STATE OF MICHIGAN
BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST

Complaint No. 103

Hon. Tracy Green
Third Circuit Court
Detroit, Michigan

DISCIPLINARY COUNSEL'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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INTRODUCTION

The Amended Complaint (complaint) charges Hon. Tracy Green (respondent) in three counts with multiple violations of the Michigan Code of Judicial Conduct (canons), the Michigan Court Rules (MCR), the Michigan Rules of Professional Conduct (MRPC), and the Michigan Compiled Laws (MCL). The charges fall into three categories: concealing evidence of child abuse (Count 1); respondent knowingly making false statements about her knowledge of child abuse (Count 2); and respondent knowingly making false statements about her prior disclosure of concealing a mark of abuse (Count 3).

JURISDICTION & STANDARD OF PROOF

Respondent has been a judge of the Third Circuit Court since 2019. She is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.202.[1]

Judicial discipline is a civil proceeding, the purpose of which is not to punish but to maintain the integrity of the judicial process. *Matter of Mikesell*, 396 Mich 517, 527 (1976); *In re Seitz*, 441 Mich 590, 624 (1993); *In re Haley*, 476 Mich 180, 195 (2006). The standard of proof is preponderance of the evidence. *Id.* at 189; MCR 9.233(A).

THE MASTER'S ROLE

The Master's report contains a brief statement of the proceedings, plus findings of fact and conclusions of law with respect to the issues presented by the complaint and the answer. MCR 2.236. The standards of judicial conduct are established by MCR 9.202 and the canons. *In re Ferrara*, 458 Mich 350, 359-60 (1998).

[1] MCR 9.202(B)(2) incorporates the Rules of Professional Conduct and the canons.

The Master must evaluate respondent's conduct objectively, rather than from respondent's subjective perspective. *In re Tschirhart*, 422 Mich 1207, 1209-10 (1985). The Master does not address sanctions.

STATEMENT OF PROCEEDINGS

On November 10, 2020, the Judicial Tenure Commission (JTC) filed a complaint against respondent. She answered the complaint and raised affirmative defenses on December 30, 2020. On March 5, 2021, the Supreme Court appointed Hon. Betty Widgeon as Master. The Master entered a scheduling order on March 23, 2021. The following motions were filed (all dates are in 2021):

- On March 31 respondent filed a Motion for In-Person Proceedings, which was denied on April 2.
- On April 12, disciplinary counsel filed a Motion in Limine to Admit Evidence Pursuant to MRE 803(6), MRE 803(7) and 801(d)(1)(B), which was denied on April 29.
- Also on April 12, disciplinary counsel filed a Motion in Limine for a Prehearing Ruling on the Admissibility of Evidence Pursuant to MRE 803(2) and 801(d)(1)(B), which was denied on April 29.
- On May 24, disciplinary counsel filed a Motion to Prohibit Respondent from Communicating with all Witnesses on Disciplinary Counsel's Witness List, which was granted on May 26.
- On June 2, disciplinary counsel filed a Motion to Redact Respondent's Answer to the 28-Day letter, which was denied on June 26.
- On June 3, disciplinary counsel filed a Motion to Admit Child Protective Services Reports for Limited Purposes, which was granted on June 26.
- On June 9 respondent filed an Emergency Motion for a Continuance; granted on June 10.
- On June 11, disciplinary counsel filed an Update on Evidence of Witness Tampering.
- On August 2, disciplinary counsel filed a Motion to Admit as Substantive Evidence Certain Prior Statements and Testimony of Russell Davis-Headd and Gary Davis-Headd, Jr. pursuant to MRE 803(5), and to Admit the Entirety of Those Statements for

the Limited Purpose of Rebutting an Inaccurate Inference. On August 21, the first motion was denied and the second motion was granted.

- On August 26, disciplinary counsel filed a Motion to Admit Evidence from Child Protective Services, which was denied on September 15.

- On September 16, respondent filed a Motion to Strike the CPS Reports from Evidence, which was denied September 22.

- On September 27, disciplinary counsel filed a Motion to Amend Complaint, which was granted on October 28.

- Also on September 27, disciplinary counsel verbally argued a Motion to Strike One Sentence from Exhibit 11B, which was denied on October 11.

- Respondent renewed her Motion for In-Person Proceedings on October 25, and it was granted on October 26 as to the October 29 and November 19 hearing dates.

- On October 26, disciplinary counsel filed a Motion for Clarification in the Michigan Supreme Court, which was denied on October 28.

- On October 29, disciplinary counsel filed a Motion to Move Testimony from the Separate Record to the Record, which was granted on November 11.

- On September 27, disciplinary counsel filed an amended complaint that added Count 3 and deleted or modified some allegations in the original complaint, but did not change the essence of the original charges. [2] Respondent answered the amended complaint on November 17.

The public hearing commenced remotely on Zoom on May 27, 2021 and was made available to the public on YouTube. The hearing continued on June 28, July 21, August 6, August 23, September 17, September 24, October 13, October 29, and November 19. The hearings on October 29 and November 19 were conducted in person. Sixteen witnesses testified and 52 exhibits were jointly admitted. Closing arguments took place on December 1 via Zoom and live streamed on YouTube, with the consent of both parties.

[2] Because Russell Davis-Headd no longer remembered respondent putting makeup on his face, disciplinary counsel deleted that allegation from the amended complaint.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Background

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)[3] and Russell. Hon. Kevin Cox awarded custody to Mr. Davis-Headd and gave supervised visitation rights to Ms. Bressler. (Ex. 48) He ordered that neither parent use corporal punishment. (Ex. 48) Respondent was aware of this order. (Answer to Complaint, p 11; Green, 11-19-21, p 2027/6-7)[4]

From April 2015 through June 24, 2018, Max and Russell lived with respondent's son. Ms. Bressler did not exercise her visitation rights. Respondent saw the boys at least once a week. (Ex. 3, p 6) During those three years, respondent's son abused the boys multiple times. Child Protective Services (CPS) came to their home at least three times prior to June 24, 2018. (Ex. 45, 5:10 – 5:23; Ex. 46, 10:57) The children were never separated from their father on those occasions and CPS did not interview them about whether they were being abused. (Max, 6-28-21, p 514/9-16)

On the morning of June 24, 2018, a neighbor reported suspected child abuse at the Davis-Headd home. (Ex. 1) The police spoke with respondent's son but not with the children. (Russell, 6-28-21, pp 305/25-306/16; Max, 6-28-21, pp 514/17-515/7) They left without taking action.

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. (Adams, 5-27-21, p 31/20) CPS investigator Leslie Apple and Police Officer Melissa Adams spoke with the children upstairs while other officers spoke with respondent's son outside the home. *(Id.* at pp 42/3-10, 43/2-5) This was

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

[4] Transcript citations refer to the name of the witness, the date of testimony, and the page and line numbers in the transcripts.

the first time the boys were separated from their father while talking with CPS, and the first time they felt free to disclose the horror of what their father had been doing. (Max, 6-28-21, p 514/12-16; Ex. 45, 5:10-5:23) Max and Russell showed Ms. Apple and Officer Adams marks on their bodies they said their father inflicted. (Adams, 5-27-21, p 43/7-16; Apple, 9-24-21, p 1321/10-18.)

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. (Adams, 5-27-21, p 48/20-23) Both boys immediately reacted in a strongly negative way. Russell got quiet and stopped talking. *(Id.* at p 49/11-13) Max got nervous and scared; he was shaking, his voice was cracking, he was fidgety, and he started crying. (Id at pp 49/2-7, 52/12-21; Apple, 9-24-21, p 1321/7-8, 21-22) He told Ms. Apple and Officer Adams 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 the dad to get them back. (Adams, 5-27-21, p 62/16-23; Apple, 9-24-21, pp 1322/15-1323/9) As Officer Adams testified:

> . . . I've been a police officer for Detroit for 13 years, and there are certain runs or certain instances that do stick out throughout my time . . . Russell and Gary . . . the fear you could see in their eyes and through their actions when they thought their father was coming up the stairs or when they thought they had to go with their grandmother, those stick out in your memory. (Adams, 5-27-21, pp 107/20-108/14)

Ultimately, CPS decided to place the boys with someone other than respondent.

The evidence summarized below shows that respondent knew her son was abusing her grandsons during the years it was happening. She did virtually nothing to prevent the abuse, and even attempted to conceal it on multiple occasions. When she was later asked – first during her testimony in the Juvenile Court proceedings, and then by a reporter – about concealing bruises, she emphatically but misleadingly denied doing so. She thereafter made additional false statements to try to explain or negate her actions and prior false statements.

COUNT 1

Count One of the complaint charges respondent with knowingly concealing evidence that her son abused her grandsons. The evidence detailed below shows that between April of 2015 and June of 2018, respondent's son was under a court order not to use corporal punishment on his boys. Despite the order, he beat them, belted them, slapped them, and spanked them. Respondent saw the marks that these beatings created, and her grandsons told her what their father was doing. She did nothing to protect the boys, and on occasion she attempted to conceal the abuse with makeup. Each paragraph of Count One details a piece of this history.

Central to Count One is whether respondent was aware that her son was abusing her grandsons between April of 2015 and the day they were rescued by CPS in June 2018. The evidence below shows that she was. While reviewing this evidence it is important to keep in mind that respondent is not only the boys' grandmother, she is also a former foster care worker and a lawyer who specialized in juvenile and criminal law and who presented herself as an advocate for children and families. (Ex. 51) Her personal experience and background would have made her more sensitive than most to the abuse concerns that were brought to her attention. She would also have been sensitive to those concerns because she knew her son had a history of abusing the boys before 2015, so much so that Judge Cox forbade him to use *any* corporal punishment on them. (Ex. 48; Answer to Complaint # 11, Green 11-19-21, p 2027/6-7)

Paragraph nine of the complaint is the first paragraph of Count One. It alleges that between July of 2015 and June 24, 2018, respondent was aware that on multiple occasions her son abused his then-wife, Katy, by slapping her and choking her. During his testimony in this proceeding and in his June 2021 prehearing interview, Russell said he and Max told respondent they saw their

father "choke" Katy, such that she passed out and he poured water on her, yelled, and slapped her.[5] (Russell, 6-28-21, pp 289/10-20, 289/24-290/25; Ex. 46, 6-10-21, 36:17-37:10) Max also testified, in this hearing and in Juvenile Court, that he told respondent her son choked Katy.[6] (Max, 7-21-21, pp 628/16-20, 629/5-7; Ex. 29, p 88) Even respondent admitted, both during the investigation and this hearing, that she was told her son choked and slapped Katy. (Ex. 4, pp 5, 7; Green 11-19-21, p 2022/11-16) Respondent's awareness that her son abused Katy is yet another reason she would have been sensitive to signs that her son was *also* abusing her grandsons.

Respondent denies that merely being informed that her son slapped and choked Katy meant that she was "aware" that he had done so. In order to rationalize how she could have been informed of the abuse yet be unaware of it, respondent intimated at this hearing that she did not believe Katy.[7] (Green, 11-19-21, p 2022/20-25) Notably, though, respondent did not say she disbelieved her grandsons' report that her son choked Katy, nor did she say *why* she disbelieved something Katy said that was so consistent with her son's behavior generally.

Respondent also minimized her contradiction by testifying that these two incidents occurred "years apart." *(Id.* at p 2022/24-25) The reality is that they could not have been very many years apart, as both had to take place between 2015 and June of 2018. More important, whatever time passed between incidents does not matter to respondent's awareness. She already knew that her son was prone to physical violence. What she was told he did to Katy was part of an ongoing

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5 This brief refers to "choking" because that is the word the boys and respondent used. In fact, though, the act they all described was "strangling," not "choking."

6 Throughout these proposed findings of fact, references to "this hearing" and "this proceeding" are references to the public hearing in this case.

7 Respondent first hinted at this during the investigation. When the Commission asked her if Katy told her that her son abused Katy, respondent gave an apparently self-contradictory answer: "No, though she did tell me that Gary had slapped her once in the past. . . . On one occasion, one of my grandsons had said that Gary and Katy had an argument in the past and Gary had 'choked' Katy. . . ." (4, p 5) Respondent's statement to the Commission did not clarify how she could have been told these things but had not been told that her son had abused Katy.

and longstanding aspect of his character. Respondent's denial that she knew her son abused Katy, after being told at least twice that he did, is not credible. The evidence proves paragraph nine.

Paragraph 10 alleges that respondent was aware her son was abusing Russell and Max. Paragraph 10a alleges the first of several ways she was aware – she knew her son was a very "stern" disciplinarian. She admitted this in Juvenile Court, and to Ms. Apple. (Ex. 2, pp 64-65; Apple, 9-24-21, p 1305/4-7) The evidence therefore establishes paragraph 10a.

Not every "stern disciplinarian" is an abuser, of course. But the facts of this case, detailed in the pages that follow, show that when respondent admitted her son was a stern disciplinarian she knew she *was* talking about an abuser.

Respondent attempts to minimize the significance of acknowledging that her son was a stern disciplinarian by claiming she only meant she thought he used too many timeouts and took away privileges for the wrong reasons and for an unreasonably long time. (Green, 11-19-21, pp 1967/18-1068/3; 2034/4-11; 2075/18-2076/6) This is not plausible in light of her awareness that her son was physically abusive, because timeouts are hardly "stern" when compared with abuse.

Respondent's attempt to minimize is also not plausible in light of her knowledge that Ms. Apple and the Juvenile Court lawyers were discussing *physical* abuse of the boys, and not any other type of discipline. Respondent's conversation with Ms. Apple took place after the family team meeting two days after the boys were rescued. Family team meetings are held to "dialogue the current allegations," (Apple, 5-27-21, pp 152/23-153/3) and the "current allegations" were about *physical* abuse. The meeting was three hours long and "emotional." It was when Ms. Apple called respondent after this meeting that was about *physical* abuse that respondent admitted her son was a "stern disciplinarian." (Apple, 9-24-21, pp 1304/21-1305/3)

Likewise, the Juvenile Court proceedings were concerned with *physical* abuse of the children. Respondent's Juvenile Court testimony makes that clear, because the only questions she was asked about her son's discipline of the boys concerned physical discipline. (Ex. 2, pp 52-65) It would have made no sense for respondent to call her son a "stern disciplinarian" if she was only referring to lengthy timeouts, either with Ms. Apple or in the Juvenile Court, because even very long timeouts are mild discipline when compared with physical abuse.

Paragraph 10b alleges respondent was aware her son used corporal punishment on his children.[8] This is what respondent was aware of that happened after April 30, 2015:

- By respondent's own admission, her son smacked Max across the face hard enough to leave a handprint that was bad enough, and lasted long enough, that she felt compelled to cover it with makeup. The smack clearly violated Judge Cox's order prohibiting corporal punishment. (Ex. 3, pp 8, 9, 10, 11, 12, 13, 14)
- Both of the boys informed respondent multiple times of the abuse they suffered and showed her their injuries. (Russell, 6-28-21, pp 310/1-10, 311/14-22, 312/25, 319/11-19, 321/17-25, 322/10-16, 432/7-12; Ex. 29, p 88; Ex. 30, pp 17-18, 28; Ex. 32, pp 46, 87, 101; Ex. 34, pp 17-18; Ex. 46, 6-10-21, 16:18-16:32) In particular, Max told her about hits to his face that left marks, at least one of which she covered with makeup in addition to the one she acknowledges. Max believes respondent saw other marks on his face as well, because his father hit him on the face often and he frequently had marks when he visited her. (Max, 6-28-21, p 481/22-24; Max, 8-23-21, pp 1069/16-23, 1070/1-2) He told her about the abuse while in the car on the way to her home from choir practice, and almost every time he saw her. (Ex. 29, pp 87, 88, 101) Russell

[8] "Corporal punishment" is any physical discipline. (Dictionary.com)

showed her marks four or five times, and told her about the marks five times. (Ex. 46, 6-10-21, 17:08-17:56)

- Russell told respondent that his father used a belt on them; indeed, she testified in Juvenile Court that she knew her son used a belt to discipline the boys.[9] (Russell, 6-28-21, pp 312/2-5, 321/17-25; Ex. 2, p 65)
- The boys specifically told respondent about being spanked multiple times. (Ex. 3, pp 8, 11, 17, 20; Ex. 46, 39:45 – 40:20) Respondent even told Ms. Apple, the Juvenile Court, and the Commission that she knew about the spankings. (Apple, 9-24-21, p 1307/11-20; Ex. 2, p 65; Ex. 3, pp 8, 11, 17, 20)
- Respondent knew the boys were being hit because she could hear them screaming when she came over. (Ex. 26, p 19; Ex. 30, p 16; Ex. 32, pp 41, 46-47) As Russell said: "She knew what was going on but she would never stop him or call the police or anything. She was standing in the room. She could hear us scream. She didn't do anything." (Ex. 26, p 19)

Respondent now minimizes her knowledge of the spankings, just as she minimized her understanding of "stern disciplinarian" and her awareness that her son abused Katy. In her answer to the complaint and her testimony at the hearing she claimed she knew her son did this prior to Judge Cox's order in 2015, but said she did not know any corporal punishment continued **after** that. (Green, 11-19-21, p 1963/21-24) To support this, she notes that she has only ever said she was aware of the spankings "in the past," by which she says she was always referring only to the time ***before*** Judge Cox forbade corporal punishment. (*Id* at p 2029/20-23)

[9] Respondent claims she only became aware that her son used a belt during the CPS investigation. Her claim is discussed further at page 9 below.

However, when respondent told Ms. Apple she knew about spankings, she had just met with Ms. Apple for the team meeting that was concerned only with her son's very ***recent*** abuse of the boys, not events from more than three years earlier. (Apple, 9-24-21, pp 1304/15-25, 1306/1-3, 1307/11-20) When respondent testified in Juvenile Court, she was a family court judge who had been a family law lawyer, and she knew the focus in Juvenile Court was ***recent*** abuse. In fact, it was respondent who provided the timeframe for her Juvenile Court testimony as being between when her son got custody of the boys in 2015 and June 24, 2018. Once she established that range she never altered it as she answered questions that concerned her son's actions during that range, and no other time period was discussed during her testimony. (Ex. 2, pp 52/24-53/13) Yet when respondent told Ms. Apple and the Juvenile Court jury that she was aware of spankings, she did not tell them she was only aware of those that took place in a completely different context three and four years earlier.

During its investigation, the Commission asked respondent six different questions about her knowledge of spankings. Again, she knew very well that the investigation that prompted those queries was concerned about her knowledge of her son's ***recent*** abuse of the boys. Each of her six answers admitted she knew about the spankings "in the past," without adding that by "in the past" she only meant "more than four years earlier." (Ex. 3, pp 8, 11, 17, 20) In fact, one of the questions explicitly asked her *when* the children told her their father struck them. This was a written question, and she had as much time as she needed to consider her answer, yet she again said only "in the past" without further clarification. (Ex. 3, p 10) Until respondent testified in this hearing, she *never* suggested that she was only aware of spankings that preceded Judge Cox's order, even though each time she was asked about recent abuse, the circumstances gave her every reason to make that clear if it was true. Respondent's claim that "in the past" referred only to pre-2015 is not credible.

Similarly, respondent testified in Juvenile Court that she knew her son used a belt on his boys. (Ex. 2, p 65) This is yet another admission she now tries to minimize, by claiming that she only became aware that he used a belt during the CPS investigation; that is, *after* the boys were rescued and the belt was no longer in use. (Green, 11-19-21, pp 2003/23-2004/1). Of course, when respondent testified in Juvenile Court, she knew the inquiry was focused on her knowledge of abuse while it was occurring, and she had to know it was significant to that jury whether she was aware that her son belted the boys *while* he had sole custody of them. (Ex. 2, pp 52/24-25, 53/6-13) Yet this judge and family lawyer who told the Juvenile Court jury without qualification that she was aware of her son's use of a belt would have this Court believe that she simply did not then think to clarify that she had only learned about the belt use after the abuse had ended. Like her other minimization of what she has said, the circumstances show that this one is also not credible.

It is very telling that the only time respondent now claims ***not*** to have known that her son was spanking or belting the boys is during the very years when the boys say they told her these things were occurring, and when both boys say respondent witnessed the effects on their bodies. For all of the reasons just stated, respondent's testimony that she believed the spankings stopped in April 2015, and she only knew about the beltings *after* the boys were rescued, is not believable. The evidence establishes paragraph 10b.

Paragraph 10c alleges that respondent knew her son hit his children with a belt. As noted just above, the evidence establishes paragraph 10c.

Paragraph 10d alleges that Russell and Max told respondent they had been spanked by their father on numerous occasions. The evidence establishing that the boys told her this is cited at page 7, above. Respondent's answer to the complaint does not challenge this allegation. As argued

above, her claim that she was only aware of spankings before April of 2015 is implausible. The evidence establishes paragraph 10d.

Paragraph 10e alleges that Russell and Max told respondent about their fear of what would happen to them physically if their father learned they had misbehaved at her home. Respondent acknowledged in Juvenile Court that the boys would express concern that if they had misbehaved, they might get in trouble when they went home. The boys recall telling her that they feared their father. (Ex. 2, p 56/11-20; Ex. 45, 35:14-35:19; Russell, 6-28-21, p 319/20-25)

When respondent testified in this hearing, she admitted the boys told her about their concern but she claimed she thought the "trouble" they were referring to was *non*-physical punishment. (Green, 11-19-21, p 2004/8-15) To the contrary, the context makes clear that she had to know that the boys were concerned about physical discipline. She knew as early as Judge Cox's order that corporal punishment was one of her son's methods of discipline. As noted above, the boys repeatedly told respondent her son spanked them, hit them with a belt, and smacked Max across the face. In contrast, there is no evidence the boys ever told her they had too many timeouts or their father took away privileges excessively or unreasonably. They told her they "feared" him, which is not the reaction a child is likely to have to a father who imposes too many timeouts. To believe respondent's claim that she thought the boys were only worried about timeouts, one has to disregard the evidence that they told her about the physical abuse and their fear; once she was aware of either of those things she could *not* plausibly think that the boys' concern was timeouts or lost privileges.

In short, respondent's denial that the boys shared with her their fear of physical discipline by their father, and her current explanation of what she understood "get in trouble" to mean, are not truthful. The evidence establishes the allegations of paragraph 10e.

Paragraph 10f alleges that in about 2018 respondent heard her son slap Max across the face hard enough to leave a handprint, which she later concealed with makeup. Respondent has consistently admitted that she was aware of a slap and she has admitted to the Commission she concealed it with makeup. (Ex. 3, pp 8, 9, 10, 11, 12, 13, 14) Respondent also told Ms. Apple that she heard her son slap Max, (Apple, 9-24-21, p 1307/11-13), and Max testified that respondent was once present when he got slapped. (Max, 6-28-21, 478/5-16)

Respondent now denies she was present when any corporal punishment took place. She says Ms. Apple "lied" about her having said she heard her son slap Max, and Max "lied" about her having been present when he was slapped. (Green, 11-19-21, pp 2036/17-2037/14) It is a strong accusation to say that Ms. Apple, a public servant, lied about what respondent said. One would expect her to have some evidence to support such a claim. She has none. Further, Ms. Apple has no reason to lie about respondent. She and respondent did not even know each other before CPS rescued the boys. (Green, 11-19-21, pp 2037/21-2038/1) She was just recording respondent's statements as part of her job. Ms. Apple is credible, and respondent's accusation that she lied is not credible. Similarly, respondent has no evidence – just her bare allegation – to support her claim that Max "lied" when he said she was once present. Nor has respondent explained how both Max and Ms. Apple could have concocted the same lie. The evidence establishes paragraph 10f.

Paragraph 10g alleges that respondent saw other marks on Max's face on other occasions, marks that Max told her had been inflicted by his father. Respondent denies knowing this, but the boys' multiple, consistent, statements contradict her:

- Russell testified in this hearing that Max had bruises on his face, and that he and Max told respondent their father put marks on their bodies. He also testified that Max told respondent about the marks on his body every time Russell did. (Russell, 6-28-21, pp

310/1-10, 311/14-22, 312/1-19, 319/11-19, 321/17-25, 322/10-16, 432/7-12) Max has also said respondent knew about the beatings and abuse. (Ex. 32. pp 87, 101; Ex. 29, p 88)

- Max testified in this hearing that he had a lot of marks on his face, which respondent sometimes concealed. One time, as she was putting makeup on him, she even told him he needed to stop getting slapped – a clear indication that she was aware of other slappings. He believes respondent "probably" saw other marks on his face, because the marks were there when he saw her. He had marks on his face "pretty often," because his dad smacked him a lot. Max's testimony was consistent with his prior statements about respondent's knowledge that her son was slapping him. (Max, 8-23-21, pp 1069/16-23, 1070/1-2; Ex. 29, pp 107,109; Ex. 34, pp 14-15, 19-22, 24-25; Ex. 35, pp 91, 112; Max, 6-28-21, pp 469/24-470/16, 478/ 5-21, 480/12-24, 481/12-18; Max, 7-21-21, pp 638/8-11, 652/4-11; Max, 8-23-21, pp 1006/24-25, 1010/9-14 & 19-22, 1011/7-14, 1016/15-25, 1017/12-16)

The evidence establishes the allegation of paragraph 10g.

Paragraph 10h alleges that Russell showed respondent bruises on his body more than once, and told her they had been inflicted by his father. Again, respondent denies this, and again, her denials are contradicted by Russell's and Max's multiple and consistent statements. As noted above at pages 6-7, when Russell was asked about his grandmother's knowledge, he said he showed her his bruises and told her how he got them, and he repeated that during his prehearing interview and in this hearing. The evidence establishes paragraph 10h.

Paragraph 10i alleges that when Russell was about eight, he told respondent he was going to be "spanked" by his father, and respondent left the home as the "spanking" was about to take

place. The repeated, consistent statements by both boys show that respondent knew the boys were about to be beaten at least once, and respondent admits that Russell told her he was going to get a spanking or a "whooping." (Ex. 29, pp 90-91; Ex. 34, pp 16-17; Max, 6-28-21, p 525/10-12); Max, 7-21-21, p 629/8-14; Green, 11-19-21, p 2005/12-21, 2006/8-9; Answer to Complaint 10j)

Respondent now denies that she thought the "whooping" was imminent, and claims that before she left on that occasion, she got her son to agree not to spank Russell. She claims she simply accepted her son's explanation that he just wanted to "scare" Russell and would not follow through with a "whooping." *(Id.* at p 2006/8-9)

This, too, is not plausible. During this interaction with Russell, respondent must have been sensitive to the issue of child abuse, as a mother and a grandmother and a lawyer who practiced juvenile law. She knew Judge Cox had ordered her son not to use corporal punishment and she knew or should have known that Judge Cox had determined that her son was abusive. She knew her son had physically abused Katy, his wife. The boys had informed respondent of the beatings, as is described above. Despite all these red flags, by her own admission respondent never so much as asked Russell and Max how they were being spanked or whether they were okay. (Green, 11-19-21, pp 2048/23-2049/7; Ex. 2, p 65; Ex. 3, pp 16-17) She admits that she relied completely on her son's assurance, and that she did not do anything more to protect the boys or to make sure her son was complying with Judge Cox's order than receive that assurance. It is hard to imagine respondent would have represented one of her juvenile clients so poorly. If she was truly unaware of the abuse, as she claims, it is only because she deliberately buried her head in the sand when it came to the way her son treated her grandsons. The evidence establishes paragraph 10i.

Paragraph 10j alleges that respondent's grandsons told her they had been "spanked" by their father on other occasions. Respondent's answer to the complaint did not respond to this

allegation. The evidence concerning her knowledge of the spankings is discussed above on pages 7-8, and establishes paragraph 10j.

Paragraph 10k alleges that on multiple occasions respondent saw injuries on Max's face, and on multiple occasions Max told her that his father had injured him. As written at page 12 above, the evidence establishes this allegation.

Paragraph 11 alleges that between May 2015 and June 2018, respondent was aware her son was under a court order not to use corporal punishment on his children. She admits this. (Answer to Complaint, 11; Green, 11-19-21, p 2008/20-24)

Paragraph 12 alleges that despite the indicia of abusive punishments, respondent did not inquire into the nature of her grandsons' corporal punishments. She has repeatedly acknowledged that she never asked about the nature of the "spankings." (Ex. 3, pp 16-17; Green, 11-19-21, pp 2048/23-2049/7) Russell and Ms. Apple confirmed what she said. (Russell, 6-28-21, p 321/23-322/18; Apple, 9-24-21, p 1309/8-15) The evidence establishes paragraph 12.

Paragraph 13 alleges that the totality of the evidence shows that respondent was aware that her grandsons were being abused by her son. The following summarizes everything showing she was aware that is mentioned above:

- Respondent knew her son had a history of physically abusing her grandsons and had slapped and choked Katy;
- Respondent was aware that her son was a "stern" or "strong" disciplinarian, in a context that showed this was a reference to physical punishment;
- Respondent heard the boys screaming from being hit when she came over;

- Respondent's grandsons told her they feared their father, and told her their concern about what would happen if their father learned they misbehaved at her home, in a context that made clear that their concern was physical punishment;
- Respondent acknowledges knowing that her son slapped Max across the face once, leaving a handprint that did not dissipate and could not be covered successfully with makeup. The boys say that in fact, she was aware this happened repeatedly, and even acknowledged that by telling Max he needed to stop getting slapped – something she would only say if she were aware of multiple slaps;
- The boys showed respondent marks on their bodies and Max frequently had marks on his face, which they told her their father had inflicted;
- Respondent knew her son hit her grandsons with a belt;
- The boys told respondent about the "beatings" their father gave them almost every time they saw her. (In addition to cites above, see Russell, 6-28-21, p 310/1-8) She did not inquire into the nature of any beatings or spankings, despite knowing there was a court order prohibiting them; and
- When Russell was about eight, he told respondent he was about to be "beat" by his father, and she left as the "beating" was about to take place. (Max, 6-28-21, p 525/8-12; cf. Ex. 34 p 16)

In light of all that evidence, something respondent said to Ms. Apple is particularly telling. After the family team meeting that took place two days after her grandsons were rescued, she told Ms. Apple that she did not know "it" (meaning the abuse to which Ms. Apple had referred in the conversation) was "this bad." (Apple, 9-24-21, pp 1305/19-1306/17) If she did not think the abuse was "this bad," she must have been aware that there was abuse – just not aware that there was as

much abuse as it turned out there was. Respondent's statement to Ms. Apple revealed – probably unintentionally – that she knew her son was abusing her grandsons.

Respondent now denies she was referring to *physical* abuse when she told Ms. Apple she did not think "it" was "this bad." (Green, 11-19-21, p 2034/4-11) She claims she was only referring to *civilized* punishments her son imposed – banishing the boys to their rooms or prohibiting them from using their iPads. (Green, 11-19-21, pp 2075/18-2076/6) However, she admits she did not say anything like that to Ms. Apple. *(Id.* p 2034/16-20) Her current explanation is implausible. Any grandmother who is under the impression that her grandsons are merely getting timeouts, and who then learns during an emotional three-hour meeting with CPS officials that in fact, they have been severely physically abused, is not likely to say, "I didn't think it was this bad." Rather, one would expect her to say words to the effect of "I had no idea there was anything physical going on." It is very revealing that that is ***not*** what respondent told Ms. Apple.

Respondent claims Ms. Apple had "confirmation bias," as a result of which she misinterpreted what respondent said. But respondent's statement to Ms. Apple was pretty simple, and Ms. Apple merely recorded those simple words in her investigative report shortly after respondent spoke them during a discussion about child abuse. (Apple, 9-24-21, p 1306/6-23) Merely quoting respondent's words accurately, rather than interpreting them (which Ms. Apple did not do in her report), is not the sort of thing that is subject to confirmation bias.[10]

The totality of the evidence clearly shows that respondent was aware that her son was abusing her grandsons.

[10] Ms. Apple did, in fact, understand respondent's words to be a reference to physical abuse. (Apple 9-24-21, pp 1305/19-1306/23).

Paragraph 14 alleges that on multiple occasions respondent put makeup on Max's injuries in an attempt to conceal them.

- Max has consistently and convincingly said this every time he was interviewed about his grandmother's conduct. (Ex. 29, pp 107, 109; Ex. 34, pp 14-15, 19-22, 24-25; Ex. 35, pp 91, 112; Max, 6-28-21, pp 469/24-470/16, 478/ 5-21, 480/12-24, 481/12-18; Max, 7-21-21, pp 638/8-11, 652/4-11; Max, 8-23-21, pp 1006/24-25, 1010/9-14 & 19-22, 1011/7-14, 1016/15-25, 1017/12-16)
- At this hearing, Max explained that respondent put makeup on his marks more than once. He provided some concrete details. For example, he described one occasion when respondent concealed a handprint in her upstairs bathroom after his father drove him to her house at night. He described that on this occasion the makeup was in a black pallet and respondent was talking to Katy while she put it on him. This happened more than once. (Max, 6-28-21, pp 478/5-11 & 17-19, 480/12-18, 481/2-4 & 12-16; 8-23-21, pp 996/17-997/10, 1011/7-14, 1017)
- Max's testimony has to be considered in light of Russell's statements that respondent put makeup on him, as well. During his first interview about respondent, Russell said she put makeup on him once, on his face, before he was nine years old. (Ex. 30, p 10-13) He testified in this hearing that she put makeup on him two or three times, (Russell, 6-28-21, pp 312/24-313/2), though he also acknowledged that his memory of this was not strong. The fact that respondent put makeup on Russell makes it more likely that she also put it on Max.
- Even respondent admits putting makeup on Max, though she claims she only did so once.

Respondent also claims that she only put makeup on Max because Russell was teasing him about being slapped. (Ex. 3, pp 13, 14, 20, 21; Green, 11-19-21, p 1976/17-21) Her excuse is false. Both boys testified that they did not tease each other about getting hit by their father or the fact that they had marks on their faces. (Russell, 6-28-21, p 315/2-9; Max, 6-28-21, pp 482/18-20, 486/11-12; Ex. 46, 6-10-21, 40:50-41:03; Ex. 45, 6-11-21, 37:28-37:42) As Russell said during his prehearing interview, the boys never teased each other about having marks on their bodies because there was nothing funny about it. (Ex. 46 at 40:50) Significantly, Max explained:

> And let's say he was teasing me. I wouldn't ask to be—I'm not gay. I don't want makeup on me. So I definitely wouldn't have asked for that. Like, I don't know. I would probably try to think of something else. I wouldn't want makeup on my face. Because that wasn't like—that wasn't Halloween makeup. It was women's makeup, so I for sure wouldn't ask for that. And he wasn't teasing me in the first place, so. (Max, 6-28-21, p 486/11-20)

Further evidence that respondent's explanation is not true is that if it *were* true, she surely would have mentioned it much earlier than she first did. As a former foster care worker, experienced lawyer and eventually a judge, whose specialty was juvenile cases, respondent was well aware that evidence gathered during a CPS investigation is important – particularly when, as here, that evidence showed not only that a parent caused physical harm to a child, but there was also an attempt to conceal that evidence. Therefore, if she had an innocent reason for putting makeup on Max's handprint, one would expect her to have told CPS about the makeup and her reason when she was asked about her knowledge of abuse in 2018. One would also have expected her to tell her innocent reason to the Juvenile Court jury when she was asked whether she had concealed abuse. (Ex. 2, p 65-66) And of course, she should have mentioned it to M. L. Elrick, the reporter who interviewed her about concealing abuse just two months after she testified in Juvenile Court. (Ex. 7) But she never did any of those things. (Ex. 3, pp 13, 14, 20, 21; Elrick, 5-27-21, p 200/3-6; Apple, 9-24-21, p 1309/21-23; Green, 11-19-21, pp 2061/6-9, 2062/17-25, 2063/4-6,

2065/10-19) She did not come up with this explanation until the JTC began to ask about her use of makeup in late 2019.

The evidence establishes paragraph 14. Paragraph 15 alleges that by knowingly concealing evidence that the boys were abused, respondent violated:[11]

a. MCR 9.104(1) and MRPC 8.4(c), by engaging in conduct prejudicial to the proper administration of justice;

b. MCR 9.104(2), by engaging in conduct that exposes the legal profession or the courts to obloquy, contempt, censure or reproach;

c. MCR 9.104(3), by engaging in conduct that is contrary to justice, ethics, honesty, or good morals;

d. MRPC 8.4(b), by violating a criminal law when doing so reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer;

e. MCL 750.483a(5)(a), which prohibits tampering with evidence;

f. MCL 750.505, for being an accessory after the fact to child abuse; and

g. MCR 9.104(5), by engaging in conduct that violated a Michigan criminal law.

No further explanation is necessary to show that respondent's concealing abuse violated the court rules and rules of professional conduct listed in paragraphs 15b, 15c, 15d and 15g. Paragraph 15(e) charges that respondent violated MCL 750.483a(5)(a), which prohibits tampering with evidence. The statute says: "a person shall not . . . knowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in a present or future official

[11] Count One alleges that respondent violated criminal laws and Rules of Professional Conduct, but not the judicial canons, because she was not yet a judge when she did the acts charged in this count. MCR 9.202(B)(2) provides that "[c]onduct in violation of the . . . Rules of Professional Conduct may constitute a ground for action with regard to a judge, whether the conduct occurred before or after the respondent became a judge or was related to judicial office."

proceeding." It does not matter if an "official proceeding" (or a prosecution) was ever initiated. *See*, *People v Sara Ruth Ylen*, unpublished opinion per curiam of the Court of Appeals, issued 7/30/2015 (Docket No. 320861) (defendant convicted of tampering with evidence even though no charges were brought for the underlying crime). By concealing evidence that her son's discipline had left marks on Max's body and face, respondent concealed or otherwise tampered with evidence of abuse that could have been admitted in an official proceeding concerning the abuse. 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, her concealment of the marks was knowing and intentional. The only plausible reason she concealed the abuse was to keep it from being discovered. Her explanation for concealing the one handprint she acknowledges concealing is false.

Paragraph 15(f) charges that respondent violated MCL 750.505, which punishes an accessory after the fact. The statute states: "A person is an accessory after the fact when, after obtaining knowledge of the principal's guilt, after the completion of the crime, he renders assistance in an effort to hinder the detection, arrest, trial, or punishment of the principal." *See*, *People v Beard*, 171 Mich App 538, 545; 431 NW2d 232 (1988). Respondent was aware that her son was physically disciplining the boys aggressively enough to leave lingering bruises. Given her background and Judge Cox's prohibition against corporal punishment, she had good reason to believe her son was committing crimes, as a judge eventually found. Respondent hindered the detection of her son's abuse, and therefore rendered him assistance.

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). Respondent notes that not every handprint

inflicted on a child's cheek by a parent is "child abuse," and on that basis, argues that the handprint she admits concealing was not abuse and therefore she did not conceal evidence of a crime.

The first problem with respondent's argument is that this case is not about a single slap. The record shows that respondent was aware of and concealed multiple acts of abuse, just one of which was the handprint she acknowledges. Further, the fact that a single slap is not typically prosecuted does not mean it is not child abuse.[12] It is still "abuse" if it was knowing or intentional harm. Both the mark respondent acknowledges and those she does not acknowledge were caused by her son's deliberate and repeated striking of the children. That striking caused physical harm, and therefore constituted child abuse.

Section (9) of the child abuse statute states: "This section does not prohibit a parent or guardian, or other person permitted by law or authorized by the parent or guardian, from taking steps to reasonably discipline a child, including the use of reasonable force." This provision does not help or excuse respondent. The "whoopings," slappings, spankings, beatings, and beltings her son gave the boys were not "reasonable force" – especially after they were explicitly prohibited by Judge Cox – and respondent cannot reasonably have thought they were. In fact, she admits that even the lone handprint she acknowledges was "totally inappropriate and unacceptable" (Ex. 3, p 14) and "not reasonable parental discipline." (Ex. 3 p. 9) The physical abuse of which she was well aware, including that handprint, were therefore not excused by the Child Abuse Law.

Respondent argued during this hearing that the evidence did not prove that Russell and Max were victims of child abuse, and therefore could not prove that she was aware of "child abuse" when she concealed the handprint on Max's face. She is framing the issue too narrowly by focusing

[12] There are no reported cases in which a parent was prosecuted merely for slapping a child across the face one time. That does not mean a single slap is never abuse. Rather, the lack of reported cases is likely because there are generally better ways than criminal prosecution to address that level of abuse.

on whether the boys were actually the victims of abuse.[13] Respondent concealed *evidence* of abuse. Whether or not some factfinder ultimately concluded that the sum total of the evidence constituted actual abuse is beside the point. When respondent concealed the marks, she knew they were evidence of abuse, and she knew she was deliberately attempting to conceal this evidence. That is all the law requires.

In any event, the evidence listed above does clearly show that the boys were victims of abuse – spankings, beatings, beltings, and multiple slaps to Max's face, all of which were severe enough to leave lingering marks. The evidence also clearly shows that respondent knew her son was committing this abuse, in violation of Judge Cox's order; that her grandsons were suffering from this abuse; and that respondent took concrete and deliberate acts to cover up her son's actions.

By concealing evidence of a crime, respondent not only violated the laws just discussed, she also obstructed the proper administration of justice as charged in paragraph 15a.

COUNT II

Count Two charges respondent with making false statements about her knowledge that her son was abusing her grandsons and about her actions with respect to that abuse. In part, Count Two alleges that the following statements in respondent's November 21, 2019 answer to the Commission's questions were false:

- Paragraph 19 alleges that respondent stated that none of her grandchildren had ever told her they had been abused. Her statement to this effect is in Ex. 3, p 12 #17.
- Paragraph 20 alleges that respondent stated: "I was, and remain, unaware of any alleged 'abuse' of my grandchildren by my son." That statement is in Ex. 3, pp 13-14 #19.
- Paragraph 21 alleges that 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

[13] As the record shows, both a Juvenile Court jury and a judge did find that the boys were victims of abuse; the latter finding that abuse was proven beyond a reasonable doubt. (Green, 11-19-21, pp 2032/11-21)

hand of their father. Specifically, I was never advised about alleged abuse by my grandsons." Her statement is in Ex. 3, pp 19-20 #38.

- Paragraph 22 alleges that respondent stated: "As related to being spanked, I have no recall of any specific occasion that this 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." Her statements are in Ex. 3, pp 19-20 #38.

- Paragraph 23 alleges that respondent denied she was made aware of "corporal punishment" her son administered to her grandsons, and claimed she was only told about one incident in which Max was slapped across the face, plus additional spankings. Her statements are in Ex. 3, pp 10-12 ##16(k), 17; pp 19-20 #38.

- Paragraph 24 alleges that respondent denied knowing that Max and Russell had been hit by their father, and falsely denied witnessing Max being hit. Her statements are in Ex. 3, pp 9-10 #15.

- Paragraph 25 alleges that respondent stated that she did not see marks on her grandson's bodies, excluding the slap mark she once saw on Max's face. Her statements are in Ex. 3, pp 7-8 ##14(b), 14(v); pp 12-13 ##18, 18(a); pp 19-20 #38.

- Paragraph 26 alleges that respondent stated she was not "advised" that her son had left any marks on her grandsons' bodies, excluding the slap mark that she saw on Max's face. Her statements are in Ex. 3, pp 7-8 ##14(b), 14(v).

- Paragraph 27 alleges that each of the above statements was false, in part because:

    a. Respondent saw Max and Russell frequently, and on several occasions Max told her about the abuse while she was driving them in her car and he was around nine or ten years old. Russell also told respondent that he was being hit by his father.

    b. Respondent witnessed her son hit Max across the face, leaving a handprint that she concealed with makeup.

    c. When Russell was about eight years old, while at respondent's house, he showed her bruises on his face, neck, arms, legs, and back that he said her son had inflicted. He showed her other bruises that he said her son had inflicted on other occasions as well.

    d. When Max was nine or ten years old, respondent put makeup on him several times in the bathroom of her house, to cover marks that, as she was informed and was otherwise aware, had been inflicted by her son.

    e. Respondent heard her son strike Max on the face at least one time, hard enough to leave a handprint which she later concealed with makeup.

- Paragraph 28 alleges that respondent's November 21, 2019 answers 14(b), 14(b)(viii), and 15, which asserted that she never witnessed her son strike Max, were false or misleading, in that she did see her son strike him multiple times.

- Paragraph 29 alleges that respondent's November 21, 2019 answers 18(g) and 19, which asserted that she put makeup on Max because Russell was making fun of him for being slapped by his father and for the mark on his cheek, were false or misleading because Russell never teased Max about being slapped by their father or having a mark on his cheek, and neither of the boys ever told respondent or anyone else that Russell teased Max for this reason.

The evidence that is summarized in the analysis of Count One, above, shows clearly that respondent was told about the abuse and shown injuries she knew were inflicted by her son upon her grandsons. Pages 6-8 above summarize the evidence that Russell and Max repeatedly told her about the abuse and showed her their injuries. Pages 7-13 summarize the evidence that Russell told respondent they were hit by a belt, they told her about the spankings and beatings, she heard them scream while being beat, she was aware Russell was about to be "whooped," and was present when Max was slapped on the face. This evidence therefore also shows clearly that each of her statements to the Commission that is described in paragraphs 19-26 and 28 of Count Two is false.

Further, as is noted above at page 18, the boys did *not* tease each other about getting hit by their father or the fact that they had marks on their bodies. The evidence therefore establishes the allegation of paragraph 29.

Paragraph 30 alleges that respondent testified at a Juvenile Court hearing on March 13, 2019 as a witness on behalf of her son. Paragraph 31 alleges she made several false statements at that hearing, including:

- That Max did not show her bruises on his body; (Ex. 2, p 63)

- That she did not use makeup to conceal Max's and Russell's bruises; (Ex. 2, p 65)

- That Max's testimony that she *did* conceal bruises on his face with makeup was a lie. (Ex. 2, p 66)

Max's and Russell's testimony that is summarized at pages 6-7 and 17 above shows that each of these claims was false.

Respondent claims the statements she made about bruises and makeup during her Juvenile Court testimony were truthful. In order to evaluate her claim, it is worthwhile to take a closer look at what she said and the context in which she said it. There is nothing in the CPS records suggesting that she was asked about seeing bruises or using makeup prior to the Juvenile Court hearing; the first time there is any record that she was asked about seeing bruises and using makeup was during that testimony:

> Q. Have you ever used makeup to cover up Gary and Russell's bruises, specifically, on Gary's face?
>
> A. Again, I have never seen any bruises.
>
> Q. That wasn't my question.
>
> A. So the answer is no.
>
> Q. If Gary testified to that yesterday, that would be a lie, correct.
>
> A. Yes, it would.
>
> (Ex. 2, pp 65, 66)

Respondent's answer to the complaint claimed she was being truthful when she gave this testimony, because she distinguishes between "bruises" and a "handprint." (Answer to Complaint, 34) There are several reasons that does not make sense. First, she has worked very hard to make this handprint seem insignificant, but it clearly *was* significant. It did not go away within minutes of the slap, as might happen with an ordinary slap. Rather, it stayed long enough that even after Max was taken to her house after receiving it, it was still so bad that she thought she should conceal it. The common understanding of the word "bruise" certainly applies to a mark like that.

Second, respondent had to know that concealing a lingering handprint of that intensity was relevant to the question she was asked in Juvenile Court about concealing bruises, and in fact, was tantamount to concealing abuse. Rather than give this responsive information, she denied concealing anything and even accused her grandson of lying. She misrepresented by omission, and in doing so, misled the Juvenile Court jury.

During this hearing respondent testified about her Juvenile Court testimony as follows:

Q. In juvenile court, you didn't tell the lawyers that you put makeup on a handprint on Gary, Jr.'s face to cover something other than a bruise, did you?

A. No I didn't.

Q. But at that time you were aware that you had used makeup to cover what you describe now as three fingers?

A. When I was on the stand was years after the makeup incident occurred. I had completely forgotten about it.

Q. You forgot you put makeup on your grandson?

A. I forgot that I put makeup on the handprint.

(Green, 11-19-21, p 2061/6-15) It is not plausible that a grandmother – who is also an experienced juvenile court attorney and former foster care worker – would simply forget that she had put makeup on her grandson's face to cover "three fingers." No matter how long ago she hid the handprint, concealing abuse is serious business, and not something a grandmother who also has respondent's professional experience should ever forget having done.

The colloquy in this hearing continued as follows:

Q. So are you telling us in March of 2019 when you testified in juvenile court you simply forgot that you put makeup on this boy?

A. Well, Ms. Weingarden, the question was whether I put makeup on bruises. So that never put me in the mindset of, oh, they must be talking about the handprint.

(Id at pp 2061/24-2062/4) However, as the Juvenile Court transcript shows, the attorney who questioned her in that proceeding specifically used the word "makeup." (Ex. 2, p 65/25) Respondent could not have reasonably forgotten that she applied makeup to Max's facial injury in the first place, but if she somehow did, she was reminded by the attorney's question. Respondent's explanation for her Juvenile Court denial that she had concealed a bruise was not credible. The evidence establishes paragraph 31.

Paragraph 32 of the complaint alleges respondent's testimony at Juvenile Court that she did not use makeup on any bruises (described in paragraph 31 of the complaint) contradicts her November 21, 2019 answer #18; i.e., that she put makeup on Max's face because Russell was teasing him. (Ex. 3, pp 12-13) Her statement to the Juvenile Court and her statement to the Commission cannot reasonably both be true. It is easy to see why they differ, once the context of each is considered.

In the Juvenile Court, respondent denied any connection to the abuse. That put her in very sharp contrast to what her grandchildren were saying. She later staked out a middle ground to the Commission by acknowledging that she concealed a single handprint. Once she admitted doing that, though, she had to create a reason for doing so. The explanation she gave the Commission, embodied in her answer #18, is that she was preventing teasing.

Respondent's admission and explanation are in tension with her claim in Juvenile Court that she did not conceal any bruises. Her explanation is also false, because as noted both just above and at page 18 above, Russell and Max did not tease each other about getting slapped by their father.

Not only is respondent's justification contrary to the evidence, it defies common sense. As noted above at pages 18-19, had she concealed a handprint with makeup to prevent teasing, one

would expect her to mention that when asked about concealing bruises in Juvenile Court. But she did not mention it there, nor did she mention it when discussing the handprint with Ms. Apple or when being asked about concealing abuse by Mr. Elrick.

Moreover, respondent did not hesitate to call her grandson a liar for having claimed that she *had* covered a bruise with makeup. Had a grandmother really concealed a handprint for a *legitimate* reason, it is unlikely that she would have accused her own grandson of lying for saying she had concealed a "bruise" rather than calling the thing she concealed a "handprint." Rather, it would have been much more natural for her to say something like "oh, he's probably just thinking of the time I covered a *handprint* with makeup." The evidence establishes the allegations in paragraph 32.

Paragraph 33 of the complaint alleges that respondent's testimony in Juvenile Court (cited in paragraph 31 of the complaint) and her answer #18 are both false, in that she put makeup on Max multiple times, and did not do so to prevent Russell from teasing him. The evidence that respondent's purpose was *not* to prevent teasing was discussed just above, while the evidence discussed at page 17 above shows that she put makeup on Max multiple times. The evidence establishes the allegations of paragraph 33.

The evidence described above shows that respondent was well aware of every one of the things that she denied knowing as alleged in paragraphs 19-33. Her false statements violated:

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

b. MCR 9.104(2), which prohibits conduct that exposes the legal profession or the courts to obloquy, contempt, censure or reproach;

c. MCR 9.104(3), which prohibits conduct that is contrary to justice, ethics, honesty, or good morals;

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

e. MCJC Canon 2(B), which requires a judge to promote confidence in the integrity of the judiciary; and

f. MRPC 8.4(b), which prohibits a lawyer from conduct involving dishonesty, deceit, or misrepresentation, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer.

CREDIBILITY

Much of the evidence that pertains to Counts One and Two comes from Russell, Max and respondent. The boys have said repeatedly and consistently that they told respondent about the abuse and showed her their injuries, and that she put makeup on Max's face to cover injuries she knew her son had inflicted. For her part, respondent denies she was aware the boys were abused, admits knowing only about one handprint, and claims she only used makeup once, to prevent Russell from teasing Max. Given this posture, resolving Counts One and Two requires determining whether the boys or respondent are more credible. The evidence discussed below shows that the boys are significantly more credible.

Respondent herself explained why her relationship with the boys gave them no reason to lie about her. She told the JTC:

> Since birth, I have done my best to develop a close, nurturing relationship with my grandsons. They have spent a significant amount of time with me in my home. I have sat for them, have them for overnight stays, cooked meals for them, included them in my family fellowship and holiday times, and taken them to church for services, to participate in youth choir, and other related church activities. I love my grandsons and have done everything possible to be involved in their lives in a meaningful and encouraging way.

(Ex. 3, p 2) She further said she saw the boys "at least once per week" and that she and her grandsons had a "great relationship." (Ex. 3, pp 3, 4) Throughout the hearing she maintained that she was a loving grandmother. (Green, 11-19-24, pp 1964/4-12, 2019/4-6, 2022/15-21) With that background in mind, the discussion below focuses on the credibility of each of the boys.

Russell

Importantly, Russell has been quite consistent and credible in his descriptions of respondent's knowledge that he and Max were abused, and about her use of makeup to conceal that abuse, to the best of his young memory. See Appendix A's summary of Russell's prior statements. That is important evidence of credibility in its own right, and it makes unlikely the idea that he would lie about respondent. Russell was only eight years old when he was removed from his father's home. Even if he were inclined to lie about her, he was too young to have the sophistication needed to make up a big lie about her and tell it consistently over a period of years.

In any event, there is no evidence that Russell was inclined to lie about respondent, though he does not care for her. When interviewed, he remembered nice things she did for him, but also said he did not like her because she was mean and yelled at him. (Ex. 30, p 9/15-22) He still does not like her today, and said he hopes he never sees her again. (Russell 6-28-21, p 414/17-24) He even acknowledged in this hearing his previous testimony that he hates her and never wants to see her again.

However, Russell also denied that he hates respondent enough to lie about her. *(Id.* at p 414/17-415/2) Not liking someone – even hating someone – is a far cry from lying about them. Moreover, respondent has not even been a part of Russell's life for more than three years, making it less likely that whatever feelings he had when he last saw her would cause him to testify falsely at this hearing. (Russell 6-28-21, p 414/17-24)

Neither Russell's mother, nor Max, nor anyone else ever told Russell to say respondent put makeup on him, *(id.* pp 315/12-25, 431/24-432/6), nor did his mother tell him what to say about his father's abuse or respondent's knowledge of it. *(Id.* pp 316/1-3, 318/20-319/4) He said everything he testified to was the truth, no matter who asked the questions. *(Id.* at p 435/25-436/2, 437/19-20)

To his credit, Russell acknowledged that he does not have a good recollection about the makeup respondent put on him. *(Id.* p 356/5-7) He was only eleven years old when he testified. If he were out to make false statements about her, it is unlikely that a witness so young would have acknowledged any such uncertainty. It is more likely that if he were lying, he would describe respondent's knowledge and actions with considerable embellishment rather than minimization.

Although Russell was aggressively cross-examined, nothing in the cross-examination showed inconsistency or called his credibility into question. For example, in June of 2021 counsel for respondent "tested" this eleven-year-old's memory by asking him what he had said to KidsTalk interviewers three years earlier, and to disciplinary co-counsel nearly two years earlier. *(Id.* at pp 344/24-345)/3, 346/5-13) Russell credibly answered that he "did not remember" to several of these questions. *(Id.* at pp 339/17-21, 340/7-13, 344/24-345/3) His answers do not call into question his reliability as a witness; no one should expect him to remember exactly what he said 21 months or three years earlier.

In addition, the cross-examination challenged Russell with the fact that he had not mentioned certain things he now says about respondent at his first two KidsTalk interviews. *(Id.* at pp 344/24-345/3, 372/3-373/25) The "challenge" was misplaced – neither interview was even focused on respondent's conduct. Only at the second interview was Russell asked about her, and only through a few questions that were not designed to elicit the information he provided when he

was later interviewed about her. (Ex. 25, Ex. 26) There are not very many eleven-year-olds with the presence of mind to tell an adult in a position of power that the reason he did not say anything about respondent at those long-ago interviews was that he was not asked about her. The fact that Russell did not mention that during cross-examination does not damage his credibility.

Counsel also tried to discredit Russell by ridiculing some things he told the KidsTalk interviewers as being so bizarre they could not possibly be true. *(Id.* at pp 389/14-22, 393/22-24) But Russell's testimony was hardly bizarre. He stands by his recollections that his father had parties with naked people and that he was molested by his father, *(id.* p 434/10-15), and neither of these claims is inherently unbelievable. The children were living in a dysfunctional home. Russell shared with Max what he saw when they were living there, and Max later told an interviewer at KidsTalk that Russell had told him that their father touched his private parts and that he had seen his father with naked men. (Ex. 32, p 27) CPS did not consider Russell's claims bizarre, and took them seriously enough to investigate them. (Apple, 9-24-21, p 1425/4-8) The fact that the investigation was unable to substantiate the claims is no indication that Russell was wrong, and there is absolutely no evidence contradicting his statements.

Another of respondent's efforts to attack Russell's credibility was based on a mistaken premise. Counsel confronted him with having claimed at one of his KidsTalk interviews that there was a murder in his house. (Russell, 6-28-21, pp 389/20-21, 390/1-25) Russell said he did not remember ever having said such a thing, despite counsel's efforts to push him into this admission. *(Id.* at pp 389/20-24, 390/18-24, 391/2-5, 395/4-9) Russell was right; the transcripts of his interviews show he did not say that. (Russell, 6-28-21, p 389/20-24; Ex. 25, 26, 30). What he actually said was that he and the other children *believed* their father murdered Katy after he choked her so badly she passed out. (Ex. 25, pp 25/21-23, 24/22-25, 26/1-23). That was certainly a

reasonable fear for children to have in that moment. More important, for purposes of assessing his credibility, is that what Russell actually said does not provide a foundation for the question he was asked in this hearing. Nothing about the colloquy suggests that Russell is not a credible witness.

Max

The record shows that Max ***loves*** his grandmother. (Max, 8-23-21, p 1042/9-13) He cares for her so much that he initiated communications with her during these proceedings. (Max, 6-28-21, p 526/3-8) He texted her as recently as two weeks before the hearing began, saying: "I love you so much, though. I love you Grammy. I know you can't respond to my text, but I do. I hope they just dismiss this case just like they do every other one. I can't wait to see you again." (Max, 8-23-21, p 1042/1-8; Ex. 40) It was clear not only from that text, but also from his demeanor and his words during this hearing, that he did not want to testify because he does not like telling people what respondent knew and did. (Max, 6-28-21, p 475/20-25)

Respondent has consistently stressed in this proceeding that the boys have been coached to lie. She offers nothing relevant to support that theme, and Max's demonstrated feelings are the opposite of someone who would or could lie to hurt her. In fact, at one point he gave answers he thought were helpful to respondent's case, and informed her counsel: "I was trying to help your client." (Max, 7-21-21, p 695/5-6)

Max has long spoken well of respondent. When first asked about her, in September 2019, he talked about the nice things she did for him. She got him Lego sets, took him to Chuck E. Cheese, hosted a birthday party for him, and celebrated Halloween and Thanksgiving with him and Russell. (Ex. 34, pp 12-13) He said she was "kind of" nice. *(Id.* at p 14)

Max's feelings about respondent were not all positive. During that same interview, he also said he believed respondent had something to do with him being with his dad and not seeing his

mom. (Ex. 34, pp 25-27) Respondent tried to discredit Max in this hearing by confronting him with similar statements he made at his father's criminal trial, to the effect that he blames respondent for taking the boys away from their mother and their ability only to have supervised visits with her. (Max, 7-21-21 pp 815/17-819/12) Although Max has acknowledged being angry at respondent for her role in separating him from his mother, those feelings did not stop him from saying the nice things about her that are mentioned above when he was first interviewed about her. During the interview and in this hearing he also stated clearly then that he was being truthful with respect to what he said about her. (Max, 8-23-21, pp 1072/20-1073/18; Ex. 34, pp 26, 27)

Further, what matters most is how Max felt when he testified in *this* hearing. When he was asked during *this* hearing whether he blames respondent *now* for his not being with his mother, Max said: "I don't do nothing now. I don't care. So I don't have any hate towards nobody. I don't care." *(Id.* p 1025/23-1026/4) He explicitly denied that his testimony was influenced by any anger at respondent for her part in his not seeing his mother. (Max, 7-21-21, pp 683/20-24, 684/13-16 & 18-21) There is no reason to question any of these denials.

Despite respondent's persistent efforts, there is no evidence that Max has any motive to make up anything negative about respondent. In addition and like Russell's, Max's substantive statements about respondent's knowledge and actions have been largely consistent over time, even though he acknowledged that his memory of these events is not good. (Max, 7-21-21, pp 612/9-15, 812/20-22; See Appendix B, summarizing Max's prior statements with respect to respondent)

It is understandable that Max's memory would not be good, given the trauma he has suffered and the passage of time. It is also understandable because to Max, respondent's putting makeup on him, for example, was not a "big deal" – unlike the abuse itself. (Max, 7-21-21, pp 684/5-8, 689/25, 690/1-5) To the extent Max's recollection has changed, the changes are the sort

of thing one would expect in a person's memory – especially a child's memory – over the course of several years. Nothing in any of the changes in Max's memory suggest any fabrication, or any reason to question his main statements about respondent's actions.

The one thing about which Max was significantly *in*consistent was his early claim that respondent told him to write a false letter to a friend of his father identified as "John." Max acknowledged that he had lied about his father's and respondent's actions with respect to that letter. (Max, 7-21-21, p 695/21-22; Max, 8-23-21, p 1072/4-8) While it was wrong of Max to lie, the circumstances, described below, show that he was in an unbearable dilemma for a 13-year-old child, and that his lies in this difficult situation do not impugn his credibility generally.

Prior to May 12, 2021, disciplinary counsel became aware that Max had purportedly written a letter to "Uncle John" that called into question some of the testimony about the abuse Max gave at his father's criminal trial. The letter was troubling, and on May 12 Max told a KidsTalk forensic interviewer who was asking about the circumstances that it was respondent who directed him to write the letter.

On June 1, 2021, disciplinary co-counsel forensically interviewed Max about the letter, to investigate whether respondent had tampered with a witness or aided her son's violation of a bond condition. The interview took place in the basement of his home. Consistent with what Max told the interviewer at KidsTalk, he told co-counsel that respondent initially told him to write a letter to his father's judge, asking to be allowed to communicate with his father. Respondent's purported instruction changed over time, from Max writing a letter to the judge in which he sought permission to communicate to Max writing a letter to his father's friend, John, in which he recanted some of his trial testimony and blamed his mother for what he had said in court. (Ex. 44, 1:05:15-1:06:43; 1:34:17–1:34:37) Max said respondent used Snapchat to give him a draft of a letter he

was to send to John. *(Id.* at 1:11:43-1:12:10; Ex. 9, 9a) Max said the letter said things that were untrue, including a) that Max had said things during his father's case that were untrue, and b) that it was his mother who told him to say his father abused him. Max said he wrote the letter after amending part of it. *(Id.* at 1:12:10-12:21:00; 1:25:00-1:27:07) He then provided an elaborate story about how he obtained an envelope and an index card with John's address on it. *(Id.* at 1:23:40-1:25:20) He provided details of the plan to get the letter to John. *(Id.* at 1:35:00-1:36:08) Eventually, he said he left the letter on the back porch of his great-grandmother's home and someone apparently picked it up. *(Id.* at 1:12:21-1:12:40; 1:27:13-1:27:44)

Critically, after Max spoke with the KidsTalk interviewer on May 12 but *before* he spoke to co-counsel on June 1, he told respondent that in his KidsTalk interview he had falsely blamed her for telling him to write the letter. He asked her to back him up on this misrepresentation. (Max, 7-21-21, pp 577/19-579/5, 583/15-585/25) She did not challenge what he had done or urge him to correct his misrepresentation. Rather, she remained silent, thereby giving her implicit approval. In other words, at the time Max repeated his false story to co-counsel on June 1, he had respondent's implicit approval for that false story.

Eventually, on June 11, Max admitted to co-counsel that it was his father, not respondent, who had directed him to write the letter to John. He explained that he had lied because he had promised his father he would not tell anyone and he did not want to be responsible for sending his father to prison. (Max, 6-28-21, pp 548/8-18, 586; Max, 7-21-21, p 726/9; Max, 8-23-21, pp 1072/7-1073/3) He credibly testified that he has not lied about anything else involving respondent. (Max, 8-23-21, p 1073/16-18)

Respondent argues vigorously that because Max lied about the circumstances surrounding the letter to John, he should not be believed about anything. However, respondent's expert witness,

Nancy Diehl, explained that before deciding whether a known lie means a child cannot be believed about other things, one has to take a look at what the child lied about and why. Sometimes the reason makes perfect sense given the situation, while other times it means they are just not truthful. (Diehl, 10-13-21, pp 1712/21-1713/6)

Max explained why he lied, and from his perspective, doing so did make sense. He was in an impossible situation for a child. His father had asked him to write a false letter. He understood, because respondent told him so, that his father was not allowed to talk to him while on bond, and he did not want to be responsible for sending his father back to prison. (Max, 6-28-21, pp 548/8-18; Max, 7-21-21, p 726/9; Max, 8-23-21, pp 1072/7-1073/3; Ex. 44, 1:03:20-1:04:18) His lie makes sense under those circumstances. Since he was not in any similar dilemma with respect to the information he has given about respondent's knowledge of, and actions concerning, the abuse, there is no reason to doubt him.

The evidence shows that Max's statements and testimony about respondent's knowledge of abuse and use of makeup to conceal abuse are reasonably consistent over time, were truthful, and should be believed.

Corroboration of Russell and Max

The boys' statements about respondent are corroborated by other evidence. The most powerful corroboration is the way they both reacted, spontaneously and physically, when told they may live with respondent after being rescued from their home in 2018. Russell got quiet and stopped talking and had fear in his eyes. Max became nervous, scared, shaking, fidgety, was crying and his voice cracked, as he objected because respondent knew they were being abused and did nothing about it. See above at page 2.

The boys' statements also corroborate each other. Although they were always interviewed separately, and although they did not even know they were going to be asked about respondent prior to their first interview that focused on her, they said very similar things about what she knew and how she reacted to that knowledge. They could not have done that if they were making it up.

The fact that the boys had severe injuries when they were rescued also corroborates their statements. Ms. Apple testified that on a scale of one to ten, their injuries were an "11." (Apple, 9-24-21, p 1318/1-6) Injuries that severe are not likely to happen during first-time abuse. Parents who abuse children do not usually get caught at the outset; rather, the abuse escalates until it becomes so bad that authorities learn of it. Therefore, the likely *best* scenario for these boys is that they had been abused for mere months, rather than years, by the time they were rescued. Whatever the duration of their abuse, it had to be appreciable, and the record is clear that respondent saw them regularly during whatever time that was.

Further corroboration of the boys' statements is that a juvenile court jury apparently believed them, because it terminated their father's parental rights based in part on what they said. (Id at p 1324/5-7; Green, 11-19-21, p 2032/11-13) Also, a judge apparently believed them, because he convicted their father of two counts of child abuse in the second degree and sentenced him to prison, based in part on what they said. (Apple, 9-24-21, p 1327/20-22; Green, 11-19-21, p 2032/14-21)

It is also very significant that respondent's own statements to Ms. Apple, her answers to the Commission, and her testimony, all corroborate significant parts of the boys' testimony, though perhaps unintentionally:

- Max said he told his grandmother about what was happening to them. (Max, 7-21-21, pp 626/20-627/6) She admitted the boys confided in her. (Ex. 2, p 54/2; Green, 11-19-21, p 2020/3-14);
- Respondent admitted she was told that her son choked and slapped Katy. (Ex. 4, p 7; Green 11-19-21, p 2022/11-16);
- Respondent admitted knowing her son was a very "strong" or "stern" disciplinarian; (Apple, 9-24-21, p 1305/4-7; Ex. 2, pp 64/24-65/2; Green, 11-19-21, p 2003/16-19). As noted above at pages 5-6, in context this could only have been a reference to physical discipline.
- Respondent admitted knowing her son used a belt on the boys, and though she disagrees with them about when she knew this, the evidence supports the boys' version. (Ex. 2, p 65);
- Respondent implicitly admitted to Ms. Apple that she knew the boys had been abused, when she told Ms. Apple she did not think it was *this bad* (Apple, 9-24-21, pp 1305/10-1306/17);
- Respondent admitted to Ms. Apple that she heard her son slap Max; *(Id.* at pp 1306/24-1307/5; *see also*, Ex. 3, pp 8, 9, 10, 11, 12, 13, 14)
- Respondent was aware that her son was spanking the boys, though she implausibly claims she only knew of this before Judge Cox forbade corporal punishment. See pages 7-9, above.[14]

[14] Respondent also minimizes the significance of the spankings somewhat by saying she believed "spanking" meant being hit with an open hand. (Green, 11-29-21, p 2049/3-7) Of course, even those spankings would have violated Judge Cox's order.

- Respondent admits she did not ask any questions about how the boys were being disciplined. (Apple, 9-24-21, p 1307/11-14; Ex. 3, pp 16-17, 20) The boys testified to this as well. See above at page 14.
- Respondent admits concealing a handprint on Max. (Ex. 3, pp 13, 14; Green, 11-19-21, p 1976/17-20) Though she denies concealing other marks as the boys said she did, it is significant that she acknowledges even one.

In short, respondent corroborates the heart of what the boys have said.

Respondent has stressed that Russell and Max have been interviewed and have testified multiple times about what occurred while in their father's care. She is correct about that fact, but wrong to suggest that as a consequence, their testimony cannot be trusted.

The boys were forensically interviewed at the Wayne County Child Advocacy Center in June and August, 2018. (Ex. 25, 26, 31, 32) They testified in Juvenile Court in March 2019 and reporter M. L. Elrick interviewed them in May 2019. (Ex. 28, 29) They testified at their father's criminal trial in August of 2019. (Ex. 24, 35) [15] They were forensically interviewed for the first time about *respondent's* conduct in September 2019, by disciplinary co-counsel. (Ex. 27, 30, 33, 34) In June 2021, co-counsel interviewed Max about the "Uncle John" letter he wrote. (Ex. 44) The boys discussed respondent's conduct again during a prehearing meeting with co-counsel in June 2021. (Ex. 45, 46) Respondent points to the raw number of their prior interviews to argue that on that basis alone, their testimony cannot be trusted.

[15] It is likely the boys were also interviewed by the juvenile court attorneys as well as by the assistant prosecuting attorney, but evidence about those interviews was not presented at the hearing. If those interviews did occur, there is no evidence that the questioning was suggestive or implanted false information.

Respondent's concern is unfounded. The evidence shows that co-counsel was the first person whose interview of the boys focused on respondent's conduct.[16] Co-counsel was a Wayne County Prosecutor for 33 years, specializing in child abuse prosecutions for the last 29. She interviewed the boys at the KidsTalk facility in September of 2019, (Weingarden 11-19-21, pp 2084/25-2085/5) and adhered to the Michigan forensic interview protocol as she did so. (Ex. 43) She knew the protocol well – she was trained in it in the late 1990s and has interviewed hundreds, if not a thousand, children during her career. (*Id*. at p 2087/6-10) In fact, she became a trainer herself, and has trained other prosecutors, CPS workers, and police officers in the use of the protocol. *(Id.* p 2087/20-23) KidsTalk even hired her to meet one on one with forensic interviewers and review recordings of their interviews to critique their work and improve their skills, including how to handle particularly difficult issues. *(Id.* pp 2088/18-2089/4)

Co-counsel followed the protocol every time she formally interviewed[17] Russell and Max. *(Id.* p 2091/5-7; Ex. 27, 33, 44, 45, 46) She did the hypothesis testing required by the protocol by asking open-ended questions about the boys' relationship with respondent, designed to elicit whether they had a motive to lie or anyone had coached them to lie about her. (Weingarden, 11-19-21, pp 2091/8-9, 2091/15-2092/8, 2093/1-8) She also used hypothesis testing to explore whether respondent may have had an innocent reason to put makeup on her grandsons' faces, by asking whether the makeup was for something like Halloween or a school play. The boys rejected those hypotheses. *(Id.* at p 2092/9-24) In addition, the interviews were recorded on video, which

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[16] Max testified that M.L. Elrick interviewed him two or three times. (Max, 6-28-21, pp 335/9-14, 494/25-495/6) The record does not include any details concerning those conversations. There is nothing to show the extent to which Mr. Elrick's interview was focused on respondent, and nothing to indicate that it was at all suggestive.

[17] Disciplinary co-counsel also spoke with the boys by phone. (Max, 7-21-21, pp 607/9-17, 622/20-25, 624/1-18, 636/10-18) The record did not explore the scope of these calls, but inasmuch as the record establishes co-counsel's expertise in the protocol and her adherence to it in her recorded interviews, it is unlikely she violated it during these calls. There is no evidence that she did so.

makes it possible for the factfinder to verify whether they were done correctly and without suggestion. (Diehl, 10-13-21, p 1688/15-21)

Pages 38 and 39 of exhibit 43, the Michigan Forensic Interview Protocol, are a quick overview of how the forensic interview should be done. The videos of co-counsel's first interviews of the boys are exhibits 27 and 33, and the corresponding transcripts are exhibits 30 and 34. They show that neither of the boys knew what the interview would be about. Co-counsel purposely did not tell the boys' mother why co-counsel wanted to talk to her children or what the interviews would cover. (Weingarden, 11-19-21, pp 2091/15-2092/8) Max and Russell both confirmed that they did not know why they were at KidsTalk on that day. Max said his mom was not allowed to tell him. (Ex. 34, p 7) Russell said his mom merely told him: "You're going to KidsTalk to talk to a nice lady." (Ex. 25, pp 6, 7).

Respondent's expert, Nancy Diehl, testified that if the interviewer is well-trained in the protocol, is very experienced at interviewing kids, does not ask suggestive questions, asks open-ended questions, conducts a child-centered interview, and video-records the interview, that allays her fears that the interview is biased. (Diehl, 10-13-21, pp 1662/22-25, 1668/12-21) Any concern she had would have been allayed by the circumstances of the boys' interviews.

Respondent

Although respondent has impugned her grandsons' motives for testifying, it is hers that are more in question. In contrast to the boys, she had and continues to have reasons to lie. In 2018, when her son's abuse became known, she was running for judge. She ran on the platform of being an experienced family and child advocate and a former foster care worker. (Apple, 9-24-21, pp 1312/25-1313/3) It would have destroyed that image for the media or electorate to learn that her son was an abusive father, and that she knew it and did nothing to protect her grandsons. She had,

and still has, a motive to conceal what she knew and did, to preserve her career. Further, as a lawyer she was and is aware that her actions violated the Michigan Rules of Professional Conduct, and as a criminal attorney, she must have known that concealing abuse was criminal.

The evidence shows that respondent was more invested in protecting her son and helping him avoid responsibility for his actions than she was in protecting her grandchildren after being aware of the abuse inflicted by her son. In that regard, it is very noteworthy that nine months after her grandsons were removed from her son's home, after the CPS investigation was completed, after she was well aware of the proof that her son had abused her grandsons and after she had expressed her surprise that the abuse was "this bad," she went to unusual lengths to help her son retain his parental rights to her grandsons. She asked her friend and former law partner, Ms. Richard, to represent her son at the juvenile court hearing. (Green, 9-17-21, pp 1170/5-12, 1171/22-25) Ms. Richard had no experience in these cases, so it was respondent who guided her. (Green, 9-17-21, pp 1171/10-21, 1172/1-3 & 10-16, 1174/25, 1175/1-2 & 23-25, 1176/11-13) While she was a judge on the same bench as the judge who presided over the trial to terminate her son's parental rights, she helped Ms. Richard prepare for the trial. *(Id.* at p 1172/10-11) She "told her what direction to go in with certain investigative issues. [She] told her who witnesses were. [She] told her what laws she could use to support certain positions." *(Id.* at p. 1172/12-16) Respondent also assisted Ms. Richard while the trial was in progress, by engaging in "in depth" discussions of the case *(Id.* at pp 1175/23-1176/3), assisting with trial strategy *(Id.* pp 1174/25-1175/1-2), and preparing direct and cross examination questions. *(Id.* at p 1176/11-13) Her intimate involvement in the trial that was to determine whether her grandsons should be removed from her son's abuse demonstrates how heavily she was invested in his welfare over that of her grandchildren. Those feelings likely

impacted the actions she took that are the subject of this case, and impacted her explanation for those actions as well.

In addition, although the evidence shows that Max and Russell have been substantively consistent in their statements about respondent's knowledge and actions, it shows that respondent has made minimizing and inconsistent statements with respect to important issues:

The slap mark on Max's face

Respondent told Ms. Apple she first became aware of the handprint at the boys' home.[18] (Apple, 9-24-21, pp 1306/24-1307/10) She now claims she first saw the handprint in *her* home. (Green, 11-19-21, pp 2036/17-2037/11) The difference is significant. In her first answers to the Commission, she wrote: "what looked like a handprint went away shortly after it was brought to my attention." (Ex. 3, p 13) But she also wrote that she was not successful in covering it up. (Ex. 3, p 13) Everyone agrees she was in her own home when she tried to conceal the handprint. If the handprint was inflicted at the boys' home and so minor that it disappeared quickly, it would have been gone, or fading to insignificance, by the time they got to her home, and there would have been no need to try to conceal it with makeup. If she was first aware of it at her son's home, as she told Ms. Apple, and it still was so bad that it needed concealing at her home, it certainly did not go away "shortly after it was brought" to her attention, and her two statements to the Commission cannot be reconciled.

Another reason her statements cannot be reconciled is that a mark that disappears quickly is not a mark she would need to, or be unable to, conceal, as she admits is true of the handprint she acknowledges. (Green, 11-19-21, pp 1969/22-1970/1, 1971/1-6 & 17-23)

[18] Max also recollects that respondent became aware of a handprint in their home, and tried to conceal it in her own home. (Max, 6-28-21, p 478/8-11)

Respondent's application of makeup to the handprint

Respondent has also been inconsistent about her use of makeup to conceal handprints on Max's face. The first time she was asked about using makeup to conceal marks on Max's face was in the Juvenile Court trial in March 2019. Her testimony is quoted above at page 25. She denied ever having seen "bruises," and denied concealing any bruises with makeup. She did not mention that she had put makeup on a handprint. Max's lingering handprint was indistinguishable from a "bruise," and the question put to her in Juvenile Court fairly asked whether she had covered up marks of corporal punishment with makeup. She denied doing so.

When respondent was interviewed by reporter M.L. Elrick two months later, she was more emphatic in her denial that she used makeup to conceal abuse. She told Mr. Elrick: "I didn't put makeup on any bruises**,** to conceal any abuse: that is utterly preposterous. It just didn't happen." (Ex. 7; Id. at pp 2062/23-2063/3) It was certainly *not* "preposterous" to say she put makeup on a bruise to conceal abuse, if what she did do is put makeup on a lingering handprint. But during her interview with Mr. Elrick, she did not tell him that, either. As of then, she had not disclosed her use of makeup to anyone. In this proceeding, of course, she does admit that she concealed a handprint with it.

As is discussed in more detail with respect to Count Three, below, respondent has also been inconsistent as to what she said to CPS about concealing a handprint. In her answer to the complaint she said five times, under oath, that she told CPS about concealing the handprint with makeup. (Answer, 10f, 22, 23, 24, 26) Once she learned Ms. Apple would testify, though, she backtracked to say she is not so sure she said that to Ms. Apple. (Green, 9-17-21, pp 1150/13-19, 1152/23-1153/14)

Every time respondent talked about her knowledge of abuse and her use of makeup, she knew she was addressing relevant and crucial issues. Despite that, her statements are inconsistent with each other, and defy common sense. It is clear that she is much less credible than her grandsons.

While there is substantial corroboration for the boys' testimony, there is minimal convincing corroboration for respondent's testimony. Her husband and daughter, Andre Green and Simone Green, testified that they did not see abusive marks on the boys and did not see the boys' father discipline them in an inappropriate way. (Andre Green, 10-29-21, pp 1849/22-23, 1850/3-8; Simone Green, 10-29-21, pp 1833/15-19 & 1833/24-1834/7) Of course, her husband and daughter have a motive to protect her. They love her and naturally do not want to see her held accountable for judicial misconduct. (Simone Green, 10-29-21, p 1838/18-19) There is also no evidence that the boys confided in either Simone or Mr. Green as they did with respondent. Finally, if the boys did not make a big deal about the abuse to Simone, there is no reason for any marks to have made an impression on her.

Likewise, Tamika Brown-Edwards and Marcus Ray Holmes, church personnel, did not see abusive marks on the boys' bodies. (Brown-Edwards, 10-13-21, pp 1702/18-23, l791/16-24; Holmes, 10-13-21, p 1764/5-15) However, this does not mean the boys did not have those marks. The evidence shows that their father did not let them appear in public if they were visibly wounded, and they were always clothed at church events. (Russell, 6-28-21, p 345/20-23; Ex. 25, p 39; Brown-Edwards, 10-13-21, p 1799/3-6; Holmes 10-13-21, p 1778/6-11)

Two of Max's teachers also saw no abusive injuries. (Noffsinger, 10-13-21, p 1727/9-19; Minnis, 11-19-21, p 1907/3-8) But the teachers also said the children had to wear uniforms, which consisted of long pants, and said the boys did not change clothes for gym class. (Noffsinger, 1-13-

21, pp 1730/9-1731/2; Minnis, 11-19-21, p 1908/8-22) In addition, the boys were home schooled for the six months before they were rescued. (Max, 8-23-21, p 1085/17-21; Ex. 29, p 84)

Like respondent's other witnesses, her son's friend, Theodius Cross, testified he did not see abusive marks on the boys. (Cross, 10-13-21, pp 1743/22-1744/9, 1746/13-1747/2) Even if he is right that the boys' bodies were unmarked whenever he saw them, the evidence does not show that his contacts were so frequent or occurred during such a time that he would have been likely to notice abuse. And like the other witnesses who noticed nothing, he never saw the boys without clothes on. *(Id.* at pp 1749/20-1750/3)

It is not surprising that people outside the boys' inner circle did not see evidence that they were abused. The boys were afraid of their father and had been told by him "what happens in this house stays in this house." (Ex. 25, p 42) Indeed, if they had marks on their bodies their father restricted their ability to be seen. (Russell, 6-28-21, p 345/20-23; Ex. 25, p 39)

Other Unethical Conduct By Respondent

The evidence shows that respondent was unethical in addition to the ways charged in the complaint; ways that raise significant questions about her credibility. For example, in the spring of 2021 she helped her son communicate with Max, although she knew a bond order prohibited him from doing so. (Max, 6-28-21, pp 527/10-528/20, 529/5-9, 530/6-17)

Worse than that, she attempted to get Max to adopt her false explanation for applying makeup to his face. To that end, she told him, in the spring of 2021 – three years after the fact and right before the hearing in this case was set to begin – that she put makeup on him to prevent Russell from teasing him. (Max, 6-28-21, pp 485/16-486/10) Max does not remember what they were discussing before respondent raised the makeup incident, but he is not the one who raised that topic. (Id, at pp 681/5-17, 682/1-21)

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. And during her improper conversation with a witness she definitely knew better than deliberately to inject her challenged explanation for having put makeup on him. 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.

Respondent denies this conversation occurred (Green, 11-19-21, pp 2044/13-2045/7), but Max has no reason to lie about it. Indeed, it is hard to imagine that he *could* lie about it. To tell this lie, this thirteen-year-old boy would have had to know enough about the charges and respondent's defense to understand that a central part of her defense is this story for why she put makeup on him, then would have had to concoct the idea that she called him to tell him that story. There is no plausible way for this to happen.

Finally, it is relevant to respondent's credibility that in May 2021, when Max informed her that he had lied about who told him to write a letter to "Uncle John," she allowed his untruthful statement to stand; as she admits and Max said, she did not tell him to correct it and she did not correct it herself, (Max, 7-21-21, p 585/4-19; Green, 11-19-21, pp 2057/19-2058/9, 2058/23-2059/2, 2060/10-1), even though she knew disciplinary counsel had brought the issue of potential witness tampering to this Court's attention.

Respondent's Unfounded Accusations of Bias and Lies

Respondent's defense, in significant part, is that her grandsons have been coached to lie against her, Ms. Apple lied and was biased against her and her son, and Mr. Elrick was biased against her. (Green, 11-19-21, pp 2036/17-2037/16, 2065/23-2066/3; Green, 9-17-21, pp 1159/14-

18, 1167/7-10) She does not explain what it is about her that would cause so many key, but unrelated, witnesses to lie, be biased, or collude against her.

The evidence shows those allegations are simply untrue. There is no significant evidence that Russell, Max, Ms. Apple or Mr. Elrick lied about or were biased against respondent. In that regard, it is significant that she did not even know Ms. Apple prior to Ms. Apple's investigation of her son's abuse. (Green, 11-19-21, p 2037/21-25; Green, 9-17-21, p 1155/8-19) She also did not know Mr. Elrick before he interviewed her in May 2019. (Elrick, 5-27-21, p 193/5-6)

One vignette captures well respondent's siege and conspiracy mentality. She requested a meeting with CPS District Manager Baker and other CPS upper management to complain that Ms. Apple was biased against her and her son. (Green, 9-17-21, p 1159/14-16; Baker, 9-27-21, p 1530/8-18) She also sought to remove the children from their mother. (Green, 9-17-21, p 1162/17-18) She disagreed with the circuit judge's decision to grant Ms. Bressler custody, making the very controversial claim that the judge "didn't know everything. Ms. Apple made sure that he didn't. She—she colluded with Choree Bressler . . ." *(Id.* at p 1164/15-22) What evidence did respondent have to support her inflammatory claim of collusion? She admitted she had no reason to believe Ms. Apple was in court with Ms. Bressler, and to her knowledge, the judge never contacted Ms. Apple or her supervisor. *(Id.* at pp 1165/6-9, 1166/18-24) In other words, she had no evidence.

Respondent's statements that Ms. Apple was biased against her and colluded with Ms. Bressler are not true. Mr. Baker explained that after he and other supervisory personnel met with respondent, they reviewed the case and did not find Ms. Apple was biased. (Baker, 9-27-21, p 1537/11-18)[19] In fact, Ms. Apple was awarded the governor's coin for her work on this case, with

[19] They did assign a different investigator and supervisor to review the investigation to give it a "second set of eyes." (Id, p 1535/6-9)

Mr. Baker's approval. *(Id.* p 1537/9-10) Ms. Apple directly denied that she colluded to help Ms. Bressler get the boys. (Apple, 9-24-21, p 1275/2-4). Nor did she make a recommendation to the court on whether to put the boys with Ms. Bressler. *(Id.* p 1411/8-11) She did not provide Ms. Bressler with a lawyer or give her a referral for a lawyer, and did not appear in court with her. She did not contact the judge and the judge did not contact her. *(Id.* at pp 1271/17-1272/2)

Likewise, respondent claimed Mr. Elrick was biased against her. *(Id.* at pp 2065/23-2066/2) First, whether he was or was not biased is irrelevant, because it is her own words on the video. It was not Mr. Elrick's alleged bias that caused respondent falsely to say that it was "preposterous" that she would conceal abuse with makeup. (Ex. 7) Second, there is no evidence – merely respondent's suspicion – to support her claim. Third, she was represented by her own media consultant throughout her dealings with Mr. Elrick. They had a three-hour meeting with him, but she never asked him to correct or retract the story he aired. (Green, 11-19-21, p 2069/7-10) In addition, she never asked another media outlet to correct it. (Green, 11-19-21, p 2069/14-18)

In short, there is no evidence to support respondent's claims that anyone lied or colluded or that any witness was biased against her, and it calls her own credibility into question that she has made such claims despite lacking evidence to support them.

Alleged Coaching by Ms. Bressler

Throughout the hearing, respondent reiterated another idea that is not supported by any evidence: that the boys' mother was the driving force behind their allegations about her. To the contrary, it is clear Ms. Bressler had nothing to do with what the boys have said.

The relevant evidence concerning Ms. Bressler is that in the first part of 2018 she sent the boys emails that encouraged them to report to CPS that they were being abused. The emails do not

mention respondent's name or give her sons any directive to talk about respondent, much less to lie about her. The emails show no "coaching." (Ex. 11a, b, c)[20]

In addition to the emails, the boys had a few short telephone calls with Ms. Bressler, but there is no evidence she so much as mentioned respondent during those calls, either. (Max, 6-28-21, pp 293/7-21, 499/19-501/25; Russell, Ex. 46, 6-10-21, 29:34-30:27)

The boys were asked over and over whether anyone, including their mother, told them what to say or not to say. They denied it every time they were asked. (Russell, Ex. 25, p 42; Ex. 26, p 30; Ex. 30, p 30; 6-28-21, pp 324/5-7, 482/14-23; Ex. 46, 6-10-21, 8:47, 30:30, 32:50-33:09; 33:17, 34:33; Max, Ex. 31, p 23; Ex. 32, p 50; Ex. 34, p 27; 6-28-21, pp 293/22-294/4, 463/2-5; 7-21-21, pp 686/25-687/18, 688/1-7; Ex. 45, 6-11-21, 29:15-29:45)[21] Indeed, there is no plausible way she *could* have coached them. As is noted above at page 42, they first spoke in detail about respondent's actions and knowledge in September 2019. Neither Ms. Bressler nor they knew why they were being interviewed or what questions they would be asked. They were interviewed separately. Yet they provided basically the same information. Ms. Bressler could not have coached them to do that.

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[20] It should be noted that the emails were provided to disciplinary counsel by respondent, and the parties have stipulated there are no additional emails. (Ex. 10) Presumably, if there were emails that actually showed Ms. Bressler coaching the boys, respondent would have produced them during this hearing.

[21] Russell testified that some of his allegations were made after he was living with his mother for two months. (Russell, 6-28-21, p 395/10-13) However, he denied he relied on his mother to tell him what to say. *(Id.* at pp 318/23-319/4, 403/1-3) He further denied that he would "say or do anything" to remain in contact with his mother, and denied that he would lie about respondent. *(Id.*at p 422/6-11)

At his 6-11-21 interview (Ex. 44), Max discussed the limited contact he had with his mother. He saw her at a family Christmas party in 2017, where he was given her telephone number. He did not see his mother again until June 2018. He spoke with her on the telephone and she encouraged him to tell about the abuse. (Ex. 45, 15:50-17:08) His mother never told him to lie and he does not know if she even mentioned respondent's name. (Ex. 45, 17:20-18:45) He said his mother never told him to lie about his father or about respondent; she did not talk about respondent and did not tell him what to say about respondent's knowledge of the abuse or about the makeup. She also did not tell him what to say before the KidsTalk interviews, except to tell him to tell the truth. *(Id.* at 28:15-29:45)

Respondent introduced three YouTube videos and one radio interview of Ms. Bressler into evidence. They show that Ms. Bressler was irate about her perception that respondent protected her son, but did not protect her grandsons from her son's abuse. In one of the videos, she told the viewers that respondent should not be elected judge because she should not be making decisions about Wayne County families, having not protected her own grandsons. (Ex. 36)

Whether or not Ms. Bressler's perception was justified, her dislike of respondent and her statements that respondent should not be elected are no indication that she told her children to lie about respondent. Respondent has had no communication with Ms. Bressler since the divorce in 2015. (Green, 11-19-21, pp 2021/22-2022/6) Ms. Bressler was subpoenaed to testify at this hearing. Though she was initially compliant, she ultimately failed to appear. If she were out to get respondent, she would have made it her business to testify and ensure that respondent be found responsible for committing misconduct. She did not bother. It speaks poorly of her that she did not honor her subpoena, but her disinterest is the opposite of a desire to fabricate evidence against respondent.

Although the *claim* of coaching has been made repeatedly during this proceeding, there has been absolutely no *evidence* that Ms. Bressler or anyone coached Russell or Max to lie.

Officer Adams

Officer Adams's description of how Max and Russell reacted when they learned they might have to go with respondent upon being rescued is perhaps the most powerful evidence in this case. See page 2, above. While respondent does not accuse Officer Adams of bias, she has attacked Officer Adams's credibility on the basis that she did not include the boys' physical reaction in her report of the incident. (Adams, 5-27-21, pp 83/24-25, 84/1-10, 86/12-18, 87/4-6 & 15-17) This is

yet another attack that missed the mark, because while respondent is right that the boys' reaction is not in the report, Officer Adams explained why she could recall this incident even years later:

> . . . I've been a police officer for Detroit for 13 years, and there are certain runs or certain instances that do stick out throughout my time. Like I said, this was the first one where—I've dealt with child abuse issues before. This was the first one that we've actually had to remove the children from the house. And it may not all be in my report, which Mr. Ashcraft has clearly pointed out, but your memory of things, of smells, or things that were stated, of actions, most of those are easy to remember than sometimes explaining them or writing them down. . . . The children—the two older boys who I spoke to, Russell and Gary, they were—they were the sweetest boys that—ever. And the way that they would talk to me or the ladies from CPS and then the fear you could see in their eyes and through their actions when they thought their father was coming up the stairs or when they thought they had to go with their grandmother, those stick out in your memory. (Adams, 5-27-21, pp 107/20-25, 108/1-14)

Any remaining doubt about Officer Adams's recall evaporates once Ms. Apple's own, identical, recollection of the boys' reaction is considered. See page 2, above. Officer Adams clearly had an accurate memory of the way the boys reacted to mention of respondent.

COUNT III

Count Three charges that respondent knowingly and falsely told the Commission that she had informed CPS prior to 2019 that she concealed Max's handprint with makeup. Unlike Counts One and Two, this count does not rest on any evidence from Russell or Max.

In 2018 respondent told Ms. Apple that she heard her son slap Max and saw the resulting handprint. That was the only sign of her son's abuse that she acknowledged to CPS.[22] In 2019 she testified in Juvenile Court, where she acknowledged being aware of the handprint but denied concealing any bruises with makeup and said Max was lying if he said otherwise. Three months later, she gave a media interview during which she said it was "preposterous" to suggest she had

[22] As noted above, she also acknowledged that she was aware of spankings.

concealed bruises or abuse. She never hinted, in Juvenile Court or during the interview, that she had used makeup on a handprint.

Four months after respondent was interviewed by Mr. Elrick, disciplinary co-counsel first interviewed Russell and Max. Both described how respondent had repeatedly concealed their abuse with makeup. Two months after obtaining that information, the Commission asked respondent whether she had concealed the boys' marks and injuries with makeup. She admitted to covering a handprint on Max's face one time, but denied she saw "marks" or used makeup to cover "injuries." The Commission also asked her whether she told the truth at the Juvenile Court proceeding, and she said she did.

Respondent's answer to those questions acknowledged that she had concealed one handprint with makeup, thus partially corroborating what Russell and Max had said. She also claimed that her testimony in Juvenile Court and her statement to Mr. Elrick were true, even though she had there denied concealing any bruises; because, she said, she has always distinguished between a "handprint" and a "bruise."

The initial complaint was filed in November 2020. It alleged that respondent's claim to have distinguished between handprints and bruises in her Juvenile Court testimony and the Elrick 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, five separate times in her answer to the complaint, that she had told CPS about concealing the handprint *before* she testified in Juvenile Court. This was no side issue or minor claim. If her statements in the answer were accurate, the fact that she disclosed her concealment of a "handprint" to CPS *before* she testified in Juvenile

Court 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." 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 time of that testimony, the prior disclosure would have been a strong indication that she really did distinguish between a bruise and a handprint. In other words, if her statements in the answer were accurate, she would have neutralized some of the most serious allegations against her. The context of respondent's five claims to have told CPS about concealing the handprint shows they were the opposite of casual or inadvertent – they were central to her defense of this case.

Respondent testified in this proceeding that the person at CPS to whom she would have disclosed concealing the handprint was Ms. Apple. (Green, 9-17-21, p 1150/13-15) 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 respondent to disclose that she had concealed a handprint, 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.

The other evidence corroborates Ms. Apple's recollection that respondent did not disclose her use of makeup. Ms. Apple explained what is included in a CPS investigative report. (Apple, May 27, 2021 p 121/8-19) She documents every person she has talked to and summarizes in paragraph form what the interviewee said. She documents the date, time, and place where the interview occurs. She always puts what people tell her in her report and does not purposely leave information out. *(Id.* at pp 132/16-133/13) She testified that if a grandmother told her that she used makeup to conceal injuries on a child, she would have deemed that important and documented it in her report. (Apple, 5-27-21, pp 134/22-25, 135/1-13) All of the CPS investigative reports are in evidence for the very purpose of showing that they include no such statement. (Ex. 16, 17, 18, 42) In addition, Mr. Baker testified that respondent never told him about her use of makeup, either. (Baker, 9-27-21, pp 1538/5-12, 1539/3-16)

Respondent no longer stands by her answers to the complaint that Ms. Apple has now refuted. However, she only altered her position when it became obvious that direct evidence would contradict her. At least as early as June 3 of last year, 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 this question.

Respondent first 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 navigated the DHHS process and obtained the other reports and the ability to call CPS witnesses, including Ms. Apple. Respondent then aggressively resisted disciplinary counsel's efforts to introduce the newly obtained reports in evidence. *(See Respondent, Judge Tracy Green's Motion to Strike the CPS Reports from Evidence)* She also resisted disciplinary counsel's efforts to introduce Ms. Apple's testimony. *(See Respondent, Tracy Green's Response to Disciplinary Counsel's Motion to Admit Evidence from Child Protective Services)* During this whole time, she did not reveal, to the Master or to disciplinary counsel, that perhaps her answers to the complaint were not true after all.

Respondent's posture about the reliability of the statements in her answer did not change until the Master decided to permit disciplinary counsel to make a record of Ms. Apple's testimony. Then and only then, on September 17, 2021 – nine months after she made her false statements, more than three months after she learned that CPS records contradicted them, and after she lost her effort to keep the remaining CPS evidence out of this case – she began to equivocate about her answers to the complaint. (Green, 9-17-21, pp 1150/14-19, 1152/23-1153/14, 1154/22-1155/1)

Respondent claims that the reason she has reconsidered her memory is that her statements were challenged. (Id. at p 1153/3-14) But they were challenged in early June, and 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; better to claim a mistake than to directly contradict the evidence.

The evidence is clear that respondent's five answers to the complaint were false. The only real question in Count Three is whether respondent *knew* they were false when she made them.

The only way to answer that question – to evaluate her intent – is to look at the circumstances. The circumstances show that her intent was to deceive.

First, at the time respondent provided her false answers, they were self-serving. As noted above, it was central to her defense to the allegations that she had lied to try to establish a prior consistent statement in which she had revealed to CPS that she had concealed the handprint.

Second, respondent would have been familiar with the Child Protection Law, as a practitioner of family law. Based on her experience, at the time she made the false statements 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.[23] She was very nearly right. But for a unique 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 testimony.[24]

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.

Fourth, it is also significant that 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 the initial CPS reports that contradicted her out of evidence, 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-

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[23] MCL 722.627(2)

[24] 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.

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 practiced juvenile law at the time CPS investigated whether her grandsons were abused. She would have been well aware that concealing the abuse under investigation was highly improper. She should have known to report using makeup on the handprint to CPS, if for no other reason than that her doing so would help to illustrate to the investigators how severe the handprint was. She could not reasonably have forgotten whether or not she had disclosed this important fact, at the time she was swearing that her answers in the complaint were true.

Sixth, and related, this is the second time respondent claims 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) It is not plausible that when she was asked about applying makeup while testifying in Juvenile Court, she forgot that actually, she *had* concealed a mark with makeup; and it is 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. It is clear that her repeated statements in her answer to the complaint – that before she testified in Juvenile Court she told CPS she put makeup on a handprint – were false, and she knew they were false when she made them.

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.

CONCLUSION

For the reasons stated in these proposed Findings of Fact, the evidence shows that respondent committed the misconduct charged in each count of the complaint.

Respectfully submitted,

/s/ Lynn Helland
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s/ Lora Weingarden
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Date: January 21, 2022