STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION

In Re Hon. Kahlilia Y. Davis

36th District Court
Wayne County, MI

FC 101

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

INTRODUCTION

The second amended complaint alleges in seven counts that respondent violated various canons of judicial ethics, court rules, and the Michigan Rules of Professional Conduct. The Master found that the preponderance of evidence proved certain facts alleged in Counts I through VI, and proved that respondent committed some of the misconduct as charged in those counts. The Master found that the evidence did not establish any of the misconduct charged in Count VII. While the evidence supports the Master's findings of misconduct, the discussion below shows that the evidence also clearly refutes the Master's findings that a great deal of other misconduct was not established. For the reasons stated below, disciplinary counsel endorse the Master's findings that the evidence supports, but strongly disagree with the Master's findings that the evidence refutes.

OVERVIEW[1]

Respondent was elected to the 36th District Court in November 2016 and her term commenced on January 1, 2017. She was initially assigned to the landlord-tenant docket (Respondent's stipulation of facts, ¶¶1, 3, 5), and remained there from March through October of 2017. During that time, she presided over several cases that are the basis for Counts One and Two of the complaint.

- In May 2017 respondent unlawfully and without basis held a landlord's agent in contempt of court, imposed a plainly unlawful penalty, and humiliated the agent, all without providing due process.
- In September 2017 respondent held a process server in contempt of court and ordered him jailed for five days, after hearing an unsworn statement that raised the *possibility* that the process server's certification of process was mistaken. Respondent denied the process server the opportunity to cross-examine the unsworn witness or otherwise to dispute the unsworn statement; provided the process server no notice that he faced a charge of contempt; and found him in contempt without providing any semblance of due process.
- In September and October 2017 respondent announced that she would dismiss any case in which Myran Bell was a process server. Her reason was an assumption that Mr. Bell had made improper service, based on her out-of-court observation and hearsay.[2] Though respondent thereafter had a clear bias against Mr. Bell and any case in which

[1] Assertions in this overview that are not supported by cites to the record are supported in the text that follows the overview.

[2] Had respondent taken evidence, she would have learned that Mr. Bell was not, in fact, the person who made service.

he served process, she did not recuse herself from those cases. Rather, she dismissed or adjourned at least 17 cases in which he served process, forcing the landlords to refile their complaints for eviction or to re-serve the plaintiffs. Even after her chief judge, Hon. Nancy Blount, ordered her not to dismiss cases on the basis that Mr. Bell had served the process, respondent continued to dismiss, *sua sponte*, at least six cases in which Mr. Bell was the process server, under the disingenuous pretense that no lease or deed was attached to the complaint. She thereby created needless costs and loss of time to the landlords and severely impacted Mr. Bell's reputation and livelihood.[3]

On the basis of respondent's refusal to follow the law, to allow attorneys to make a record, to adhere to Judge Blount's directive not to dismiss cases in which Mr. Bell was the process server, and to reinstate those cases that had been dismissed, Judge Blount removed respondent from presiding over any 36th District Court cases. Judge Blount also directed respondent to report to work on a daily basis.

Because court administration did not otherwise know if respondent was in the courthouse, Judge Blount required her to report her arrival time to the chief judge's office each day. Respondent did so by sending Judge Blount, her SCAO regional administrator, and the 36th District Court administrator a disrespectful and vaguely threatening Bible verse on each day she reported her arrival. She simply failed to comply with the directive on other days. Respondent's disrespect and obstruction of court administration are the basis for Count Three of the complaint.

In January 2019 Judge Blount assigned respondent to the 36th District Court business license docket. Her courtroom used video recording equipment rather than a court reporter or court

[3] Mr. Bell testified that he had "maybe double" the number of clients in 2017—before respondent's vendetta—than he now has. (Tr 7/7/22, p 27/4-5)

recorder. Respondent requested a live reporter, but 36th District Court administration did not send a court reporter because she had video recording equipment. In late January 2019, respondent disconnected her courtroom's official recording equipment, then presided over more than 40 business license hearings without making any official record of them. These actions are the basis for Count Four of the complaint.

During the period when respondent disconnected, and refused to use, her courtroom's official recording equipment, she recorded the proceedings in 32 cases on her personal cell phone. She then published on the internet some of the cases over which she presided, all without the approval of the Supreme Court. These actions are the basis for Count Five of the complaint.

On March 4, 2019, Chief Judge Blount again suspended respondent from her docket after learning that she failed to record the business license hearings. In September 2019, while respondent was suspended, she went to a fitness center. She parked illegally in a way that blocked access to a car that was parked in a handicapped parking space. She placed a Detroit Police "On Official Business" placard—which she was not authorized to have—in the window of her car, then used the fitness facility. When the person whose car respondent had blocked saw that she could not enter her car, she contacted the facility's management, who contacted security. The blocked car's owner also called the police.

Respondent returned to her car while the police and the person whose car she had blocked were there. Respondent acknowledged to the police officer that she was illegally parked and, without prompting, showed her judicial identification to the officer. Respondent then threatened the complaining witness for having brought this matter to the attention of the police.

The officer issued respondent a parking ticket. Respondent contested the ticket. When her hearing in the Hamtramck District Court was not proceeding to her liking, she abruptly walked out on the proceedings while they were still in session.

The various events surrounding respondent's illegal parking at the fitness center are the basis for Count Six of the complaint.

The Commission investigated respondent's myriad instances of misconduct. During the course of the Commission's investigation, respondent made at least 13 statements that she knew were false at the time she made them. Respondent's knowing falsehoods are the basis for Count Seven of the complaint.

The Master found that respondent committed significant misconduct, to be sure, but also absolved her of every instance of the most serious misconduct. In absolving her, the Master ignored important evidence, rested her conclusions on evidence that did not exist, and resolved every credibility determination in respondent's favor even though respondent was the only witness shown to have testified falsely and whose credibility was in serious doubt.

COUNT ONE

Count One alleges that respondent used her contempt power unlawfully and committed other misconduct in two landlord-tenant cases. In particular, it alleges that in May 2017 respondent abused and misused her power against a landlord's agent named Joy Eck, and in September of the same year she abused and misused her power against a process server named Jerry Johnson.

Joy Eck

The facts below are uncontradicted. On April 3, 2017, a landlord named Detroit Real Estate entered into a consent judgment with Sharon Hayes, one of its tenants, in the amount of $3,277. The judgment provided that Detroit Real Estate could apply for an order of eviction if Ms. Hayes

did not pay her rent in full by the end of April. Ms. Hayes did not pay the full amount, and after refusing to accept partial payment, Detroit Real Estate applied for an order of eviction on May 4. An eviction notice was left at Ms. Hayes's residence sometime between May 4 and May 7. (DC Ex 1, p 2; DC Ex 2; DC Ex 3; DC Ex 4). The notice incorrectly informed Ms. Hayes that the court had ordered a bailiff to evict her.[4] (DC Ex 4)

May 8, 2017 Events and Hearing

Respondent signed, but never entered, the order of eviction on May 8, 2017. (DC Ex 4) Ms. Hayes filed a motion for relief from judgment and to stay proceedings that same day. (DC Ex1, p 2-3; DC Ex 5) Without allowing time for Detroit Real Estate to file any response, respondent held a hearing that afternoon.

Diane Wyrock appeared at the hearing as the attorney for Detroit Real Estate. Respondent asked why the notice asserting that the court had ordered a bailiff had been placed on Ms. Hayes's door days before, when respondent had just signed the order that morning. Before allowing Ms. Wyrock to answer, respondent exclaimed, "So that would be a misrepresentation." (DC Ex 6, p 11) Moments later, when Ms. Wyrock still had not replied to respondent's question about the premature notice, respondent added, "I don't like misrepresentation. I don't like it at all." She then pronounced: "I don't like lies. I don't like people lying on this Court." (DC Ex 6, p 12) She then said the notice was a "complete lie and was used to intimidate people." (DC Ex 6, p 13) Respondent made all of these statements although she had not heard any evidence as to how and why the notice had been prematurely left at Ms. Hayes's residence, as to whether Detroit Real Estate gained

[4] Respondent had not yet signed the order of eviction that was mandated by Ms. Hayes's failure to comply with the judgment.

anything by the premature placement of the notice, or as to whether Ms. Hayes was misled or harmed as a result.

Respondent then entered an order for Ms. Eck to appear on May 24, 2017, to show why she should not be held in civil contempt and why sanctions should not be issued against her.[5] A judge has the power of contempt, of course, but it is to be used judiciously and with the utmost restraint – only when the contempt is clearly and unequivocally shown. *In re Hague*, 412 Mich 532, 555 (1982); *In re Contempt of Dudzinski*, 257 Mich App 96, 109 (2003). Contempt proceedings are only appropriate if the alleged conduct 1) violates a court order, 2) impedes the functioning of the court, or 3) impairs the authority of the court. See generally, MJI Contempt of Court Benchbook and MJI Contempt of Court Flowchart. Respondent scheduled Ms. Eck's contempt hearing though neither Ms. Eck nor Detroit Real Estate had violated any court order.

Not only did respondent have no reason to think Ms. Eck had violated a court order, she had nothing other than her own speculation to suggest that Ms. Eck had committed fraudulent misrepresentation. Despite lacking any evidence to support a finding of wrongdoing, respondent directed Ms. Wyrock to bring someone from Detroit Real Estate to the hearing who had a checkbook "because somebody is going to pay some money" on the hearing date. (DC Ex 1, p 3; DC Ex 6, p 13) Respondent added, "And tell [Detroit Real Estate] they are going to be very sorry that they did that. So bring a checkbook. . . . I know that Ms. Eck [Detroit Real Estate's office manager] and Detroit Real Estate they gone (sic) be paying. . . ." (DC Ex 6, p 14-16)

[5] Ms. Eck contracted COVID on the eve of the hearing before the Master, so was unavailable to testify during the abbreviated hearing.

May 24, 2017 Show Cause Hearing

At the show cause hearing, in reply to respondent's question, Ms. Eck acknowledged that she understood respondent took issue with the timing of the notice posted on Ms. Hayes's residence because that notice should only have been placed *after* the order was signed. (DC Ex 8, p 4) Without allowing Ms. Eck time to explain why or how the notice was placed on Ms. Hayes's door, and without any proof or evidentiary basis supporting her comments, respondent interjected:

> [S]o what you did is you committed fraud. . . that is ridiculous. It's disgusting and I believe it's a business practice of yours and it's going to stop today.
>
> You are going to pay this woman $3,000 in punitive for your fraud. It was intentional. It was purposeful. You wanted to subvert the law and you're going to pay a $500 fine to this court.
>
> (DC Ex 8, p 4-5)

Respondent continued to hector Ms. Eck, telling her to sit down "until those checks are written." Moments later she addressed Ms. Eck again: "I don't see you writing a check. . . . I told your lawyer to have you bring a checkbook with you. Where is it?" (DC Ex 8, p 5) When Ms. Eck responded that she had not brought her purse, respondent railed, "Well then, you are going to stay here. Your lawyer better find it because otherwise, you're going to jail today." (DC Ex 8, p 6)

Despite having no basis to suspect that Detroit Real Estate would fail to pay a judgment, and rather than simply ask Ms. Eck to obtain payment, respondent bullied her further, exclaiming: "Well Ms. Eck, . . . you're going to get a check somehow to these people today. And you can sit here all day long . . . until my docket is done and then you'll go to lock-up. And then you'll spend seven days in Wayne County Jail. So figure it out. That's disgusting."[6] (DC Ex 8, p 6)

[6] Ms. Wyrock eventually retrieved the checkbook while Ms. Eck remained in the courtroom, and later that day checks were issued as respondent had ordered.

Although the law did not permit respondent to assess punitive damages or a fine in this case, respondent entered an order that Detroit Real Estate pay $3,000 in punitive damages to Ms. Hayes for a "fraudulent posting" on her door, and a $500 fine to the court. (DC Ex 9)

Notwithstanding this evidence, the Master concluded that respondent had not violated any ethical responsibilities in her treatment of Ms. Eck. (Report, pp 7-8) For the reasons stated below, each of her findings in support of that conclusion was clearly erroneous.

The first issue addressed by the Master was whether respondent prejudged her finding of contempt, and whether she had a factual basis to find contempt. The Master's conclusion that respondent did not prejudge contempt, and did have a basis to find contempt, rested solely on one finding of fact: that Ms. Wyrock "admitted" that she had previously admonished Ms. Eck to cease the practice of prematurely posting eviction notices. (Report pp 2, 7) The Master's theory was that if Ms. Wyrock had admonished Ms. Eck not to post the notice prematurely, prior to Ms. Eck posting the notice on Ms. Hayes's door, that was evidence of contempt.

The record refutes the Master's finding. Ms. Wyrock's actual statement on May 8 was not that she *had previously* admonished Ms. Eck, but that she *was going to advise* her to cease posting eviction notices prior to the court actually signing the writ.

> THE COURT: I don't believe that you are responsible for that. I don't believe that you go out and put these things on the door and I certainly don't – I would hope that as an officer of the court; you wouldn't do that --
>
> MS. WYROCK: No. I wouldn't and *I'm going to advise my client* to stop doing that practice because you told me to – (Emphasis Added)
>
> (DC Ex. 6 at p 12)

The Master compounded her misinterpretation in paragraph 5 on page 5 of her report, where she found that at the May 24 hearing, Ms. Eck herself "did not contest her attorney's prior statement that counsel had previously urged cessation of the practice of premature posting." Again,

Ms. Wyrock had not said that. (DC Ex 6 p 12) Further, respondent never asked Ms. Eck whether she had been advised not to post the incorrect notice *prior* to posting the notice on Ms. Hayes's door. Respondent never asked her whether she had a "practice" of posting incorrect notices. Neither respondent nor anyone else even informed Ms. Eck that Ms. Wyrock had claimed that she had "previously" advised Ms. Eck to stop posting incorrect notices, which might have given Ms. Eck a reason to respond.[7] Ms. Eck cannot be faulted, or an adverse inference raised, for not contesting a statement that was never made. Indeed, one aspect of respondent denying Ms. Eck all due process was that she never provided Ms. Eck with an opportunity to contest anything.[8]

The Master was clearly wrong to find significance in Ms. Eck's silence on this point, since she had absolutely no reason to address it or even to suspect that it was an issue. Because the Master was laboring under the misconception that Ms. Wyrock had admonished Ms. Eck prior to May 4 to cease posting eviction notices prematurely, she wrongly concluded that respondent had not prejudged Ms. Eck's contempt, wrongly found that respondent had a factual basis to find Ms. Eck in contempt, and therefore found that respondent did not abuse her contempt power. Once the Master's erroneous interpretation of the record is corrected, it is clear that respondent did prejudge the facts, and that respondent had no lawful basis even to begin contempt proceedings.

The Master's second finding excused respondent for her gross errors of law. The Master found that although there was no legal authority for respondent to impose a fine or punitive

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7 As just noted, Ms. Wyrock had not, in fact, made any such claim.

8 "[I]n a civil contempt proceeding, the accused must be accorded rudimentary due process, i.e., notice and an opportunity to present a defense, and the party seeking enforcement of the court's order bears the burden of proving by a preponderance of the evidence that the order was violated." *Porter*, 285 Mich App at 456-457. Accordingly, caselaw has held that in a civil contempt proceeding the alleged contemnor must be: 1) informed of the nature of the offense and given notice of the charges; 2) afforded a hearing regarding the charges; and 3) given a reasonable opportunity to prepare and present a defense. *In re Collins*, 329 Mich 192, 196 (1950); *In re Contempt of Robertson*, 209 Mich App 433, 438 (1995).

damages, and her doing so was clear legal error, because respondent was a very new judge this incident did not constitute *persistent* lack of legal knowledge,[9] misconduct in office, or other ethical violation. (Report, p 7)

The Master was correct that respondent had no authority to impose either punitive damages or the fine on Ms. Eck, but the Master was clearly wrong to find that respondent's ignorance and abuse of her authority were ethical. The uncontroverted evidence and the Master's own findings demonstrate that respondent did not show even minimal professional competence, and therefore violated Canon 3(A)(1).

First, the Master's focus was too narrow. Because the Master mistakenly believed Ms. Eck had committed a contempt of court because she had previously been admonished, she did not address respondent's gross abuse of her contempt power. Whether or not Ms. Eck committed a contempt, she was entitled to due process, and for reasons the Master does not explain, the Master never addressed respondent's failure to give Ms. Eck any of the process she was due.[10] Instead, the Master focused only on the illegal fines respondent imposed.

No matter the Master's focus, she was clearly wrong to excuse respondent's incompetence on the basis that respondent was a new judge. It is fundamental to the practice of law that if one does not know the authority for taking an action, one researches that issue before taking the action. It does not take an experienced judge to know that; in fact, a new judge should be especially humble about ensuring that there is authority to support the judge's actions.

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[9] To the extent the Master concluded that respondent's treatment of Ms. Eck did not show a "persistent" lack of legal knowledge, disciplinary counsel agree. That charge of persistency applies to respondent's abuse of her authority with both Ms. Eck *and* with Jerry Johnson, several months later.

[10] For example, although respondent treated the contempt as criminal, as demonstrated by the penalties she imposed, she never arraigned Ms. Eck on the charge. She never described the evidence against Ms. Eck and did not give Ms. Eck an opportunity to present a defense.

Respondent did not do that, though the evidence showed, and the Master found, that respondent received all the training offered to new judges.[11] (Report, p 4; Tr 7/7/22, pp 47/17 – 48/2) The Master excused respondent for not knowing how to handle a contempt proceeding, in particular, because "[t]here was no . . . evidence that the respondent accessed the MJI Bench Book on Contempt." (Report, p 5) Rather than serving to *excuse* respondent's ignorance, the Master's finding that respondent actually had access to the MJI Bench Books two months before the Eck hearings, but never so much as accessed the section on contempt, *inculpates* her for failing to be minimally competent. It is not clear why the Master excused respondent for never bothering to look at the resource that could have guided her, when actually, this fact is very damning of her.

Moreover, the Master ignored the uncontroverted testimony of Chief Judge Blount, who testified that in addition to the Bench Book, respondent could have consulted with the court's "judicial assistant about the appropriate path to take. . . . She could have consulted with her presiding judge, Judge Millender. She could have asked Judge Jefferson. She could have asked any number of people for assistance." (Tr 7/7/22 pp 49/19-50/1) Respondent availed herself of none of these opportunities.

The requirements of faithful adherence to the law and maintenance of professional competence in Canon 3(A)(1) lose their meaning for new judges, if new judges are excused from

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[11] In particular, at page 4 ¶ 8 of her report the Master found that respondent's training prior to the May 24 hearing was as follows:

a. November 2016 Pre-Bench Seminar focused on transition to judgeship.
b. Receipt of written materials from the January 2017 New Judges Program.
c. Abbreviated orientation at the 36th District Court.
d. March 2017 "New Judge Training."
e. In March 2017, a link to MJI Bench Books and a resend of the January New Judges materials. F
f. Attendance at a March MJI seminar for new judicial officers.

Judge Blount testified that respondent received all the training other judges received, with the possible exception of meeting some department heads.

minimal competence merely because they are new. The Master's conclusion that respondent did not violate Canon 3(A)(1) was clearly erroneous. Abuse of the contempt power constitutes judicial misconduct warranting discipline." *In re Hague*, 412 Mich 532, 555 (1982).

The Master also excused respondent for her demeanor toward Ms. Eck. The Master found that while respondent sharply addressed Ms. Eck's "practice" of premature posting, and rebuked her for not bringing resources to pay a possible civil penalty despite forewarning by her attorney, this did not constitute disrespect or discourtesy because respondent's statement that Ms. Eck would not be free to leave until she paid, and if she did not pay before the close of court she would be placed into custody, were not misrepresentations of respondent's authority. (Report, pp 7-8)

The Master's reasoning is a *non sequitur*. Whether or not respondent's words were accurate, she had absolutely no basis to use them on Ms. Eck.[12] Respondent had no basis for calling Ms. Eck's conduct disgusting, an act of disrespect the Master completely ignored. Respondent had no basis to threaten Ms. Eck with custody, when Ms. Eck had demonstrated no resistance to complying with respondent's (plainly unlawful) order to pay fines. Ms. Eck suffered a blistering, unwarranted, and unsubstantiated verbal attack by respondent, who acted not as a judicial officer trying to ascertain facts, but as a modern-day grand inquisitor.

It is sometimes helpful to step back from the individual facts to look at the bigger picture they present. In Ms. Eck's case, they show that respondent acted unlawfully throughout their interaction. Unbridled by the law, due process, and the canons, respondent became, in effect, her own investigator, judge, jury and executioner. She did not have even a theoretical basis to hold a contempt hearing in the first place. She compounded this unlawful exercise of power by prejudging

[12] Perhaps the Master did not deal with that fact because she incorrectly believed Ms. Eck had been warned prior to posting the Hayes notice.

Ms. Eck's actions, rather than first hearing the evidence. She compounded her prejudging further by concluding that the mere fact of one improper notice demonstrated that posting it was a "deliberate misrepresentation," "used to intimidate people," done with fraudulent intent, and a "business practice" of Detroit Real Estate. Respondent aggravated all these abuses further by failing to afford Ms. Eck so much as a modicum of due process, and by ignoring the most basic law and procedures mandated for contempt proceedings. Respondent's extrajudicial coda to her treatment of Ms. Eck was her imposing a fine and punitive damages for which there were no legal authority. And respondent did all of this while humiliating Ms. Eck for no reason.

Respondent's treatment of Ms. Eck violated Canon 3(A)(1) by failing to be faithful to the law and failing to maintain professional competence in the law; Canons 3(A)(3) and 3(A)(14), for failing to be patient, dignified, respectful and courteous; Canon 3(A)(12), for having a severe attitude toward a witness tending to prevent the proper ascertainment of truth, and for making premature judgments; and Canon 3(A)(13) for failing to adopt the usual and accepted methods of doing justice, imposing humiliating acts or discipline not authorized by law in sentencing, and failing to endeavor to conform to a reasonable standard of punishment.

Jerry Johnson

The facts described below are uncontradicted.

On October 11, 2017, respondent presided over a hearing on a motion to set aside a default judgment in a landlord-tenant matter. At this hearing, the tenant, Nicole Thomas, claimed she never received any paperwork alerting her to the eviction. The proof of service stated that the process server, Jerry Johnson, had personally served Ms. Thomas on September 19, 2017 at 8:35 a.m. (DC Ex 10; Ex 11, p 4)

Mr. Johnson averred under oath that his proof of service was accurate. (DC Ex 11, p 7) Ms. Thomas denied under oath that she had ever seen Mr. Johnson, and claimed to have been at work at the time on the proof of service. (DC Ex 11, p 7) Respondent then asked Ms. Thomas for her employer's phone number. Respondent called the number from the bench and spoke with someone who identified herself as "Nodja Mosley." (DC Ex 11, pp 12-13) Respondent never swore Ms. Mosley as a witness.

Respondent asked Ms. Mosley if Nicole Thomas was at work on September 19 at 8:35 a.m. While on hold awaiting Ms. Mosley's reply, respondent threatened Ms. Thomas and Mr. Johnson with jail for contempt because "somebody is lying." (DC Ex 11, p 14) Ms. Mosley returned to the phone, had respondent repeat her question whether Ms. Thomas was at work on that date and time, and gave a one-word answer: "yes." (Id. at pp 14-15) Ms. Mosley did not explain how she determined the answer, nor provide any information other than her one-word conclusion.

The landlord, Celestine Sanders, then requested respondent to ask Ms. Mosley a follow-up question. Before Ms. Sanders could even finish the question, respondent snapped:

> No. What you can do is be quiet or you can go to jail with [Mr. Johnson]. That's what you can do. Which one you want to do? Pick one. Pick one, because I'll comply with which ever you choose. Pick one, Ms. Sanders. Tell me what you -- [DC Ex 11, p 15]

Respondent did not allow the parties to ask any questions of Ms. Mosley. After concluding the phone conversation, and without giving Mr. Johnson any opportunity to state his position, respondent said Mr. Johnson had lied under oath and did not care about due process. Then, without allowing Mr. Johnson any of the due process protections afforded by MCR 3.606(A) and MCL 600.1711(2), respondent pronounced that he would spend five days in the Wayne County Jail with

no early release. (DC Ex 11, pp 16-17; DC Ex 13).[13] When she did that, respondent did not have any evidence of Mr. Johnson's inaccuracy, nor of any intent to deceive, other than Ms. Thomas's sworn (but not cross-examined) statement that she was not personally served and was at work at the purported time of service; Ms. Thomas's purported text message, which was hearsay, stating that she never received any court date or papers from the court; and the unsworn (and not cross-examined) conclusion of the person who identified herself as Ms. Mosley.

Respondent said she would give Ms. Thomas a new hearing date "in a couple of weeks," to enable Ms. Sanders properly to serve her. Ms. Sanders's husband, Mark Sanders, asked why Ms. Thomas was permitted to stay for two more weeks without paying rent. Rather than address the question, respondent told him she would put him in jail also, and if he wanted to argue with her, he could go to jail with Mr. Johnson and they could discuss the matter in the lockup. (DC Ex 11, pp 17-18)

Ms. Sanders then asked whether respondent might hold off on finding Mr. Johnson in contempt until the Sanderses received verification that Ms. Thomas actually was at work at the time of the purported service through a discovery request. Again, although Ms. Sanders's question was eminently reasonable, rather than address the question, respondent said: "Ma'am, all right. Two days the Wayne County Jail. Everybody can go to jail today. You want it? . . . . Okay, then. I think I'm wearing the robe, right? What does it say up there?" Ms. Sanders noted that the spot respondent referred to read "Judge Kahlilia Yvette Davis." Respondent said: "Okay. It don't say Judge Celestine Sanders, does it?" (DC Ex 11, pp 20-21)

[13] Mr. Johnson spent the night in jail. The following day, after learning of the incarceration and reading a transcript of the proceedings, Chief Judge Blount ordered Mr. Johnson to be released from custody immediately, to be issued a personal bond, and to appear before Judge Baltimore on October 13, 2017. (Tr 7/7/22, p 49/6-9; DC Ex 14) Judge Baltimore held a hearing and found that no contempt had occurred. (DC Ex 12)

Respondent did not address any of the above in her testimony. The Master found the essence of the above at paragraphs 1-12 on pp 5-6 of her report. She concluded that respondent abused her power when she found Mr. Johnson in contempt, and improperly threatened the Sanderses with incarceration as an apparent means of controlling her courtroom. The Master concluded that respondent's severe attitude toward witnesses violated MCR 9.202(B)(2) and Canon 3(A)(12), by tending to prevent the ascertainment of the truth. (Report, p 8) The Master also found that respondent failed to be patient, dignified and courteous, in violation of MCR 9.202(B)(2) and Canon 3(A)(3); failed to be faithful to the law and to maintain professional competence in it, in violation of MCR 9.202(B)(1)(a) and Canon 3(A)(1); and engaged in conduct prejudicial to the administration of justice, in violation of MCR 9.104(1) and MCR 9.202(B). (Report, p 9) Disciplinary counsel endorse the Master's findings and conclusions concerning the Johnson/Sanders matter.

COUNT TWO

Except where noted, the facts below are uncontradicted. They show that respondent engaged in a vendetta against a process server for which respondent had no evidence, prejudged her conclusions, and during which respondent acted unlawfully. In those respects, her actions were strikingly similar to her treatment of Ms. Eck and Mr. Johnson.

On August 29, 2017, while respondent was on leave, she witnessed a process server put a complaint for nonpayment of rent on the door of her aunt's residence. The complaint was actually intended for a different resident who lived nearby.[14] Respondent mistakenly assumed the process server was Court Officer Myran Bell. (Tr 7/15/22, pp 390/21, 396/6-14) Although Mr. Bell had

[14] The attorney who prepared the documents had put the wrong address on them. (Tr 7/15/22, p 397/13-16; DC Ex 16)

been hired to serve the documents, he was ill on that day and had an employee serve them. Mr. Bell then filed the proof of service with an inaccurate date and time of service.[15] (DC Ex 16)

The following day, respondent sent an ex parte email to the late Judge Penny Millender, who was presiding over the complaint, and to Judge Cylenthia Miller, who was also assigned to the landlord-tenant docket, stating her concern that Mr. Bell was not fulfilling the statutory requirements for service. Without any evidence to support this claim, respondent's email asserted her belief that not making proper service was Mr. Bell's common practice.[16] (DC Ex 17).

About three weeks later, respondent announced on the record, in her courtroom, that attorneys should not use Mr. Bell to serve process. She added that she did not trust anything he put on a proof of service. She concluded by saying that she would grant any motion for dismissal in a case in which Mr. Bell had served process. (DC Ex 18, pp 3-4) As the Master found, "beginning on September 20 respondent presided over many cases where Mr. Bell was the process server and either dismissed them or adjourned them." (Report p 10 ¶13; DC Exs 20-21) The Master illustrated what respondent did:

> For example, in 17-321677 and 17-312686 where Mr. Bell was the court officer, the respondent posed the Hobson's choice to the self-represented litigants to either obtain service through another process server or have the case dismissed. In both cases she expressly stated that the reason she deemed service invalid was because it was made by Mr. Bell. [Report, p 10]

Respondent dismissed or adjourned cases in which Mr. Bell served process on her own motion, solely because he had been the process server. She did that without making any effort to determine whether the defendants in each case had or had not properly been served.

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[15] Because of the inaccurate address, the plaintiff's attorney dismissed the case on August 31, 2017. (DC Ex 16)

[16] Respondent had made the same completely unsupported accusation of an improper "practice" against Joy Eck during Ms. Eck's proceedings four months prior.

Respondent went so far as to cause or allow a note to be placed on the podium in her courtroom,[17] instructing parties not to use Mr. Bell as a court officer. (Tr 7/7/22, p 32/19-24; DC Ex 19) Chief Judge Blount saw a picture of the note, and entered an order on September 25, 2017 instructing respondent to cease dismissing cases for lack of service based solely on the identity of the court officer or process server, and to reinstate any such case she had dismissed. (Tr 7/7/22, p 53/22-25; DC Ex 22). Disregarding her chief judge's directive, respondent continued to dismiss or adjourn, *sua sponte*, cases in which Mr. Bell was the process server. She began to do so under the guise that a lease or deed was not attached to the complaint. She did that in at least six matters between September 27 and October 2, 2017. (DC Exs 24-28) The Master found that respondent's purported legal basis for these dismissals was erroneous and a mere pretext respondent used to circumvent her chief judge's order. (Report, p 14 ¶C)

On October 6, 2017, in a hearing involving several cases in which Mr. Bell was the court officer, attorney Frederick Coleman represented the landlord and requested that default judgments be entered because the defendants had not appeared. Respondent continued to say she did not believe anything Mr. Bell said, and twice stated that she did not care what Chief Judge Blount said. (DC Ex 29, pp 7-9) Respondent adjourned four of the matters handled by Mr. Coleman solely because Mr. Bell had been the process server. (DC Exs 30-33) That same day, she adjourned six more cases handled by attorney Lee Ravitz solely because Mr. Bell had been the process server. (DC Exs 34-39). Respondent recorded no proceedings in Mr. Ravitz's six cases.

As of October 11, respondent was still instructing on the record: "Do not use Myran Bell in my courtroom as a process server." (DC Ex 11, pp 19-20) Because respondent continued to

[17] There is no basis to think that anyone other than respondent was the cause of this note, but the record does not explicitly establish that.

dismiss or adjourn cases in which Mr. Bell had been the process server and failed to reinstate those cases she had dismissed in violation of Judge Blount's order, on October 20, 2017 Judge Blount prohibited respondent from presiding over any 36th District Court cases until further order. (Tr 7/7/22, p 55/18-25; DC Ex 22)

The Master found the essence of the above at pp 9-12 of her report. To the extent her findings are consistent with what is above, they are well supported by the record, and disciplinary counsel urge the Commission to accept them.[18] The evidence summarized above, and the Master's findings, demonstrate respondent's complete failure to be judicial with respect to Mr. Bell. In sum, solely on the basis that she *thought* she saw Mr. Bell serve process mistakenly, she embarked on

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[18] On the other hand, disciplinary counsel do not endorse paragraphs 7 and 11of the Master's finding with respect to Count Two. Paragraph 7 found part of Mr. Bell's testimony not credible. Mr. Bell testified that he made two attempts at personal service on the address at 430 Frederick. He then became ill and had a temporary employee make the third attempt, which was the attempt respondent witnessed. Mr. Bell could not remember the name of that employee because it "was a while ago, and I went through quite a few employees." (Tr 7/7/22, pp 29-30) The Master disbelieved this testimony.

In a sense, the Master's finding about Mr. Bell's credibility is irrelevant. It was gratuitous and did not impact any of her findings of misconduct. Disciplinary counsel address it nonetheless, because the defect in her reasoning extends to her several other, equally faulty but more significant, credibility findings.

The Master's only reason to disbelieve Mr. Bell was that respondent's public rejection of any case in which he was the court officer so impacted his business that he hired an attorney and sought an injunction against respondent. (Report p 10 ¶ 7) The Master's analysis is a non sequitur. The fact that respondent harmed Mr. Bell severely enough that he found it necessary to hire an attorney has nothing to do with whether he plausibly could or could not recall the details of a particular service. By respondent's reasoning, any person who hires an attorney to protect their interests is therefore not believable.

Further, the testimony the Master rejected on this basis was actually entirely plausible. The proof of service states that the documents were attached to the home on August 26, when they were actually attached on August 29. Mr. Bell testified that he keeps track of his attempts at service by making notations and attaching them to the paper form. He believed that the attachment he made for this service was mistakenly switched with another note. In putting the date on this service, his wrong note misled him to put down the incorrect date. (Tr 7/7/22, pp 30/21-25, 31/1-3)

Paragraph 11 of the Master's findings with respect to Count Two is also mistaken, as a result of conflating two different exhibits. This is another mistake that had no substantive impact on the Master's findings with respect to Count Two, but which we point out because it is unfortunately emblematic of her report.

On August 30 (not August 31, the date in the Master's findings), respondent sent an email to Judges Millender and Miller, in which she narrated what she thought she had observed at her aunt's house and stated her belief that filing incorrect service was Mr. Bell's common practice. The Master purports to quote respondent's email, but the quote is actually from respondent's September 18, 2017 announcement from the bench that she would grant any party's motion to dismiss if Mr. Bell were the process server. (DC Ex 18, p 4)

a vendetta to destroy his business, never giving him a chance to explain what actually happened, treating the parties who used Mr. Bell's services as mere collateral damage in her quest, and disregarding her chief judge's instruction that she cease this vendetta.

As the Master correctly found, respondent thereby violated MCR 9.104(1) and MCR 9.202(B), by engaging in conduct prejudicial to the administration of justice; MCR 9.104(2), by exposing the legal profession and the courts to obloquy, contempt, censure, or reproach; MCR 9.202(B)(1)(a) and Canon 3(A)(1), by failing to be faithful to the law, failing to maintain professional competence in the law, and for persistent incompetence in the performance of judicial duties; MCR 9.202(B)(2) and Canon 2(A), for being irresponsible and improper and eroding public confidence in the judiciary; MCR 9.202(B)(2) and Canon 2(B), for corroding confidence in the integrity and impartiality of the judiciary; Article 6, Section 30(2), of the Michigan Constitution, by engaging in misconduct in office and persistent failure to perform judicial duties; and MCR 9.202(B)(1)(c) and Canon 3(A)(14), for failing to treat persons fairly and courteously.[19] (Report, pp 14, 15)

Without explaining why, the Master did not find that respondent's vendetta violated two other canons, though it clearly did.

- Canon 3(A)(12) prohibits a judge from making premature judgments. Respondent's judgments concerning Mr. Bell were blatantly premature.
- Canon 3(A)(7) forbids a judge to make pledges that are inconsistent with the impartial performance of judicial duties. Respondent's pledge to dismiss any case in which Mr. Bell

[19] The Master's report mistakenly cites Canon 3(A)(13), which is inapplicable, and then refers to the text of Canon 3(A)(14). This is likely not the Master's error. The complaint mistakenly referred to Canon 3(A)(13), and the Master apparently did not notice that disciplinary counsel pointed out the error in our proposed findings of fact.

served process, without waiting to hear the facts of any case, plainly was a pledge that violated Canon 3(A)(7).

As noted above, after respondent thought she saw Mr. Bell serve process at the wrong address, she alerted Judge Millender, to whom the case in question was assigned. Respondent did not inform the parties in that case that she had alerted the presiding judge. Her email to Judge Millender was an ex parte communication that violated Canon 3(A)(4).

The Master found that while respondent's email was ex parte, it "was of an administrative and emergent nature regarding a pending case in which respondent while not a party had an interest," and neither party was disadvantaged by the communication. On that basis, she concluded that respondent's communication did not violate Canon 3(A)(4).[20] (Report, p 13)

The Master's analysis relied on one of the exceptions to the otherwise blanket prohibition on ex parte communications. That exception is for "scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits." Contrary to the Master's finding, respondent's ex parte communication was neither administrative nor an emergency, and it certainly dealt in a substantive way with one of the issues in the underlying case. Proper service of process is fundamental to due process, so whether service on the tenant was proper was not a mere administrative matter. Further, there was no emergency requiring respondent to inform the presiding judge of her observations. Finally, even when Canon 3(A)(4)(a) permits an exception to the prohibition on ex parte communications, the exceptions are contingent on the judge promptly notifying the parties, which respondent also did not do.

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[20] Confusingly, in her discussion of Count Two at p 15 of her report, the Master also found that respondent *did* violate Canon 3(A)(4). Respondent made that finding in the context of discussing respondent's refusal to follow her chief judge's order to cease her vendetta against Mr. Bell. Respondent made no ex parte communications in connection with disregarding her chief judge. Disciplinary counsel assume that the Master's reference to violating Canon 3(A)(4) in this context was a mistake.

For these reasons, disciplinary counsel urge the Commission to find that respondent's August 30, 2017 email to Judge Millender was an improper ex parte communication in violation of Canon 3(A)(4).

COUNT THREE

Count III concerns respondent's obstruction of the 36th District Court's discharge of its administrative responsibilities and her disrespectful treatment of Chief Judge Nancy Blount and SCAO Region 1 Administrator (and former judge) Paul Paruk.

As noted above, respondent continued to dismiss and adjourn cases in which Mr. Bell had been the process server and failed to reinstate the cases she had dismissed for this reason, in violation of Judge Blount's September 25, 2017 order. For that reason, on October 20, 2017, Judge Blount prohibited respondent from presiding over any 36th District Court cases until further order. (Tr 7/7/22, pp 54/15-21, 55/18-25; DC Ex 40) This is obviously an unusual step to take, and Judge Blount did not take it lightly. She did it only after she had consulted with then-State Court Administrator (and former judge) Milton Mack regarding a remedy for respondent's persistent and varied judicial misconduct and her intransigence with respect to her interactions with 36th District Court administration.

As respondent's regional administrator, Judge Paruk had many concerns about her, including temperament, legal knowledge, following procedures, reporting for work, and giving reasons for when she might or might not return to work. (Tr 7/8/22, p 144/15-20) Because of these concerns and at the direction of the Supreme Court, Judge Mack prepared a Performance Improvement Plan (PIP) as a path for respondent to be restored to hearing cases. (DC Ex 55) Judge Mack wanted respondent to continue to report to work in conjunction with the PIP (Tr 7/7/22, p

56/1-26), so Judge Blount also ordered respondent to report to work on a daily basis. Respondent initially refused to sign the PIP, but later agreed to comply.[21] (DC Exs 60, 62)

On November 1, 2017, Judge Blount directed respondent to inform the chief judge's office when respondent reported to work each day, because court administration did not otherwise know whether respondent was in the building. (Tr 7/7/22, p 58/9-16; DC Ex 41) Respondent replied with a disrespectful email that essentially stated that the court's cameras and the records of when respondent signed on to her computer were sufficient for administration to determine her arrival and departure times. (Tr 7/7/22, p 59/12-19; DC Ex 42) Judge Blount warned respondent that refusing to report her arrival time would be a failure to comply with Judge Blount's directive as chief judge. (DC Ex 43)

On November 6, 2017 respondent began observing Judge Blount's order by sending a daily Bible verse that was both disrespectful and vaguely threatening. For example, the November 6 email by which respondent informed administration she had arrived stated in its entirety:

> Sovereign Lord, my strong deliverer, you shield my head in the day of battle. Do not grant the wicked their desires, Lord; do not let their plans succeed. Those who surround me proudly rear their heads; may the mischief of their lips engulf them. May burning coals fall on them; may they be thrown into the fire, into miry pits, never to rise. Psalm 140:7-10 [DC Ex 45]

Respondent's November 8, 2017 email stated in its entirety:

> But the cowardly, the unbelieving, the vile, the murderers, the sexually immoral, those who practice magic arts, the idolaters, and all liars – they will be consigned to the fiery lake of burning sulfur. This is the second death. Revelation 21:8 [DC Ex 47]

Respondent sent a total of 12 such emails for the better part of November, except on days when she failed to report her arrival time at all. (DC Exs 45-54, 56) At the end of November 2017,

[21] Respondent was allowed to return to the bench in 2018, after Administrator Mack, Judge Paruk, and respondent's mentor, Judge Edward Thomas, agreed she should be returned to a docket. (Tr 7/7/22, p 68/5-7)

Judge Paruk met with respondent and her attorney about the PIP. As part of the meeting, he asked respondent to cease sending the Biblical emails. Immediately after the meeting, and in direct defiance of Judge Paruk's directive, respondent sent yet another Biblical email, beginning: "You brood of vipers, how can you who are evil say anything good?" (Tr 7/8/22, pp 130/8-13, 131/1-12; DC Ex 59)

Despite the efforts of SCAO through the PIP, respondent's failure to report for work or inform court administration of her absence arose again at the end of December 2018. Judge Blount had issued a directive for respondent and certain other judges to work the felony docket on December 26, 27, and 28, 2018, and to arrange for coverage if the judge could not work on one of those days. (Tr 7/7/22, p 68/15-19) Respondent did not appear for work on December 26 or 28, did not arrange for coverage, and did not inform administration that she would be absent on December 28. (DC Ex 64) She also did not appear, or notify court administration of her absence, from January 2 through 10 of 2109. (DC Ex 64) Judge Blount informed Judge Paruk, who had to send respondent two emails before he received an explanation from respondent's counsel, five days after his first request and with no explanation of her delay in responding. In addition to being disrespectful, this also violated the PIP, which required respondent to reply to communication requests within 24 hours. (Tr 7/8/22, pp 152/22-153/4; DC Exs 64,65)

After receipt of respondent's counsel's communication, Judge Paruk stated he would be in contact with respondent in the next few days. (DC Ex 68) He then made some amendments to the PIP because there had been ongoing problems with respondent appearing on time, and court administration could only contact her by calling her mother. There were also disputes between respondent and court administration about when respondent had appeared for work. (Tr 7/8/22, pp 158/17-159/25) For these reasons, Judge Paruk wanted to devise a way independently to verify

respondent's arrival and departure times. (Tr 7/ 8/22, pp 159/1-25, 160/1-25) Respondent did not acknowledge Judge Paruk's email enclosing the amendments, so he sent her another email on January 25, 2019, requesting additional information. (DC Ex 70; Tr 7/8/22, p 163/7-20)

Respondent's untimely answer typifies her interactions with court administration and SCAO. On January 28 she sent Judge Paruk an email, the first three paragraphs of which end with: "Please find someone else to harass." The final paragraph reads:

> Because the Ghosts of Judges Past were otherwise occupied with exchanging their black robes for white ones and could not do my docket for me, I went ahead and adjudicated the Business License docket to which I have been assigned. I sincerely wish that you, Judge Nancy Blount, and Kelli Moore would find someone else to harass. [DC Ex 71]

On the basis of the above, all of which was undisputed, the Master found that respondent failed diligently to discharge the administrative responsibilities of the court, in violation of MCR 9.202(B)(2) and Canon 3(B)(1), by: not obtaining coverage for her absence from court on December 26, 2018; her irregular reporting of her arrival and departure times; her responses to the requests by Judges Blount and Paruk for information about her attendance; and her irregular attendance without providing notice of her absences, causing the court to contact her mother to obtain her attendance. Disciplinary counsel endorse these of the Master's findings,[22] and the Master's conclusions that respondent thereby violated MCR 9.202(B)(2) and Canon 3(B)(1). (Report, p 18)

With regard to respondent's Bible verses and requests that Judges Blount and Paruk find someone else to harass, the Master appeared to focus mainly on whether those interactions

[22] Disciplinary counsel note that there are two non-substantive errors in the findings. Paragraph 3 on p 16 of the Master's report states that Judge Blount's October 20, 2017 order required respondent to report her daily arrival and departure. The order actually required respondent only to come to work daily. (DC Ex 40) Judge Blount later required by email that respondent confirm her arrivals by submitting her daily arrival time to the chief judge's office. (DC Ex 41) Also, paragraph six on p 17 of the report should state that Judge Paruk sent the email on December 4, 201<u>7</u>, not 201<u>8</u>. (DC Ex 63)

interfered with the administration of the court. Disciplinary counsel accept the Master's conclusion that they did not.[23]

Although she did not say so explicitly, the Master also apparently found that respondent's interactions with Judges Blount and Paruk were not discourteous or disrespectful. The Master found that respondent sent several emails containing Bible passages to Judges Blount and Paruk beginning November 2, 2017 (the actual start date was November 6). With respect to their content, the Master wrote:

> The emails evidenced the time of transmission and origin of the transmission and were, therefore, evidence of when respondent reported to the building. Judges Blount and Paruk found them to be threatening and baffling. (Report, p 16 ¶4)

The Master concluded that respondent, Judge Paruk, and Judge Blount had "high conflict" relationships, and that respondent's emails did not include direct threats, nor were they published so as to subject the judiciary to censure or reproach. Rather, she found, they were just internal communications regarding differences of opinion between "court systems professionals."

None of the Master's analysis addresses the disrespect that the emails communicated, and disciplinary counsel disagree with the Master's implication that they were respectful. Respondent clearly intended her communications to show disrespect and discourtesy, and she succeeded. The evidence shows that respondent's disrespect of her chief judge commenced with her open refusal to comply with Judge Blount's September 25, 2017 order that she cease dismissing cases solely

[23] With respect to respondent's compliance with her attendance-reporting requirement, the Master found that the evidence did not demonstrate how the requirement that respondent use her court email to report illness could have been met with the technology in play in 2018-2019. (Report, p 18 ¶B) This finding is a little baffling. First, the record does not contain evidence that respondent was unable to use her court email. Also, the administration's concern was whether respondent informed administration of her absences in some way, not whether she used court email to do so. She did not do so, on her own or through another person. It is not clear why the Master focused on respondent's ability to use court email on some occasions, while ignoring the bigger picture that respondent did not communicate her status to a court that needed to know that status in order to ensure her dockets were covered.

because Mr. Bell was the process server, and that she reinstate any such dismissed cases. In response to this order, respondent stated in open court: "So no, I don't care what the chief judge or anybody else at the court says" and "I don't care what Judge Blount says." (DC Ex 29, pp 8-9)

After Judge Blount directed respondent to report her arrival time each day, respondent sent Biblical emails to Judges Blount and Paruk that, in context, ooze disrespect. (DC Exs 45-54, 56) Judge Blount reasonably understood the emails to be somewhat threatening. (Tr 7/7/22, p 61/12-13). Judge Paruk noted that the emails wished negative consequences and harm to people. (Tr 7/8/22, p 129/9-10) He described them as "threatening," "disrespectful," "contemptuous," "frustrating," and "disappointing." He took respondent's message to be that the individuals to whom she sent the emails had the characteristics described in the quotes: being bad, wicked, wrongdoers, vile, murderers, sexually immoral, and the father of the devil. (Tr 7/8/22, pp 129/24-25, 130/1-8) This was an entirely fair interpretation of the emails and was clearly the interpretation respondent intended.

For her part, respondent's testimony regarding those emails only serves to underscore her mockery of this process. Nearly the entire evidence she provided about the emails was her testimony that "The only thing I intended by them was for [Judges Blount and Paruk] to know that I was in the building at work and they could tell it by the fact that I used the computer in my chambers to send the email," and she chose this means of communication because she is religious. (Tr 7/15/22, pp 435/18-436/6; 437/2-5) This is not only clearly a false explanation for why she wrote these emails to two judges with whom she was angry, it is almost taunting in its falseness. If her sole intent were truly to inform the recipients that she had arrived, she would simply have written "I'm here." What she actually wrote was clearly motivated by a desire to communicate animus.

Judge Paruk described still one more instance of blatant disrespect. A complaint had been filed against respondent by a litigant after respondent left her courtroom for three hours without notice in the middle of her docket, leaving the litigant and others simply to wait. Judge Paruk informed respondent that he would meet her at her chambers at a particular time to talk about this complaint. When he arrived, she was not there. Respondent was called and said she would return in 45 minutes. Instead, she never appeared for the meeting, never informed Judge Paruk that she would not appear, and never explained to Judge Paruk why she did not appear. As Judge Paruk aptly described, respondent, "[j]ust blew me off." (Tr 7/8/22, pp 150/23-25, 151/1-25, 152/1-3)

The evidence summarized above clearly established respondent's persistent failure to treat her chief judge and her regional administrator with dignity, courtesy and respect. The Master erred by either overlooking this or by finding otherwise. Disciplinary counsel ask the Commission to find that respondent's communications as alleged in paragraphs 135, 139-147, 149, 151, 153, and 162 of Count Three violated MCR 9.202(B)(1)(c) (persistent failure to treat persons fairly and courteously) and Canons 3(A)(3) and 3(A)(14).

COUNT FOUR

Respondent returned to the bench from one of her medical leaves on January 22, 2019. When she returned she was assigned to the business license docket in a courtroom that had video recording equipment in lieu of a court reporter or recorder. Count IV alleges that respondent knowingly failed to ensure that proceedings over which she presided in January and February 2019 were recorded.

The court's IT staff came to respondent's courtroom on January 22 – the first day she presided over the business license docket – to ensure that her video equipment was set up properly. (Tr 7/8/22, p 205/4-6) After the IT staff worked in respondent's court but before she began to hear

cases, two court employees – Dionne Drew and Morgan Hairston – both saw respondent disconnect her courtroom's video recording equipment.[24] (Tr 7/8/22, pp 204/15-17, 219/16-20, 240/17-22, 242/10-13, 255/5-8 & 14-15, 257/9-17)

Ms. Drew has worked at the 36th District Court for 23 years and was respondent's courtroom clerk from 2017 to 2019. (Tr 7/8/22, p 199/6-7 & 14-23) She testified that on January 22 respondent entered the courtroom through the back door, set her things on the bench, got on her knees on the floor, and "started taking loose the video equipment." Ms. Drew described respondent as being "a little upset" when she approached the bench. She pulled the plugs out and ensured that no lights or anything were on. Upon pulling out the plugs, respondent said, "They're not recording me. I don't trust them." Ms. Drew understood "them" to mean court administration. (Tr 7/8/22, pp 204/10-19, 205/1-3) On cross-examination Ms. Drew added that she was standing when she saw respondent get on her knees and take a plug out of the equipment. (Tr 7/8/22, p 219/21-25)

Ms. Drew never saw anyone reconnect the recording equipment. She knew it was not being used thereafter, because it was never set back up. She explained that when the equipment was functional there was either a green light or a red light. The green light reflected that the equipment was operating and the red light indicated that it was on standby. She did not see any of the lights on during the weeks after respondent unplugged the equipment. (Tr 7/8/22, pp 207/9-208/1)

Morgan Hairston worked as a court officer at the 36th District Court from October 2018 through March 2019. She was assigned to respondent's courtroom at the beginning of 2019. (Tr 7/8/22, p 238/2-7 & 14-23) On January 22, 2019 Ms. Hairston saw respondent "pulling the cords off . . . messing around with them." (Tr 7/8/22, p 240/19-22) Ms. Hairston was standing in front

[24] Respondent denies disconnecting the video equipment and disputes Ms. Drew's and Ms. Hairston's accounts. (Tr 7/15/22, p 452/16-23, 24-25, 453/1-2, 454/13-17, 458/7-9) This discrepancy is discussed further below.

of her desk, which was next to the clerk's desk or area (Tr 7/8/22, p 241/12-16), and although she was not "near" respondent at the time, she could see what respondent was doing. (Tr 7/8/22, pp 257/3-6, 258/12-17) She saw that respondent "did get down and was messing with the cords or disconnecting them." (Tr 7/8/22, p 242/12-13) Respondent threw the cords to the side and "left [the cords] there. She just disconnected them." (Tr 7/8/22, p 259/8-9) When she did so, there was no one in the courtroom audience. (Tr 7/8/22, p 255/6-8)

For her part, respondent testified that she did not know what she did on January 22, her first day on the business license docket. She intimated that her first day was like any other, and said her regular practice when she entered the courtroom would be to say "hey" to Ms. Drew, plug in her phones, and start calling the cases Ms. Drew gave her. (Tr 7/15/22, p 457/1-7) She said she would also ask Ms. Drew if she had called for a court reporter. (Tr 7/15/22, 457/13-14, 22-23)

After respondent disconnected the video recording equipment on January 22, Ms. Drew, at respondent's request, called for a court reporter, but one was not sent. (Tr 7/8/22, pp 205/25-206/11) That day and during the ensuing three weeks, respondent conducted numerous business license hearings, knowing that there was no official record and failing to ensure that there was an official record.[25] (DC Exs 72-114)

In 2019 now-Judge Elisabeth Mullins was Assistant Corporation Counsel for the City of Detroit Law Department.[26] (Tr 7/13/22, p 323/11-15) Shannon Walker is, and was in 2019, a Supervising Assistant Corporation Counsel with the City of Detroit Law Department. (Tr 7/8/22, p 266/25-267/2)

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[25] Respondent admits that she made an *un*official record of the proceedings by recording them on her cell phone. (Answer to complaint, ¶192). This is discussed in detail with respect to Count Five, below.

[26] Judge Mullins currently sits in the 28th District Court.

Judge Mullins handled business license cases for the Law Department and appeared often before respondent in that capacity in January and February 2019. (Tr 7/13/22, p 323/16-22, 324/12-18) She became suspicious that hearings before respondent were not being recorded when she noticed that the recording light was not lit on the court's recording devices on the attorney tables. (Tr 7/13/22, p 325/6-10) Judge Mullins reported this to her supervisor, Ms. Walker. They initially took a wait-and-see approach. (Tr 7/13/22, p 325/16-22)

Judge Mullins appeared before respondent on *City of Detroit v Mark Hanna Smith* on January 24, 2019. Judge Mullins wanted to appeal respondent's ruling, but was unable to do so because there was no record of the proceeding. (Tr 7/13/22, p 330/16-18; DC Ex 115) Judge Mullins reported the absence of a recording to Ms. Walker. (Tr 7/8/22, p 267/14-18)

Ms. Walker then went to respondent's courtroom and informed her that she had learned that proceedings before respondent were not being recorded. Respondent told her, "Yeah, I unhooked that shit," and waved her arm toward what Ms. Walker recalled as the jury box. Ms. Walker saw "some sort of black electronic equipment sitting there." When she asked respondent why she had done that, respondent replied, "I told them I wanted a court reporter. They didn't train me on how to use this, and so I unhooked it." (Tr 7/8/22, p 268/14-24)

Judge Mullins appeared in another case before respondent, *City of Detroit v Ali Jaber*, on February 13, 2019. Once again, the proceeding was not recorded, and Judge Mullins again informed Ms. Walker. When Ms. Walker called respondent and told her she understood that respondent was still not recording proceedings, respondent said, "Yeah. They won't give me a court reporter." Ms. Walker said she would have to report this to the chief judge or court

administration. Respondent's answer was, "Do what you have to do. Maybe they'll give me a court reporter."[27] (Tr 7/8/22, pp 269/9-25-270/4)

For her part, respondent denied disabling the equipment and maintained that she had not been trained how to use it. (Tr 7/15/22, p 406/2-5, 458/7-9) She acknowledged that she was aware that courts and judges had "abilities" to cause a record of proceedings in the courtroom. She said she achieved this by recording herself on her cell phone. (Tr 7/15/22, pp 412/20-413/4) To the extent respondent intended this to mean that she ensured an adequate record by using her cell phone, disciplinary counsel note that respondent recorded only 32 of the 43 total business license proceedings on her cell phone. Further, when Shannon Walker raised whether respondent was recording proceedings, she never volunteered that she had a record of them on her cell phone.[28]

The Master found that respondent's failure to make an official record of the business license proceedings was without legal excuse and was misconduct. (Report, pp 20-21) Disciplinary counsel endorse that finding.

On the other hand, and notwithstanding the overwhelming evidence summarized above, the Master found that the evidence did *not* establish that respondent deliberately disabled the recording equipment, and deliberately chose not to use it. (Report, pp 20-21) The analysis on which the Master relied to reach that conclusion was mistaken, and it was mistaken in ways that the Master repeats throughout her report. In a nutshell, the Master misconstrued evidence and

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[27] After learning that respondent had disconnected the video recording equipment, and that as a result, numerous proceedings over which she presided had not been recorded, Chief Judge Blount removed respondent from presiding over any cases on March 4, 2019. (DC Ex 133)

[28] The record shows that at some point (the record does not show when) Ms. Walker became aware that respondent was using her cell phone to publicize proceedings on Facebook (which is different than recording those proceedings, of course). What matters to the question of *respondent's* intent, though, is not Ms. Walker's possible awareness. If respondent is being truthful that she was freely sharing the information that she was recording the proceedings on her cell phone, she should have told Ms. Walker that when Ms. Walker raised a concern about the absence of recordings.

discredited the testimony of any witness that cast respondent in a poor light, even though the the evidence and witnesses all corroborated each other (with the exception of respondent's own testimony). To reach a result that was favorable to respondent, the Master either ignored the evidence, misconstrued the evidence, or "divided and conquered" the evidence rather than considering it as a whole. The next paragraphs detail the Master's mistakes.

We begin by reiterating the evidence discussed above that shows respondent *deliberately* disabled, or refused to use, the video equipment:

- two court employees saw respondent disconnect the equipment in January 2019;
- respondent explained to one of those employees that she was disconnecting the equipment to ensure that the court, which she did not trust, would not record her;
- a now-judge who appeared before respondent in January and February 2019 observed that the lights for the microphone were not on – not green, not red, but dark – indicating that the equipment was not functioning, rather than merely sitting idle as might be the case if respondent did not know how to push the "record" button;
- when respondent was *twice* confronted with her failure to record by a supervising assistant corporation counsel with the Detroit Law Department, she blithely *admitted* both times that she had unhooked the equipment, and said she had done so because the court would not give her a reporter;
- after admitting to the supervisor that she was not recording proceedings, respondent took no steps to notify her court administration that she was unable to operate the equipment (Tr 7/15/22, p 406/2-7), as might be expected were she actually failing to record because she did not know how. This was consistent with the fact that respondent never asked for any training on any aspect of being a judge.
- the equipment is exceptionally easy to operate (Tr 7/7/22, p 75/25-76/18), making it unlikely that she was unable, for weeks, to figure out how to use it, even if she was denied training;

In concluding that this evidence did not show that respondent deliberately disabled the equipment, the Master found credible both Ms. Drew's and Ms. Hairston's[29] observations that respondent moved and unplugged cords. (Master's Report, p 20) The Master dismissed these observations, though, on the basis that the witnesses had a "severely limited visage."

[29] The Master's report references a "Ms. Smith" but no witness had that last name. Based on context, it appears the Master was referring to Ms. Hairston.

The Master had to depart from the record to reach that conclusion. Thus, she found that despite their explicit testimony she had found credible, Ms. Drew and Ms. Hairston could *not* really see what respondent was doing – because the clerk (Ms. Drew) is seated at least one foot lower than the top of the bench, and the court officer (Ms. Hairston) is six inches lower than the clerk when seated and is off to the far left when standing. (Master's Report, p 20) There are several problems with this finding. First, nothing in the record suggests that Ms. Drew and Ms. Hairston were in these locations when they saw respondent disconnect the equipment. In fact, Ms. Drew made clear that she was standing, not seated. (Tr 7/8/22, p 219/21-25) Ms. Hairston testified that she *could* see respondent, which she could not have done under the Master's alternative facts.[30] (Tr 7/8/22, p 258/12-17) Moreover, their observations are powerfully corroborated by respondent's admissions to Ms. Drew and Ms. Walker that she deliberately unplugged the equipment.

The Master never even discussed respondent's admission to Ms. Drew. She discounted respondent's admission to Ms. Walker because she found Ms. Walker not credible. (Report p 20, ¶3a) The Master's discussion of Ms. Walker's testimony underscores her fundamental misunderstanding of this part of the case. Several paragraphs of the complaint charged, in inclusive language, that respondent "disconnected, damaged, disabled, did not activate, or otherwise rendered inoperative" her court's recording equipment. See, e.g., ¶ 176. This language was clearly intended to allege that in some way respondent carried out a deliberate choice not to use the equipment.

The Master's first sentence of her discussion of Ms. Walker's testimony frames her testimony this way: "The petitioner alleges that the respondent destroyed the equipment and offers

[30] The Master took another liberty with the record when she wrote that Ms. Drew described respondent "kneeling down silently and pulling the cords." (Report p 20 ¶3b) Neither the word "silently" nor anything close to it appears in Ms. Drew's testimony.

Ms. Walker in support of this allegation." (Report p 20, ¶3a) Even the most extreme version of the language from the complaint does not used the word "destroyed," and it was never part of disciplinary counsel's case to argue that respondent "destroyed" the equipment. By focusing exclusively on "destruction" that was never charged, the Master's framing ignores what actually was charged – that respondent disabled or deliberately did not use the equipment.

Having framed the wrong question, the Master then observes that there is no evidence that the equipment was actually destroyed. Of course there was not. That was never the allegation.

In the context of answering the wrong question, the Master said Ms. Walker testified that respondent "admitted removing" the equipment to her. (Report p 20, ¶3a) But that was *not* Ms. Walker's testimony. Rather, she testified that respondent told her that respondent had "unhooked that shit," and explained why she had done so. By misconstruing Ms. Walker's testimony, the Master created a supposed inconsistency between Ms. Walker's recollection and what really happened, and avoided grappling with the fact that what Ms. Walker actually heard respondent say is exactly what Ms. Drew and Ms. Hairston observed, and what respondent told Ms. Drew.

Ms. Walker's testimony described a single fact that, construed as the Master construed it, is inconsistent with the observations of Ms. Drew and Ms. Hairston. Once the Master's mistakes regarding Ms. Walker's testimony are corrected, this one potential inconsistency is the sole support for the Master's determination that Ms. Walker was not credible regarding respondent's admissions. The potential inconsistency on which the Master seized is that Ms. Walker testified that when respondent admitted she had "unhooked that shit," she waved her arm in the general direction of some black equipment in what Ms. Walker described as "the jury box." (Tr 7/8/22, p 268/17-20)

The Master rejects this testimony in part because, she writes, Ms. Drew denied that there was a jury box in respondent's courtroom. But Ms. Drew gave no such testimony – no one even asked her this question. Judge Mullins stated that there *was* a jury box (Tr 7/13/22, p 337/16-23), while respondent and Ms. Hairston said there was not a jury box. (Tr 7/8/22, pp 246/22-247/15)

Whether or not there was actually a jury box, the Master rests far too much weight on this bit of Ms. Walker's testimony, as can be seen by thinking about the interaction as Ms. Walker described it. She walked into respondent's courtroom and asked respondent about the absence of recording. Respondent told Ms. Walker that she had unplugged the recording equipment. As she did so, she waved her arm in a general direction. Ms. Walker assumed that respondent was referring to some black equipment in a jury box, but respondent may not have been referring to those items at all. She may only have been waving her arm to communicate the idea of "that shit" in a general way. Ms. Walker may have *thought* the equipment she saw was in a place designated for jurors, but it hardly matters whether the space she saw equipment was for jurors or for some other purpose.

Assuming Ms. Walker is simply wrong about what she saw – assuming, in fact, that there was actually no equipment at all and no space for equipment in respondent's courtroom – that detail was an inconsequential part of Ms. Walker's interaction with respondent. She had just been told by a judge that the judge had deliberately unhooked recording equipment so no record would be made. That is an extraordinary and memorable statement, far more significant to Ms. Walker than whether there was any equipment in the courtroom, and the location of that equipment would not have mattered to her at all. It does not make sense to distrust Ms. Walker's recollection of respondent's bombshell statement on the basis that Ms. Walker got a secondary detail wrong.

That is especially true for two other reasons. First, there is absolutely no indication in the record why Ms. Walker would manufacture respondent's admission that she unhooked the equipment. There is no hint of animus. There is no hint that Ms. Walker has anything other than a normal memory. Second, as noted above, what Ms. Walker recalls respondent saying is precisely what Ms. Drew and Ms. Hairston saw, and is substantively identical to what Ms. Drew heard respondent say. The Master's finding that Ms. Walker was not credible about that statement because she may be wrong about a jury box is simply wrong.

In addition to relying on alternate facts to dismiss Ms. Hairston's and Ms. Drew's eyewitness accounts, ignoring Ms. Drew's memory of what respondent said, and discounting, on the basis of a near-irrelevancy, what Ms. Walker said, the Master also had to misconstrue the testimony of Judge Mullins in order to find that the recording equipment had not been unplugged. The Master did so. Judge Mullins testified that no lights for the recording equipment were turned on. Somehow, the Master found that what Judge Mullins said was that she discovered that recording was not being done because the microphone light, attached to and dependent on the central unit, showed red. The Master concluded that "the fact that [the lights] were red connoted that they were receiving power but not taping as opposed to completely disassembled." (Master's Report, p 21)

The fundamental problem with the Master's conclusion is that Judge Mullins never testified that she saw red lights on the microphone. Rather, she said she initially "suspected that the hearings were not being recorded because on the . . . attorney tables there were the recording devices which would light up when the recording was on. I noticed that the recording light was not on." (Tr 7/8/22, p 325/6-10) Simply put, Judge Mullins never testified that the light on the microphone was red. In fact, though it could have been more explicit, Judge Mullins's testimony

on this point was consistent with Ms. Drew's testimony that she would have seen lights on the equipment if it were being operated, and her testimony that she knew it was not being operated both because the equipment was loose and because she would have seen either a green light or a red light. (Tr 7/8/22, p 207/17-25) The Master did not even mention Ms. Drew's testimony that is flatly contrary to her conclusion.

In lieu of accepting the mutually corroborating testimony of Ms. Drew, Ms. Hairston, Judge Mullins, and Ms. Walker, respondent appears to have credited respondent's testimony that she did not disable the equipment in any way. Respondent's testimony was not only self-serving, it was questionable. She denied disabling the recording equipment, but also testified implausibly that she did not even know what the video equipment was. She claimed she did not know what she did on January 22, 2019 – the day the other evidence shows that she disabled the equipment – but then described in detail getting her robe on that date. (Tr 7/15/22, pp 406/2-7, 456/25-457/2, 458/7-9 & 18, 461/12-462/24) The Master did not discuss the weaknesses in respondent's testimony, nor did she discuss respondent's lack of credibility as demonstrated elsewhere in these objections, when choosing to believe her rather than all the evidence that contradicted her.

The Master's choice to believe respondent rather than evidence that contradicted respondent repeats itself throughout her report. The report shows that whenever there was a conflict between respondent's testimony and that of another witness, she either chose to credit respondent over the other witness (as, for example, with Ms. Walker [Report p 20 ¶ 3a]) or ignored the contrary testimony of the other witness (as, for example, with Ms. Drew or Ms. Starkey. (Report p 25 ¶ 4a) If there were nothing in the record other than the testimony of respondent and of a single witness who disagreed with respondent, that might be reasonable. It is not reasonable, however, to disregard all testimony that contradicted respondent's inherently self-serving

testimony when the contrary testimony comes from so many different sources. At some point, the Master should have recognized that *respondent* is the person who is not credible, not everybody else.[31]

In addition to crediting respondent and discrediting every other witness to respondent's recording practice, the Master concluded that because respondent was physically compromised, it was more plausible that she merely unplugged her monitor cord rather than unplug all the cords that operated the equipment. (Master's Report, p 21) This, too, makes no sense. First, respondent never made this claim. It is entirely supposition on the part of the Master. Second, there is no rational reason respondent would have unplugged her monitor rather than simply turn it off, if shutting down her monitor were her goal. Second, Ms. Drew and Ms. Hairston saw respondent disconnecting multiple cords. Third, if respondent kneeled to unplug the monitor cord (recall that Ms. Drew saw respondent on her knees and Ms. Hairston saw her kneel down from her chair), she was equally in a position to disconnect all the cords. (Tr 7/8/22, pp 204/23-24, 256/16)

For all of these reasons, the Master was correct to find that respondent's failure to record proceedings was misconduct, but the Master was incorrect to find that respondent did not deliberately disable, or choose not to use, that equipment. Disciplinary counsel urge the Commission to find, based on the great weight of the evidence, that respondent intentionally disconnected the video recording equipment in her courtroom in January 2019 and continued to hold proceedings knowing that they were not being officially recorded.

COUNT FIVE

Count Five alleged that respondent improperly recorded, and published on Facebook, 32 of the proceedings she refused to record with the court's official recording equipment. Respondent

[31] Disciplinary counsel note that this issue comes up again in the Master's analysis of respondent's false statements.

admitted that she did this (Answer to complaint, ¶192), and the fact that she did was demonstrated by the recordings of those business license proceedings that were in the record. (DC Ex 117) Oddly – though consistent with the balance of the Master's report – the Master minimized respondent's recordings of court proceedings, characterizing them as showing only "respondent [ ] in full view and [] seen and heard calling cases and interacting with litigants." (Report, p 23). The Master barely alludes to the fact that what respondent was recording was the actual court proceedings in her business license cases. In any event, the Master found that this violated Canon 3(A)(11), and disciplinary counsel endorse that finding.

The Master did not find, though, that respondent also posted the court proceedings on Facebook. Ms. Walker testified that she had been Facebook friends with respondent "for a while" as of 2019. (Tr 7/8/22, p 270/17-22) She said that in early 2019, on more than one occasion, she viewed courtroom proceedings on Facebook that showed respondent presiding. She testified that she only saw Judge Davis's face, but heard Judge Mullins's voice. This accurately describes the recordings that are in Exhibit 117, and is the way the Master characterized the recordings as well. Ms. Walker heard the voice of her then-employee, now-Judge Mullins, and realized that respondent was publicizing actual courtroom proceedings. (Tr 7/8/22, pp 270/23-271/9)

The Master rejected Ms. Walker's testimony, stating that "while no doubt [Ms. Walker] earnestly recounted," the Master did not trust her memory three years after the fact. (Report, p 23) The Master had no basis to question Ms. Walker's memory. Respondent's counsel did not challenge it in any way, and nothing about her testimony is implausible.[32] Rather, this is another instance of the Master unreasonably dismissing Ms. Walker's testimony. While respondent denied

[32] Had respondent's counsel, or the Master, challenged Ms. Walker's testimony on this point, the Master would have learned that Ms. Walker made the same statement in an affidavit dated April 30, 2020, that was attached to the Commission's petition to the Supreme Court to suspend respondent. That was not in the record before the Master, because Ms. Walker's recollection was never challenged before the Master.

posting the proceedings in answer to paragraph 193 of the complaint, she did not deny doing so in any testimony at the hearing.

The Master appears to have rejected Ms. Walker's testimony because her recollection was three years old at the time she testified, but the Master ignored the crucial fact that Ms. Walker's description of what she saw on Facebook was exactly what the recordings actually showed. There is no other plausible way for Ms. Walker to have known what was on respondent's cell phone, other than having seen it on Facebook just as she testified.

Further, Ms. Walker said she told Judge Mullins about the recording contemporaneously with when it happened: "I just heard your voice. I think she's putting your proceedings on Facebook Live." (Tr 7/8/22, p 271/20-23) Judge Mullins's testimony was consistent with this. She stated that she did not know her court proceedings were being recorded on respondent's cell phone at the time (she was in court), but she later became aware of it. (Tr 7/13/22, p 341/22-342/1) Again, there is no plausible way for Judge Mullins to have become aware that respondent was recording proceedings on her cell phone other than as Ms. Walker telling her so. The Master did not address this evidence when rejecting Ms. Walker's testimony.

Further, the nature of Ms. Walker's testimony makes it unlikely to be something "earnestly recounted," yet mistaken. She heard her employee's voice in a setting in which that voice had no reason to be – on respondent's Facebook page. She saw that the reason she heard her employee's voice was because respondent had posted proceedings from her courtroom. The Master has not suggested how Ms. Walker would earnestly yet mistakenly fabricate such a memory, and she is simply wrong to disregard Ms. Walker's uncontradicted testimony on this point.

Because the Master's conclusion that the evidence did not establish that respondent posted proceedings on Facebook is based on excessive and unwarranted skepticism about Ms. Walker's

testimony, and because Ms. Walker's testimony was uncontradicted, disciplinary counsel ask that the Commission find that respondent posted her court proceedings on Facebook as charged in Count Five, and that her doing so was an additional violation of Canon 3(A)(11).

COUNT SIX

Count Six alleged that respondent committed an array of misconduct in connection with a trip she made to the gym.

On September 11, 2019, while respondent was removed from her docket for deliberately failing to record court proceedings, she went to an LA Fitness club on the east side of Detroit. She parked illegally – in the blue-striped space adjacent to a handicapped parking spot; a space that is set aside to enable persons who use those spots to get in and out of their cars. The striped space was barely the width of respondent's car, and when she parked she made it impossible to use the driver's door of the car that was properly parked in the handicapped spot next to her. When respondent parked, she placed a Detroit Police Department placard in her driver's window that read: "On Official Business," and "This vehicle shall not be cited or impounded under penalty of law." (DC Exs 118, 119)

Respondent went into the fitness center, where, by chance, she encountered Ms. Walker, who also happened to be there. Respondent pointed out to Ms. Walker a woman who passed by them while they were in the pool. The woman turned out to be Cassandra Starkey, the owner of the car respondent had blocked. Respondent told Ms. Walker: "Oh, that lady is always messing with me. I can't stand her." Respondent continued: "Yeah, I pulled in and she knows I need the handicap spot and she took it.[33] So I don't think I'm parked quite right, but I need to park in that handicapped spot because I can't walk." (Tr 7/8/22, pp 272/9-11 & 21-273/6).

[33] Ms. Starkey was herself disabled, and was entitled to use the handicapped spot. (Tr 7/13/22, p 345/7-12)

Because respondent's car was within inches of the driver's side of Ms. Starkey's car, when Ms. Starkey could not get into her car she reported the problem to the gym manager, who called security. (Tr 7/13/22, p 348/1-5) After the security officers arrived, Ms. Starkey called the police. (Tr 7/13/22, p 349/16-17).

Police Officer Nathan Gyani arrived. When Officer Gyani first met respondent, he asked if the illegally parked car was hers and she replied it was. Officer Gyani told her that she could not be parked in that space. She replied, "I know." (Tr 7/11/22, p 291/1-11)

Respondent gave testimony before the Master that was inconsistent with her statement to Officer Gyani that she knew she was parked unlawfully. She testified that she parked in a "loading and unloading zone." (Tr 7/15/22, p 465/18) She said she had a bariatric rollator, and that removing it from her car would meet the standard for using a "loading/unloading zone." (Tr 7/15/22, p 465/19-25) On that basis, respondent now claims that she parked lawfully in the striped area.[34]

Although Officer Gyani did not ask her to show identification, respondent gave him her badge and court identification. (Tr 7/11/22, pp 292/25, 293/1-6) Respondent never testified to a reason she did these things. The obvious reason she put the Detroit Police "official business" placard in her window and volunteered her judicial identification to an officer who did not ask for it was to try to avoid a parking ticket she knew she deserved.

According to Officer Gyani, he was confirming all the information he had with the intention of writing a parking ticket. (Tr 7/11/22, p 292/12-14/19-20) Ms. Starkey and respondent were sitting in their respective vehicles. (Tr 7/13/22, p 352/19-23) Respondent told Ms. Starkey,

[34] Respondent claimed to not know how long she was allowed to park in the striped area for loading and unloading purposes. (Tr 7/15/22, p 466/2-5) The evidence showed she was at the gym for more than two hours, working out in the pool, then showering and dressing to leave. (Tr 7/13/22, pp 344/21-22, 347/12-17; Tr 7/15/22, p 374/10; Tr 7/15/22, p 382/14). Even if respondent believed she could park momentarily in this "loading" zone, she certainly could not have believed she could then stay there for hours.

"You can eat my pussy, you crazy bitch. You don't know who you fucking with. You must have me twisted." Ms. Starkey asked respondent who she was talking to, and respondent said she was talking to Ms. Starkey. Respondent then threatened Ms. Starkey by stating, "I'm going to get my people in court on you, you stupid bitch." Ms. Starkey did not respond, but instead reported this conversation immediately to Officer Gyani. (Tr 7/13/22, p 352/1-18) Officer Gyani did not hear the conversation between respondent and Ms. Starkey, but he acknowledged that Ms. Starkey told him that respondent threatened her and called her names, and described a "verbal argument" between her and respondent. (Tr 7/11/22, p 291/19-21, 292/17-18, 293/7-12)

The evidence concerning the argument was contradictory. Respondent acknowledged speaking briefly with Ms. Walker at the gym in the pool, and never disagreed with Ms. Walker's memory of their conversation. (Tr 7/15/22, p 464/7-11) She denied speaking with Ms. Starkey at all that day. (Tr 7/15/22, p 465/5-15)

Lisa Favors is a friend of respondent who worked out in the pool with her. (Tr 7/15/22, p 380/5) Ms. Favors could not recall how she arrived at the gym, nor whether Ms. Starkey said anything to respondent in the gym. (Tr 7/15/22, pp 381/24-382/2, 384/22-385/3). She testified that she left the gym with respondent and was with her until respondent and she drove away, and that respondent and Ms. Starkey "never had any exchange at all." (Tr 7/15/22, p 384/16-19) When evaluating Ms. Favors's testimony, it should be noted that although she claims to remember what happened when she left the gym, she was unable to remember who she came to the gym with or whether she spoke with anyone at the gym. That is, her memory appears a little selective.

Officer Gyani issued respondent a parking ticket. (DC Ex 120) Respondent requested a hearing, which was held on January 10, 2020 before 31st District Court Judge Alexis Krot. When the direct examination of Ms. Starkey concluded, Judge Krot asked respondent whether she wished

to ask any questions of her. Respondent answered, "Your Honor, I am going to file an appeal. Thank you." She then walked out of the proceeding without another word, though it had not concluded. (DC Ex 121, p 26)

Judge Krot found respondent responsible for the parking violation and imposed a fine of $120 to be paid within a week – by January 15, 2020. (DC Ex 121, p 44) Respondent made one payment about five months later, in June, and another in July of 2020. (DC Ex 123)

Based on the above facts, the Master found that respondent improperly parked her vehicle in a handicapped loading zone.[35] She also found that respondent displayed an "official business" police placard in her car though she was neither the officer to whom the placard was issued, nor on any governmental business. Finally, she found that respondent displayed her judicial badge without a request from Officer Gyani. (Report, p 24)

The Master concluded that respondent's actions violated: MCR 9.104(1) and MCR 9.202(B), as conduct prejudicial to the administration of justice; MCR 9.104(2), by exposing the legal profession or the courts to obloquy, contempt, censure, or reproach; MCR 9.104(3), by being contrary to justice, ethics, honesty, or good morals; and Canon 1, for failing to observe a high standard of conduct so the integrity and independence of the judiciary may be preserved (Report, pp 26-27) Disciplinary counsel endorse these findings of fact and conclusions of law for Count VI.

Once again, though, the Master found that the evidence did not establish a very serious part of respondent's misconduct – her vulgar and threatening statements to Ms. Starkey. (Report, p 25) Once again, to reach that conclusion the Master found respondent to be more credible than a

[35] The Master stated that evidence for this count came from seven witnesses, one of whom her report identified as "Ms. Jenkins." There was no witness with that name. Based on the witnesses listed, it appears the Master meant Lisa Favors.

witness who contradicted respondent, and once again, the Master's conclusion was based on faulty reasoning.

The Master gave two reasons for finding Ms. Starkey not credible. One is that Ms. Starkey said she blocked her "front [license] plate" to keep respondent's acquaintance from photographing it. (Report p 25) The Master appears to have conflated two statements by Ms. Starkey. Ms. Starkey testified that she was standing in front of her car and blocking it, and also said she stood in front of the license plate to block it. (Tr 7/13/22, p 351/22-25) It was not clear whether Ms. Starkey was referring to a single instance of standing, or two different instances, and she never said she blocked her "front plate." In any event, it is not clear why the Master found this damaging to Ms. Starkey's credibility; she certainly did not explain her reasoning. The fact that Ms. Starkey tried to keep a hostile respondent from having a picture taken of Ms. Starkey's license plate seems quite reasonable under the circumstances, and hardly a reason to doubt her testimony.

Respondent's other reason for doubting Ms. Starkey is that she said the conversation in which respondent swore at her and threatened her took place while she and respondent were both in their cars. (Report, p 25) The Master first inferred that this could not be true because Ms. Starkey could not even enter her car due to the presence of respondent's car. The Master also noted that if Ms. Starkey and respondent were both in their cars, they would have been speaking through their windows from their respective drivers' seats, and (assuming their cars were parallel to each other) would have been several feet apart. The Master concluded that no conversation was likely under these circumstances because respondent's voice is so soft. She also concluded that respondent had said the things Ms. Starkey attributed to her, over such a distance, Officer Gyani or someone else would have heard her.

The Master's first inference is not consistent with Ms. Starkey's testimony. She explained that the security guard had moved her car after the police officer arrived. Respondent also left the gym shortly after the officer arrived. (Tr 7/13/22, p 350/11-22) The conversation had to take place after Ms. Starkey's car was moved, because she was unable to enter it until after it was moved. There is no evidence in the record about where Ms. Starkey's car was moved to, nor any evidence about whether it was backed into a space such that her window and respondent's were next to each other. There is simply no evidence in the record from which the Master could reasonably infer the distance between respondent and Ms. Starkey when they spoke.

Importantly, the Master did not address the fact that immediately after respondent threatened Ms. Starkey, Ms. Starkey reported her threat to Officer Gyani. (Tr 7/13/22, p 352/17-18; Tr 7/11/22, p 291/16-21) There is no reason to suspect, and it is not plausible, that Ms. Starkey falsely reported a conversation to the police, rather than much more plausibly informing Officer Gyani of her legitimate concern based on respondent's threat.

Just before the parking incident respondent had told Ms. Walker she could not stand Ms. Starkey. Respondent's effort to bully Ms. Starkey in connection with the parking incident was consistent with an attempt respondent had made to bully Ms. Starkey in their water aerobics class some time earlier.[36] (Tr 7/13/22, pp 347/4-6, 355/2-17) Her threats to Ms. Starkey are consistent with both of these facts, but the Master did not consider them.

Further, in choosing to believe respondent over Ms. Starkey, the Master ignored the impact of respondent's credibility of the fact that she had both misused a Detroit Police Department

[36] Ms. Starkey had seen respondent in the same water aerobics class several times previously. She described an occasion when respondent came to class late, then tried to bully Ms. Starkey into moving from her spot. Ms. Starkey acknowledged that they did not have a cordial relationship. (Tr 3/13/22, pp 346/25, 347/1-8, 354/1-3, 355/2-17)

placard and misused her judicial position to try to pressure or persuade Officer Gyani not to give her a ticket.

Finally, in a credibility contest between respondent and Ms. Starkey it is highly relevant that the record in this case is replete with respondent making false statements (discussed further with respect to Count Seven, below), while there is no evidence that Ms. Starkey has made any false statements.

The Master also found it significant that respondent's voice was low during the hearing on the complaint, suggesting that Ms. Starkey would have had a hard time hearing her. This is a stretch. Respondent's volume during the hearing has no bearing on her volume with Ms. Starkey, when she was angry and wanted to be heard distinctly.

For these reasons, disciplinary counsel ask that the Commission find that respondent made the vulgar and threatening statements to which Ms. Starkey testified, and on that basis to find that respondent also violated Canon 2(B) for failing to treat Ms. Starkey with courtesy and respect.

With respect to the ethical violations the Master found based on the facts above, although she found that respondent deliberately parked illegally, she determined that deliberately violating parking laws does not violate Canon 2(B),[37] which requires that a judge respect and observe the law. The Master reasoned that if Canon 2(B) were applied to this case, every parking ticket issued to a judge would be a per se violation of the canon.[38] (Report, p 26)

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[37] The Master's report actually cites Canon 3(B), but the complaint did not allege that respondent's parking misconduct violated Canon 3(B) in Count VI, and Canon 3(B) refers to facilitating the administration of the court, which is unrelated to respondent's parking. It appears that the Master actually meant Canon 2(B).

[38] The Master's reasoning raises an interesting question that need not be answered in this case. Her position is apparently that a deliberate violation of a minor law does not violate a canon that requires a judge to respect and observe the law. With respect, under the Master's view it is very hard, if not impossible, to draw a line between deliberate violations of the law that do constitute disrespect for the law and deliberate violations of the law that do not constitute such disrespect. Certainly, there is nothing in the language of Canon 2(B) that suggests any such distinction.

By regarding what respondent did as a routine parking violation, the Master showed she did not understand why respondent's violation was particularly egregious. Respondent deliberately violated MCL 257.674(t), which prohibits parking in the handicap access space, and she did that in such a way that she blocked a handicapped person's access to her car. Disciplinary counsel ask that the Commission find that respondent's particularly deliberate and egregious parking infraction showed disrespect for the law, in violation of Canon 2(B).

The Master was silent as to whether respondent misused the prestige of her office to advance her own interests when she volunteered her judicial identification to Officer Gyani. This was plainly wrong. There was no other reason for respondent to provide that identification than to attempt to use her position to intimidate or curry favor from Officer Gyani. Disciplinary counsel ask that the Commission so find.

With respect to respondent's conduct at the hearing on her ticket, the Master concluded that the evidence did not establish that respondent was disrespectful to Judge Krot. (Report, p 27) Any judge in Judge Krot's shoes would disagree.

Respondent used her cell phone during the hearing, though cell phones were prohibited in the courtroom. (DC Ex 121, pp 14, 16) In yet another finding with no support, the Master found that Judge Mullins had done the same. The record does not show that. It shows only that Judge Mullins had her phone with her, on silent. (DC Ex 121 p 25)

Disciplinary counsel suggest that the more logical answer to the Master's concern is that a judge who deliberately violates any law, including a law governing parking, thereby violates Canon 2(B). It does not follow, though, that every violation of Canon 2(B) – just as with every other violation of the canons – warrants a public complaint. Rather, the Commission has the discretion to consider all the circumstances and determine what sanction, if any, a particular violation deserves.

In this case, the aggravated nature of respondent's disrespect for the law shows why her violation is worthy of a public finding that her deliberate disrespect violated Canon 2(B).

Then, respondent abruptly left the courtroom in the middle of the proceeding without a word. (DC Ex 121, p 26) She never offered a legitimate reason for doing this. Consistent with her treatment of respondent throughout the report, the Master minimized respondent's sudden departure on the basis that nothing in the transcript shows that her exit was a distraction. (Report p 25 ¶7) Once again, the Master asked the wrong question. Respondent was charged with being disrespectful, not with being distracting. To appreciate how disrespectful this was, it helps to note that if an attorney simply walked out in the middle of a court proceeding, without an explanation and without an apology – especially if the attorney did so after receiving unfavorable rulings – the presiding judge might well issue an order to show cause why that attorney should not be held in contempt for such disrespect. Certainly, respondent would not have tolerated parties walking out of *her* proceedings in this way.

The only reason for respondent to stalk out as she did was to communicate her disrespect of Judge Krot's tribunal. Her contemptuous behavior violated Michigan Rule of Professional Conduct 3.5(d), as undignified and discourteous toward the tribunal, and Canon 2(B), as disrespectful and discourteous. Disciplinary counsel urge the Commission to so find.

COUNT SEVEN

In order to exonerate respondent of the most serious misconduct charged in the complaint, the Master resolved every single credibility determination in her favor. We note in the discussion of Count Four, above, why this was a mistake with respect to respondent disabling the recording equipment in her courtroom. Count Seven charges respondent with numerous false statements. The Master found that the evidence did not establish a single one of them. (Report, p 29) For the reasons below, the Master was just as mistaken in her findings about respondent's false statements as she was with respect to her other credibility determinations.

Misrepresentation Regarding Training

The first alleged misrepresentation concerns respondent holding Jerry Johnson in contempt. During a sworn statement she gave on April 6, 2021, respondent dismissed her incorrect use of her contempt power by claiming that she had not had any training. (DC Ex 124) Respondent continued to claim a lack of training in her answer to the allegations in the second amended complaint that she abused her contempt power. (Answer, ¶¶ 28, 47, 48, 49, 51).

In reality, respondent received the following training:

- On November 16, 2016, respondent attended the Michigan Judicial Institute Prebench Seminar (Tr 7/8/22, p 117/15-17; DC Ex 125). In a sign of things to come, respondent was late, played on her phone the entire time, and did not really partake in the training. (Tr 7/8/22, p 118/20-22)

- Respondent missed the new judges school in January 2017 because of illness. However, at her request, she received the binders from that training in January 2017. (Tr 7/15/22, p 434/8-10, 12-20)

- In March 2017 respondent had an orientation at 36th District Court. (Tr 7/7/22, pp 47/1-16, 19-25; 48/6-14, 16-18)

- On March 14, 2017, 36th District Court Judicial Assistant Matthew Carmona emailed respondent a link allowing her access to the MJI Benchbooks (DC Ex 126)

- On March 30-31, 2017, respondent attended the MJI New Judges Conference (Tr 7/8/22, pp 120/9-11, 122/9-13)

- On May 9, 2017, Mr. Carmona again emailed respondent the link allowing her access to the MJI Benchbooks (DC Ex 128)

To exonerate respondent of this falsehood, the Master focused on whether there was evidence that respondent had training regarding a *contempt* proceeding. (Report, p 28). This is an unjustifiably and unreasonably narrow interpretation of what respondent said. During her statement, respondent admitted she was required to appoint counsel for Mr. Johnson but she was not aware of that at the time. She stated, "[T]his was 2017 before I had any training." She further admitted she did not give Mr. Johnson due process before sentencing him to jail, knowing what

she knows now, but at the time she did not know that because she did not have training. (DC Ex 124, p 600) At no time did respondent suggest that what she lacked was only training regarding contempt proceedings.

Moreover, respondent's answers to the complaint show that her false claim is that she did not receive *any* training. Respondent admitted that she made no findings of fact or conclusions of law in the Joy Eck matter to support assessing a fine against Detroit Real Estate to be paid to the court. She explained that she "had not yet had any training on how to perform her duties as a judge inasmuch as Respondent had just a couple of months when she took the bench." (Answer ¶28) Respondent answered three different allegations with respect to the Jerry Johnson matter by stating "Respondent did not have training at the time" (Answers ¶¶47, 48, 49) She also said, "Respondent, not having the typical training of four to six weeks given to new judges in the 36th District Court when they first take the bench, Respondent was not allowed any training until February, 2018, which occurred after this matter that occurred in October, 2017." (Answer ¶51) At the hearing before the Master, respondent testified that she "came in to work on March 6, 2017, and was put straight on the bench of my own landlord-tenant docket with no training whatsoever." (Tr 7/15/22, p 407/21-23) These answers and respondent's testimony simply cannot be construed to mean that she was only claiming she had not been trained regarding a contempt proceeding. The Master did not address respondent's actual statements in reaching her conclusion that respondent meant only to deny that she had had no training with respect to contempt.

It is reasonable for the Master to give respondent the benefit of the doubt when there is actually doubt about what she meant. There is no such doubt with respect to her false claim that she had not received training.

Misrepresentations Regarding Recording Proceedings

Respondent, including her repeated denials that she disconnected the video recording equipment: in her answers to requests for comments (DC Exs 130A, answer 14a), in her answer to the second amended complaint (Answer, ¶ 70), and at the hearing (Tr 7/15/22, p 458/7-9). She also falsely asserted that she did not cause the video recording equipment not to be used to make an official record of court proceedings. (DC Ex 130A, answers 16b, 17b, 18, 19, 20b, 21b, 22b)

The complaint alleged that respondent made several false statements regarding her failure to use the video recording equipment. These include that she falsely denied telling Ms. Walker that she had personally disconnected the video recording equipment in connection with proceedings over which she presided in January and February 2019. (Complaint, ¶ 250) Respondent made this denial. (DC Ex 131A answer 17). As made clear at pp 29-35 above, her denial is false, because she told Ms. Walker that she unhooked the video equipment because she wanted a court reporter and had not been trained on how to use the equipment. (Tr 7/8/22, p 268/14-24) At no time did respondent deny Ms. Walker's assertion at the hearing.

The complaint further alleged that respondent falsely claimed she never told Ms. Drew words to the effect that, beginning on January 22, 2019 she was not going to use the video equipment. (Complaint ¶246) Respondent clearly made this statement. (DC Exs 130A, answer 26; 131A, answer 6) This statement was refuted by Ms. Drew, who testified that respondent entered the courtroom, was a little upset, set her belongings on the bench, got on the floor, and started taking loose the video equipment. As she did this, respondent said, "They're not recording me. I don't trust them." (Tr 7/8/22, p 204/12-19) Taken in the context of respondent's actions, it is clear that respondent informed Ms. Drew she was not going to use the video equipment and why. Respondent did not testify to this at the hearing. Respondent's denial is clearly false.

The Master's entire analysis of the false statements just summarized, and of the additional false statements discussed below that relate to recording proceedings, was that since the Master found that the evidence did not show that respondent unplugged the video equipment, the evidence also does not show that respondent made any of the false statements described in this section. As discussed above at pp 29-40, that analysis was plainly wrong with respect to unplugging the equipment. It also completely fails to address the evidence regarding the other false statements regarding the recordings with which respondent was charged.

The other knowingly false statement with which respondent is charged that was established by the evidence at pp 29-40 is her assertion that she did not cause the video equipment not to be used to make an official record of court proceedings. (Complaint ¶244) Respondent unquestionably made this assertion. (DC Ex 130A answers 16b, 17b, 18, 19, 20b, 21b, 22b). The Master's belief that respondent did not unplug the equipment does not address this allegation. The evidence showing that respondent disconnected the video equipment and told other persons that she refused to use the equipment directly refutes this assertion. Because respondent disconnected the equipment, she had to have caused the equipment not to be used.

The complaint also alleged that respondent falsely claimed that after Ms. Walker objected to respondent not recording proceedings, respondent did not reconsider whether to use the video equipment because she did not know how to use it. (Complaint, ¶ 251). Once again, respondent made this claim. (DC Ex 131A, answer 18) Respondent also maintained that the reason she did not use the video recording equipment was because she did not know how to turn it on or operate it. (DC Ex 130A, answers 18, 35) Paragraph 247 of the complaint alleged that this was false.

Respondent's claims were clearly false, based on:

- Respondent deliberately unplugging the equipment, which suggests a very different reason for not using it than lack of knowledge.

- Respondent telling Ms. Drew that the reason she unplugged the equipment was because she did not trust the administration – that is, a reason very different from not knowing how to operate the equipment.

- Respondent telling Ms. Walker that she had unplugged the equipment and hoped for a court reporter; again, unplugging the equipment is far different than not knowing how to turn it on.

- The video recording equipment is easy to use – just a "kind of an on/off affair." (Tr 7/7/22, pp 75/25-76/18) If lack of knowledge were respondent's problem, she likely could have figured out how to push the button during the weeks she did not record proceedings.

- Respondent making no effort whatsoever to get training of any kind to operate the equipment during the several weeks she presided over the business license docket. If the real reason respondent did not record proceedings was because she thought she lacked the knowledge, she certainly would have brought that to someone's attention and sought to remedy the problem. She did not do so. In fact, in response to a question from her own attorney, respondent stated that she *never* asked anybody for training on the video equipment. (Tr 7/15/22, p 406/2-7)

- When Ms. Walker first spoke with respondent about recording proceedings, respondent actually did tell her in part, "They didn't train me on how to use this, and so I unhooked it." (Tr 7/8/22, p 268/23-24) However, this hardly corroborates respondent's excuse. Rather, it demonstrates her wilfullness. If one accepts respondent's entire statement at face value, she believed she needed training, and rather than seek it, or wrestle with the equipment on her own, she chose to disable it.

The Master did not address any of these inconsistencies with respondent's claim that it was simply a lack of training that caused her not to record business license proceedings. Her excuse for not recording the proceedings was plainly false and was plainly intended to conceal the reality that she deliberately did not record those proceedings.

The complaint also alleged that respondent falsely told the Commission that she had typically, albeit in not every instance, advised the parties appearing before her that there was no record of the proceedings, and that the reason was because 36th District Court administration would not provide her courtroom with a court reporter. (Complaint, ¶ 245) Respondent unquestionably made this statement. (DC Ex 130A, answers 16f, 17f, 20f, 21f, 22f) The complaint also alleged that respondent falsely told the Commission that at or near the end of a hearing, she advised Judge

Mullins that there was no record because 36th District Court administration refused to provide a court reporter. (Complaint, ¶ 249) She unquestionably made this statement as well. (DC Ex 131A answer 16c)

Both of these statements were false. Judge Mullins was frequently in respondent's courtroom in January and February 2019. She testified that respondent never informed her that the proceedings were not being recorded, including for the *Smith* or *Jaber* hearings – the two hearings that prompted Judge Mullins to alert Ms. Walker that respondent was not recording proceedings. Nor did respondent tell her that the reason no record was being made was because the 36th District Court administration refused to provide a court reporter. (Tr 7/13/22, pp 326/5-7, 330/6-8, 332/20-22). Speaking more broadly, Ms. Hairston testified that she never heard respondent inform any attorneys or parties that the hearing was not being recorded. (Tr 7/8/22, p 243/3-6) Tellingly, the 32 recordings respondent made of her business license proceedings show the entirety of each case, and show that respondent never informed any person that she was not recording the proceedings, nor that she was using her cell phone to record them. (DC Ex 117) Finally, respondent never contradicted any of this at the hearing.

The Master did not discuss the charges that respondent falsely claimed that she had informed the parties that the proceedings were not being recorded, or the evidence showing that these statements were false. Disciplinary counsel urge the Commission to find these statements knowingly false, as they obviously were.

Respondent's false statements surrounding the video recording equipment and her failure to have an official record made of proceedings before her were a powerful indictment of her credibility generally. Respondent is the *only* person in this case who was shown by the evidence knowingly to have made false statements, and to have made them under oath, at that. Because the

Master ignored these false statements, and the evidence that showed they were false, she never had to confront why she made all credibility determinations in respondent's favor, rather than crediting the several witnesses who contradicted her and who had never lied.

Misrepresentations Regarding Illegal Parking

When asked by the Commission about her parking in the handicap place, respondent has repeatedly maintained that she was not illegally parked because she just loaded and unloaded her walker in a loading and unloading zone. (DC Ex 132, pp 538, 539, 557, 558, 560, 561, 565, 567) The Master concluded that respondent's statement was not false because it was a statement of opinion, not a statement of fact. (Report, p 28) The clear evidence contradicts the Master, no matter how one characterizes respondent's statement.

At the time she parked, respondent acknowledged to Ms. Walker and Officer Gyani that she was parked illegally. Whether she was stating that as opinion or fact, it is inconsistent with what she now claims. In fact, her use of the Detroit Police Department placard (with its false claim that she was on official business) to avoid a ticket was unnecessary if she thought she was lawfully parked. Finally, although the Master blandly characterizes respondent's claim to have parked lawfully as "contrary to law," and apparently believes respondent made this claim in good faith, in fact respondent's claim is absurd. No reasonable person could think that the marked-off space adjacent to a handicapped spot is actually a "loading and unloading zone." Certainly no judge could think that (respondent, of course, is a judge), and it is highly unlikely that were a party to present that defense in respondent's court, she would reject it with derision.

Paragraph 263 of the complaint charged that respondent falsely denied speaking to Cassandra Starkey on September 11, 2019. Again, there is no doubt that respondent made this statement. (Tr 7/13/22, p 352/1-18; 7/11/22, pp 291/19-21, 292/17-18, 293/7-12) To the extent this

is a credibility contest between respondent and Ms. Starkey, only respondent has been shown to have lied. For the reasons stated above at pp 46-49, the Master was wrong to discount Ms. Starkey's testimony. She was equally wrong to choose to believe respondent over Ms. Starkey.

Misrepresentation Regarding Residence

On March 16, 2020 respondent gave a deposition in connection with a lawsuit she filed over a car accident on April 6, 2018. She testified that she was living alone at 430 Frederick in Detroit on the day of the accident, and had lived alone at the Frederick address for fourteen months before the accident. Respondent admitted that she gave this testimony. (Answer, 235, 236; Stipulation of Facts, 235, 236; see also DC Ex 129)

In contrast, during a sworn statement to the Commission on April 5, 2021, respondent testified that as of the time Mr. Bell's employee attempted service at a home on Frederick in late August 2017, respondent had been in the house at 430 Frederick for "weeks." She claimed the home was her aunt's home, and she was staying there temporarily instead of at her "normal" house following a television newscast that gave her nightmares. (DC Ex 132)

Paragraph 241 of the complaint charged that respondent's testimony at her deposition and at her sworn statement concerning her residence at 430 Frederick were mutually inconsistent with each other and could not both be true. The Master rejected this allegation solely on the basis that there was no evidence regarding when the accident occurred. That was wrong. Respondent's admission, and stipulation to, paragraph 235 of the second amended complaint was conclusive evidence that the accident occurred on April 6, 2018. As such, respondent's deposition testimony was that she had been living at 430 Frederick since February 2017, and was continuously there alone until April 6, 2018.

Respondent's testimony at her deposition and sworn statement concerning whether she lived at 430 Frederick alone or with someone and for the length of time are mutually inconsistent and cannot both be true. While respondent could plausibly have misremembered when she began to live at 430 Frederick, she is not likely to have misremembered whether she lived there alone or with someone else. Accordingly, at least one of respondent's claims regarding her residence is false. Disciplinary counsel urge the Commission to reject the Master's mistaken conclusion and find that at least one of respondent's sworn statements regarding her residence was false.

For these reasons, disciplinary counsel urge the Commission to find that the evidence has established that respondent knowingly made each of the false statements charged in Count Seven. By doing so, she violated Canon 2(A), for being improper; Canon 2(B), for undermining public confidence in the integrity of the judiciary; MRPC 8.4(b), for engaging in conduct involving dishonesty, deceit, and misrepresentation that reflects adversely on respondent's honesty, trustworthiness, and fitness as a lawyer; MCR 9.104(2), for exposing the legal profession and the courts to obloquy, contempt, censure, or reproach; and MCR 9.104(3), for engaging in conduct that is contrary to justice, ethics, honesty, and good morals.[39]

SANCTIONS

The Michigan Supreme Court set forth several criteria for assessing proposed sanctions in *In re Brown*, 461 Mich 1291, 1292-1293 (1999). These include:

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

The evidence established that respondent engaged in multiple instances of misconduct over two years. Her misconduct includes making multiple misrepresentations during the Commission's

[39] Respondent's knowing false statements also violated MCR 9.202(B), but that court rule will have ceased to exist by the time the Commission issues its recommendation.

investigation (itself a pattern of misconduct); flagrant abuse of her contempt of court powers; grossly prejudging cases, such as the contempt cases and the cases in which she improperly dismissed or adjourned cases based solely on the identity of the court officer/process server, despite having no evidence before her regarding those cases; attempting to destroy the livelihood of Myran Bell; failing to recuse herself from cases involving Mr. Bell, despite her deep and clear bias against him; refusing to let parties and Mr. Bell be heard before ruling against them or against their interests; obstructing the court's administrative responsibilities; treating litigants and court officials disrespectfully and discourteously; disabling the official recording equipment in her courtroom and conducting proceedings knowing that no official record was being made; recording proceedings before her and publishing them on the internet without Supreme Court authority; deliberately parking illegally so as to block a car lawfully in a handicap parking space; misusing a Detroit Police "On Official Business" placard to evade a ticket; trying to use her judicial identification to avoid a ticket; threatening a complaining witness; and disrespecting a fellow judge by leaving a proceeding while the proceeding was still in session.

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

Respondent's misconduct was both on and off the bench. Counts I through V implicate conduct on the bench or in respondent's capacity as a judge. Count VI implicates conduct off the bench, though it also includes respondent abusing the prestige of her office to avoid a ticket.

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

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

These two factors are really just mirror images of each other, so this brief treats them as one. A good deal of respondent's misconduct prejudiced the administration of justice. This

includes: (1) prejudging the contempt matter involving Joy Eck, and abusing her contempt power with Ms. Eck; (2) prejudging the matter involving Jerry Johnson, abusing her contempt power, and denying him any semblance of due process; (3) prejudging cases in which Mr. Bell was a court officer, accusing Mr. Bell of engaging in an improper business practice despite lacking evidence, dismissing or adjourning cases without evidence, attempting to destroy Mr. Bell's livelihood, and failing to recuse herself from cases involving Mr. Bell, despite her deep and clear bias against him; and (4) conducting court proceedings knowing that no official record was being made.

(5) <u>Misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberate</u>

Most of respondent's misconduct was premeditated and deliberate. This includes her treatment of Ms. Eck and Detroit Real Estate; her treatment of Mr. Bell and the landlord-cases in which he had been the court officer; her obstruction of the administration of 36th District Court and her disrespect of Judges Blount and Paruk; her intentionally disconnecting her court's video recording equipment, deliberately refusing to use that equipment, and deliberately conducting proceedings knowing that she was making no official record; her intentionally recording proceedings on her cell phone and posting them on Facebook; her deliberately parking so as to obstruct a handicapped person's car; her intentionally attempting to make it appear that she was on official Detroit Police business when she was actually a judge going to the gym while she was suspended from her docket; her deliberately trying to use her judicial identification to avoid a ticket; and her many knowing false statements.

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

A significant portion of respondent's misconduct undermined the ability of the justice system to discover the truth or reach a just result, including: her refusing to hear evidence

concerning Jerry Johnson's service of process; her refusing to hear evidence in any of the cases she dismissed or adjourned solely because Myran Bell was the court officer; and her refusing to record proceedings before her, and thereby frustrating the parties' ability to appeal her rulings.

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

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

Other Considerations

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

False Statements

As noted above, respondent repeatedly lied to the Commission. Her misrepresentations include her false claims of lack of training, her false denials that she disconnected the video recording equipment in her courtroom and her false claims about the surrounding circumstances, her false claim that she did not think she was parked illegally, her false denial that she threatened Ms. Starkey, and her inconsistent answers about her residence. It was also dishonest and selfish for her to attempt to evade a parking ticket by misusing a Detroit Police Department placard and showing her judicial identification.

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

Other Acts

Respondent's judicial term expires on December 31, 2022. She was eligible for reelection this year. It is a matter of public record that on May 17, 2022 the Department of State, Bureau of Elections disqualified her from the ballot, because she filed a false "affidavit of identity" on January 25, 2022. In the affidavit, respondent averred that she had no outstanding statements, reports, late filing fees, or unpaid fines under the Michigan Campaign Finance Act. In fact, she owed $500 as a late filing fee for the July 2017 quarterly statement.[40]

Respondent is not repentant

In *In re Adams*, 494 Mich 162, 181, 183 (2013), the Court reasoned that a sanction may be less severe when a respondent acknowledges misconduct and is truthful throughout the disciplinary proceeding, but "where a respondent is not repentant, but engages in deceitful behavior during the course of a Judicial Tenure Commission disciplinary investigation, the sanction must be measurably greater." *Adams* demonstrates that respondent's dishonest conduct warrants a "measurably greater" sanction, as she not only failed to take responsibility or express any remorse for her misconduct, she also "engaged in deceitful behavior" during the course of the Commission's investigation.

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[40] On February 7, 2022 respondent withdrew her affidavit of identity and paid the $500 fee to try to cure her filing, but on May 17, the Bureau of Elections rejected her effort on the basis that a false affidavit of identity cannot be cured by withdrawing the original affidavit and resubmitting an updated one. The Bureau said that because the first affidavit contained a false statement, the Bureau was compelled to disqualify respondent from the ballot.

On May 27, 2022 respondent filed a petition for writ of mandamus against the Bureau of Elections, among others. On June 1, 2022 Judge Elizabeth Gleicher, sitting in the Court of Claims, granted the defendants' motion for summary disposition.

As a result of respondent filing a false affidavit of identity, she has been disqualified from the ballot and will not be reelected to the bench this November.

Impact on the public perception of the judiciary

Respondent's conduct has generated a great deal of negative publicity. A search of the internet reveals articles about her inappropriate conduct on the following news sources: Fox2Detroit.com; ClickonDetroit.com; the Detroit Free Press; the Detroit News; WXYZ.com; ABAjournal.com; Deadlinedetroit.com; and APnews.com. These news stories cover several years, from February 2017 in a Fox 2 story titled "The Case of the No Show Judge" to March 2022 stories regarding the amended complaint. The fact that respondent's behavior was extensively covered by news outlets has put the judiciary, as a whole, in a negative light.

Proportionality

The Supreme Court has stated:

> This Court's overriding duty in the area of judicial discipline proceedings is to treat 'equivalent cases in an equivalent manner and . . . unequivalent cases in a proportionate manner.' [*In re Simpson*, 500 Mich 533, 559 (2017)]

The Court has held repeatedly that removal is the appropriate sanction for a judge who makes false statements under oath. *In re Brennan,* 504 Mich 80, 85 (2019); *In re James*, 492 Mich 553 (2012), *In re Justin,* 490 Mich 394 (2012); *In re Nettles-Nickerson*, 481 Mich 321 (2008); *In re Noecker*, 472 Mich 1 (2005).

The breadth of respondent's misconduct is extreme, but not completely unprecedented. See, e.g., *Justin, supra; Nettles-Nickerson, supra.* The Court removed respondent Justin for fixing traffic citations issued to himself, his spouse, and his staff; preventing the transmission of or altering court information that was legally required to have been transmitted to the Secretary of State; dismissing cases without conducting hearings or involving the prosecutor; failing to follow plea agreements; and making false statements under oath during the Commission proceeding. *Justin, supra,* p 396. The Court removed respondent Nettles-Nickerson for twice making false

statements under oath; making and soliciting other false statements while not under oath; improperly listing cases on the no-progress docket; being absent excessively and engaging in belated commencement of proceedings; allowing a social relationship to influence the release of a criminal defendant from probation; and recklessly flaunting her judicial office. *Nettles-Nickerson, supra,* pp 322-323.

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

RECOMMENDATION

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

Respectfully submitted,

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