson and his cult, she was not indicating that LT was crazy, but was referring to the “forward movement he would make in therapy.” In pertinent part, counsel for Judge Gorcyca indicated in the response to the 28-day letter, that Judge Gorcyca “denies the truth of the statement that her gesture made while she was speaking was intended to indicate or even imply that [LT] was crazy. She believes that her hand motion was intended to indicate that Defendant Father should let the court know if [LT] had made any forward movement as a result of the therapy he would soon be receiving, simulating the motion of a wheel moving forward. The video depicts many hand movements throughout the course of the hearing. Judge Gorcyca frequently speaks with her hands. Judge Gorcyca recognizes how this hand gesture is portrayed on the video, realizes the symbolism behind the gesture, and how it could be misunderstood. If anyone believes or believed that she was indicating that [LT] was crazy at the time, Judge Gorcyca will accept responsibility for the misunderstanding. However, she never intended to offend anyone in this way.”

Judge Gorcyca testified similarly at her hearing. Counsel for Judge Gorcyca even proffered in argument that he and Judge Gorcyca were required to provide some response to the allegation and that this belief was the best explanation that they could provide.<sup>38</sup> The Examiner contends that Judge Gorcyca’s answer to the Commission was false and the Master agrees. The explanation proffered by Judge Gorcyca for the Manson gesture is similar to Judge Gorcyca’s efforts to explain away her June 24, 2015 conduct in retrospect at the July 10, 2015 proceeding.

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<sup>38</sup> June 1, 2016 transcript p 383

The second allegation in Judge Gorcyca's October 23, 2015 answers to the Commission's 28-Day Letter that Examiner contends was a misrepresentation is Judge Gorcyca statement that she did not find the children in contempt for their refusal to talk to or have lunch with their father. The Examiner contends Judge Gorcyca's answer to the Commission was false. As to this allegation, the Master has cited specific language in the June 24 transcript<sup>39</sup> and believes that this a matter of semantics and disagrees with the Examiner. Judge Gorcyca found the children in contempt for failing to participate in parenting time that included lunch with their father on June 24.

#### IV. **Conclusions of law:**

Based upon the evidence submitted, the Master finds that Judge Gorcyca violated the Rules of Judicial Conduct as follows:

- 1) Abuse of the contempt power by the court of contempt in
  - a. holding LT in contempt for violation of parenting time on June 24, 2016 when no such order for LT existed and he had not been ordered to participate in parenting time with his father on June 24, 2015, and
  - b. assuming, arguendo, that Judge Gorcyca is correct that this was a civil contempt proceeding, inappropriately giving the "keys to the jailhouse door" to the father who informed the judge through counsel on June 23 that he would be in Israel, thus disenabling the three children who were found in contempt to purge themselves of contempt as required by law resulting in unlawful detainer.

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<sup>39</sup> June 24 transcript p.22 lines 4-9

- 2) Engaging in inappropriate demeanor on the bench when addressing LT by employing a circling motion which universally means one is “crazy” while simultaneously discussing Charlie Manson, a gesture which Judge Gorcyca acknowledges can be objectively misconstrued as inappropriate, and then misrepresenting to the JTC in her 28-day letter when asked what this gesture meant, stating that it meant “moving forward” with therapy.
- 3) Failing to act in a patient, dignified, judicial manner by making disparaging comments to the children about themselves, their siblings and their mother during the contempt hearing that crossed the bounds of “stern language.”

Based upon the evidence, the Master concludes that Judge Gorcyca committed:

- (a) Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, Section (2) and MCR 9.205. See June 24, 2015 transcript/DVD and response to 28-day letter
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article 6, section 30, and MCR 9.205. See June 24, 2015 transcript/DVD and response to 28-day letter
- (c) Failure to establish, maintain, enforce, and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Code of Judicial Conduct, Canon 1. See June 24, 2015 transcript/DVD

- (d) Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of the Code of Judicial Conduct, Canon 2A. See June 24, 2015 transcript/DVD.
- (e) Conduct involving impropriety and the appearance of impropriety, in violation of the Code of judicial conduct, Canon 2A. See June 24, 2015 transcript/DVD.
- (f) Failure to respect and observe the law and to conduct herself at all times in a manner which would promote the public's confidence in the integrity and impartiality of the judiciary, contrary to the Code of Judicial Conduct, Canon 2B. See June 24, 2015 transcript/DVD.
- (g) Failure to be faithful to the law and maintain professional competence in it, contrary to the Code of Judicial Conduct, Canon 3A (1). See June 24, 2015 transcript/DVD.
- (h) Failure to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, contrary to the Code of Judicial Conduct, Canon 3A(3). See June 24, 2015 transcript/DVD.
- (i) Failure to adopt the usual and accepted methods of doing justice; failure to avoid the imposition of humiliating acts of discipline, not authorized by law in sentencing, and failure to endeavor to conform to a reasonable standard of punishment, contrary to the Code of Judicial Conduct, Canon 3A(9). See June 24, 2015 transcript/DVD and June 24, 2015 orders.

- (j) Conduct which exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2). See June 24, 2015 transcript.
- (k) Conduct which is contrary to justice in violation of MCR 9.104(3). June 24 2015 transcript. See June 24, 2015 transcript/DVD
- (l) Conduct that violates the standards or rules of professional conduct adopted by the Supreme Court, contrary to MCR 9.104(4). June 24, 2015 transcript.
- (m) Lack of personal responsibility for her own behavior and for the proper conduct and administration of the court in which the judge presides, contrary to MCR 9.205. See July 10, 2015 transcript and response to 28-day letter.
- (n) Conduct in violation of MCR 3.606. (Contempts outside immediate presence of court) and MCL 600.1701 *et seq.* See June 24, 2015 transcript.

The Master does not find any support for the allegations that Judge Gorcyca engaged in conduct in violation of the Michigan Support and Parenting Time Enforcement Act, MCL 552.601 *et seq.*

Contrary to the chilling impact Judge Gorcyca contends this case will have on judges across the state, this is not a case that stands for the proposition that judges cannot employ stern language or make difficult decisions from the bench in contentious cases. It is a disciplinary action which stands for the singular proposition that if a judge is going to use the inherent power of contempt, the ultimate “tool in the tool box” after years of “frustration,” the judge may wish may wish to consult the owner’s manual to make sure that she or he are using the tool properly before employing one of the

penultimate tools of inherent judicial power, a contempt finding, to deprive any individual, or children in this case, of their liberty.

Dated: July 1, 2016

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Hon. Daniel P. Ryan, Master