STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

HON. KAHLILIA Y. DAVIS
36th District Court
Detroit, Michigan

MSC 161134
Formal Complaint No. 101

THE JUDICIAL TENURE COMMISSION'S REPLY TO RESPONDENT'S PETITION FOR REVIEW

ORAL ARGUMENT REQUESTED

Pursuant to MCR 9.251(C), the Michigan Judicial Tenure Commission (the "Commission" or "JTC"), by Commission counsel, hereby replies to the Petition for Review (the "Petition," cited as "Pet") by respondent Hon. Kahlilia Y. Davis ("Respondent"). For the reasons stated below and in the accompanying brief, and as set forth more fully in the Commission's September 23, 2022 Decision and Recommendation for Discipline (the "Decision"), the Commission asks this Court to: (1) deny Respondent's Petition; and (2) adopt the Commission's recommendation to remove Respondent from the office of judge of the 36th District Court with a conditional six-year suspension.

The Second Amended Formal Complaint ("FC") charged Respondent with seven counts of misconduct. Count I charged that Respondent abused her contempt power in two cases: 17- 307300LT (*Detroit Real Estate v Sharon Hayes*) and 17-321869 LT (*Sanders v Nicole Thomas*). Count II charged that Respondent failed to conduct required evidentiary hearings and made premature decisions stemming from her

conclusion that a process server made false statements in a proof of service and thereafter automatically adjourning or dismissing any case in which the process server had been engaged by the plaintiff. Count III charged that Respondent obstructed court administration in failing to comply with orders of Chief Judge Nancy Blount and administrators of the 36th District Court having authority over Respondent. Count IV charged that Respondent intentionally disabled video equipment and failed to make an official record for her cases while in courtroom 340. Count V charged that Respondent improperly recorded and published court proceedings using her personal cellular phone. Count VI charged that Respondent used her status as a judge to improperly park in a handicap loading and unloading zone while displaying a Detroit police placard without basis and showing her judge badge to the responding officer. Count VII charged Respondent with making misrepresentations, including, among others, that Respondent made misrepresentations under oath regarding her intentional disabling of the video equipment in courtroom 340.

The Commission reviewed the entire record, including the transcripts of the public hearings conducted in person on July 7, 8, 11, 13, and 15, 2022 (collectively, the "Hearing"), the Hearing exhibits, the master's report (the "Master's Report"), disciplinary counsel's objections to the Master's Report, Respondent's response to the Master's Report, disciplinary counsel's Reply, Respondent's Reply, and considered the oral arguments of counsel.

With respect only to the Master's findings of misconduct in Counts I through VI of the FC, the Commission unanimously accepted and adopted the Master's findings of

fact and conclusions of law. Notably, Respondent did not contest these findings of misconduct by the Master in Counts I through VI which the Commission adopted, which her counsel again confirmed orally at the September 12, 2022 hearing.

Beyond the Master's findings, the Commission concluded that Respondent committed additional misconduct not found by the Master as set forth in the Decision, including the Commission's unanimous conclusion that Respondent committed additional misconduct under Counts I (by abusing her contempt power in another case), III (by sending threatening emails to colleagues), IV (by disabling video equipment in courtroom 340), and V (by publishing court proceedings to Facebook Live), and committed misconduct under Count VII of the FC by making multiple misrepresentations in sworn statements to the Commission and at the Hearing when she repeatedly denied having disabled the video equipment in courtroom 340.

Respondent conceded, and the Commission unanimously accepted and adopted, the Master's conclusions of law as to the violations that resulted from Respondent's misconduct in Counts I through VI. Combined with the additional violations under those Counts that the Commission found and the Commission's finding that Respondent committed misconduct under Count VII, the violations consisted of: conduct prejudicial to the proper administration of justice, contrary to MCR 9.104(1), MCR 9.202(B) and MRPC 8.4(c); conduct that exposes the legal profession or the courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(2); conduct that is contrary to justice, ethics, honesty, or good morals, contrary to MCR 9.104(3); failure to personally to observe high standards of conduct so the integrity and independence of

the judiciary may be preserved, contrary to Canon 1; failure to be patient, dignified, and courteous to litigants, lawyers, and other persons, contrary to MCR 9.202(B)(2) and MCJC 3(A)(3); severe attitude toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, all of which tended to prevent the proper presentation of the cause and the ascertainment of truth, contrary to MCR 9.202(B)(2) and MCJC 3(A)(12); failure to be faithful to the law and failure to maintain professional competence in the law with persistent incompetence in the performance of judicial duties, contrary to MCR 9.202(B)(1)(a), MCR 9.202(B)(2), MCJC 2(A) and MCJC 3(A)(1); being irresponsible and improper and eroding public confidence in the judiciary, contrary to MCR 9.202(B)(2) and MCJC 2(A); corroding confidence in the integrity and impartiality of the judiciary, contrary to MCR 9.202(B)(2) and MCJC 2(B); engaging in misconduct in office and persistent failure to perform judicial duties, contrary to Michigan Constitution Article 6, Section 30(2); failing to diligently discharge administrative responsibilities and facilitate the performance of the administrative responsibilities of other judges and court officials, contrary to MCR 9.202(B)(2) and MCJC 3(B)(1); recording courtroom proceedings in violation of Canon3(A)(11); and making intentional misrepresentations or misleading statements to the Judicial Tenure Commission, contrary to MCR 9.202(B) and MCR 9.230(B)(2).

Therefore, on September 23, 2022, the Commission filed its Decision unanimously recommending that this Court remove Respondent from the office of judge of the 36th District Court with a conditional six-year suspension on the basis of her misconduct.

WHEREFORE, for the foregoing reasons, and based on the supporting facts and argument in the accompanying reply brief and in the Commission's September 23, 2022 Decision, the Commission asks that this Court reject Respondent's Petition, and accept in full the Commission's recommendation of removal with a conditional six-year suspension.

DYKEMA GOSSETT PLLC

Dated: November 10, 2022

By: /s/ *William B. Murphy*

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JURISDICTION

At all material times Hon. Kahlilia Y. Davis ("Respondent") was a judge of the 36th District Court in Wayne County, Michigan, subject to all the duties and responsibilities imposed on her by this Court, the canons of the Michigan Code of Judicial Conduct ("MCJC" and the "Canons"), and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.202. Pursuant to Article 6, § 30 of the Michigan Constitution of 1963, as amended, and MCR 9.202(B)(2) and MCR 9.211, the Judicial Tenure Commission (the "Commission" or "JTC") had and has jurisdiction over Respondent's conduct. This Court has authority to act upon the recommendation of the Commission. Const 1963, Art 6, §30; MCR 9.251 through 9.253; *In re Chrzanowski*, 465 Mich 468, 483-86; 636 NW2d 758 (2001); *In re Del Rio*, 400 Mich 665, 682-84; 256 NW2d 727 (1977); *In re Mikesell*, 396 Mich 517, 527-531; 243 NW2d 86 (1976); *In re Morrow*, 508 Mich 490, 503 & n3; 976 NW2d 644 (2022).

STANDARD OF PROOF

The standard of proof in judicial disciplinary proceedings is the preponderance of the evidence. *In re Haley,* 476 Mich 180, 189; 720 NW2d 246 (2006); *In re Morrow,* 496 Mich 291, 298; 854 NW2d 89 (2014); Const 1963, Art 6, §30(2); MCR 9.233(A).

STANDARD OF REVIEW

This Court reviews the Commission's, not the Master's, findings of fact and recommendation de novo.[1] *In re Jenkins,* 437 Mich 15, 18; 465 NW2d 317 (1991); *In re*

[1] As set forth later in this Reply, Respondent prefers the Master's Report over the Commission's Decision. *See* Pet pp 8, 41, 43. As fully detailed in the Decision and below, the Commission's findings were based upon its de novo review of the record as a whole, including evidence not considered or misconstrued by the Master. Decision pp

Hathaway, 464 Mich 672, 684; 630 NW2d 850 (2001). "Although [this Court] review[s] the JTC's recommendations de novo, this Court generally will defer to the JTC's recommendations when they are adequately supported." *In re Haley,* 476 Mich at 189.

COUNTER-STATEMENT OF PROCEEDINGS

On March 16, 2020, the Judicial Tenure Commission (the "JTC" or the "Commission") filed Formal Complaint (the "Original FC") 101.[2] The Original FC charged Respondent with three counts of misconduct. On March 23, 2022, the Commission filed an amended FC. On April 29, 2022, this Court appointed Hon. Cynthia Diane Stephens as the master (the "Master"). On May 24, 2022, the Commission filed a motion to again amend the complaint with the proposed second amended FC, which the Master granted on June 17, 2022 (as amended, the "FC"). On June 24, 2022, Respondent filed her answer to the FC ("Answer," cited as "R's Ans").

Public hearings were conducted in person on July 7, 8, 11, 13, and 15, 2022 (collectively, the "Hearing"). Closing arguments were conducted by Zoom on July 19, 2022. The parties filed Proposed Findings of Fact and Conclusions of Law and

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18, 24-29, 33-35. The Commission "may, but need not, defer to the master's findings of fact." Decision p 17, citing *In re Chrzanowski*, 465 Mich at 482. It is the Commission's, not the Master's, findings of fact and recommendations that this Court reviews de novo.

[2] Respondent refers to the "five year" combined investigation and proceedings culminating in the Commission's Decision. *E.g.*, Pet p 46, 51. Yet, Respondent concedes that several of her filings, such as motions for protective orders regarding responding to investigation questions and various extensions contributed to this passage of time. Indeed, at the September 12, 2022 hearing on the parties' objections to the Master's Report, Respondent's counsel thanked the Commission for being "very good in providing us with necessary time because it was very difficult to get all this done within a certain period of time," but "everything was done, and the Tenure Commission made it possible because, otherwise, we could never have had this happen." Oral Argument TR 9/12/22 p 31/8-19.

responses. On August 1, 2022, the Master issued a report containing her findings of fact and conclusions of law (the "Master's Report", cited as "MR"). On September 12, 2022, the Commission held an in-person public hearing on the parties' objections to the Master's Report pursuant to MCR 9.241. The Commission filed its Decision pursuant to MCR 9.244 on September 23, 2022. Respondent filed her Petition on October 21, 2022. The Commission hereby replies.

COUNTER-STATEMENT OF ISSUES PRESENTED

1. Was the Commission's finding that Respondent committed the misconduct charged in Counts I through VI of the FC that the Master found and that Respondent conceded adequately supported by a preponderance of the evidence that Respondent admittedly: (a) abused her contempt power in case number 17-321869 LT (*Sanders v Nicole Thomas*) (Count I); (b) defied Chief Judge Blount's order which forbade dismissal of cases solely due to Mr. Bell being the court officer who made service of process and failed to reinstate the cases she dismissed or adjourned due to Mr. Bell's involvement (Count II); (c) intentionally failed to adhere to the court policy of finding coverage for her docket on the December 2018 days she requested leave and failed to comply with the departure, arrival and communication provisions of her Performance Improvement Plan (PIP) (Count III); (d) knowingly failed to make an official record of proceedings in her court without an adequate legal excuse (Count IV); (e) improperly recorded courtroom proceedings on her personal cellular phone (Count V); and (f) improperly parked her vehicle in a handicap loading and unloading zone in front of a LA Fitness gym while falsely displaying a police placard (Count VI)?

The Commission answers: Yes.

Respondent answers: Yes.

This Court should answer: Yes.

2. Was the Commission's finding that Respondent committed additional misconduct charged in Counts I, III, IV, and V of the FC that the Master did not find supported by a preponderance of the evidence that Respondent also: (a) abused her contempt power as to Ms. Eck in case number case 307300LT (*Detroit Real Estate v Sharon Hayes*) (Count I); (b) committed misconduct with her discourteous, threatening, and unprofessional email correspondence to Chief

Judge Blount, retired Judge Paruk, and others (Count III); (c) not only admittedly failed to make a formal record of proceedings in courtroom 340, but also *intentionally disabled* the video equipment in courtroom 340 (Count IV); and (d) not only admittedly recorded courtroom proceedings on her personal cellular phone, but also *published* such proceedings to Facebook Live in at least once instance (Count V)?

The Commission answers: Yes.

Respondent answers: No.

This Court should answer: Yes.

3. Was the Commission's finding that Respondent committed misconduct charged in Count VII of the FC adequately supported by a preponderance of the evidence that Respondent made intentionally false statements under oath in denying that she intentionally disabled the video equipment in courtroom 340?

The Commission answers: Yes.

Respondent answers: No.

This Court should answer: Yes.

4. After finding judicial misconduct charged in Counts I through VII, most of which Respondent admitted, and for purposes of fashioning a recommendation for discipline, was the Commission permitted to consider the Court of Claims' and Court of Appeals' findings that Respondent admittedly "executed an affidavit of identity (AOI) containing a false statement"?

The Commission answers: Yes.

Respondent answers: No.

This Court should answer: Yes.

5. Is the Commission's disciplinary recommendation of removal with a conditional six-year suspension reasonably proportionate to the conduct of the Respondent, including but not limited to her false testimony and answers under oath, and reasonably equivalent to the action that has been taken previously in equivalent cases?

The Commission answers:	Yes.
Respondent answers:	No.
This Court should answer:	Yes.

INTRODUCTION

Respondent admits that, despite serving less than one third of the normal time as a judge from January 2017 through June 2020, Pet pp 38-39, she committed judicial misconduct in six different ways during her abbreviated judgeship supporting the Master's unopposed findings of misconduct under Counts I, II, III, IV, V and IV of the FC. This admitted misconduct consisted of on the bench misconduct that prejudiced the actual administration of justice when Respondent abused her contempt power when she improperly jailed someone, routinely dismissed plaintiffs' eviction cases based solely on the process server they utilized in an admitted affront to then-Chief Judge Blount's order forbidding her from doing so, and knowingly conducted proceedings with *no record*. Other admitted misconduct included refusing to comply with a Performance Improvement Plan (PIP) instituted by court administration, improperly recording some court proceedings with her personal cell phone and parking in a handicap loading and unloading zone while falsely displaying a police placard in her vehicle, resulting in a disabled person having to call the police to complain because she could not access her driver's side door.

These are just the *admitted* acts of judicial misconduct. Respondent entirely glosses over these in her Petition, relegating to a footnote her understated acknowledgement that "there were some mistakes that Respondent made that were inappropriate." Pet p 37 & n3. Respondent's arguments in her Petition must be viewed under this lens of extensive admitted misconduct which she hardly addresses. Yet, according to her Petition, Respondent is the real "victim." Pet p 47. She is the victim of the Commission's supposedly onerous investigation questions in May and June 2020.

She is the victim of former Chief Judge Nancy Blount requiring her to use video equipment when Respondent really preferred a court reporter. She is the victim of the assignment of her courtroom being too far down the hall. She did not receive proper training after missing the regular training due to medical issues.[3]

But Respondent fails to explain in her Petition how these excuses, even if accepted at face value (without evidence), are justifications for the judicial misconduct which Respondent does not contest. They are not. Judge Blount was not sitting next to her directing her to abuse her contempt powers. Judge Blount did not write her emails for her. Judge Blount did not cause her to violate the PIP. Judge Blount did not dismiss her eviction cases whenever Myran Bell was the process servicer or direct Respondent to violate Judge Blount's own order to stop that unlawful practice. The Commission did not issue the May and June 2020 investigation questions that Respondent complains about until after her admitted misconduct was complete. In short, the majority of Respondent's Petition advances distracting non sequiturs which do not bear upon the judicial misconduct that Respondent admits she committed.

[3] Contrary to Respondent's unsupported insinuation, Pet p vi, Statement of Questions Involved # 3, neither the FC nor the Commission has sought to hold Respondent "liable for being sick," and none of the misconduct charged or found was based on any medical issues of Respondent. In fact, the Master credited her position regarding her medical issues and deemed them a valid reason for certain days she was not able to work. The only tangentially related issue under Count III is that she still needed to communicate with her colleagues and administrators regarding medical absences and arrange for coverage when possible under court policy. At the September 12, 2022 oral argument, Respondent's counsel made the unsolicited acknowledgment that the "Commission has been very good about recognizing the fact that she did have, in fact, medical problems and that did, in fact, make it difficult and in some cases impossible for her to appear in court because she had to be hospitalized in certain cases and other things." Oral Argument TR 9/12/22 p 29/16-22.

Respondent's only real disagreement with the Commission's Decision is where the Commission found additional misconduct under Counts I, III, IV, V and VII that the Master did not find. Respondent implores this Court to defer to and reinstate the Master's findings. But under well-settled precedent this Court reviews de novo the Commission's – not the Master's – findings of fact and conclusions of law. The Commission was permitted, but not required, to defer to the Master's findings of fact, including as to credibility determinations. The Commission set forth in detail in the Decision its reasoning for making findings different from the Master in certain respects based upon the record evidence. The Commission's Decision provided citations to this record evidence, and the Commission's findings in these regards were amply supported by a preponderance of the evidence, warranting adoption by this Court. And where, as here, the Commission's recommendation for discipline is adequately supported, this Court generally defers to the Commission notwithstanding its de novo review. *In re Haley*, 476 Mich at 189.

FACTS AND PROCEDURAL HISTORY

The Commission objects to Respondent's "Statement of "Facts." It is nearly 5.5 pages of argument without citation to the record. The Commission set forth a detailed statement of facts and the procedural history with citations to the record in its September 23, 2022 Decision, Decision pp 6-16, 17-35, which is fully incorporated herein and which the Commission will not repeat, except to reiterate certain evidence in the below Argument section as necessary to address Respondent's arguments.

ARGUMENT

I. Respondent Admits Her Judicial Misconduct On Six Separate Counts.

The Master issued her Report on August 1, 2022. Although the Master did not find that Respondent committed all of the misconduct charged in the FC, the Master concluded that Respondent committed all or portions of the misconduct charged in Counts I through VI of the FC. This included the Master's finding that Respondent: (a) abused her contempt power in case number 17-321869 LT (*Sanders v Nicole Thomas*) (Count I); (b) defied Chief Judge Blount's order which forbade dismissal of cases solely due to Mr. Bell being the court officer who made service of process and failed to reinstate the cases she dismissed or adjourned due to Mr. Bell's involvement (Count II); (c) intentionally failed to adhere to the court policy of finding coverage for her docket on the December 2018 days she requested leave and failed to comply with the departure, arrival and communication provisions of her Performance Improvement Plan (PIP) (Count III); (d) knowingly failed to make an official record of proceedings without an adequate legal excuse (Count IV); (e) improperly recorded courtroom proceedings on her personal cellular phone (Count V); and (f) improperly parked her vehicle in a handicap loading and unloading zone in front of a LA Fitness gym while falsely displaying a police placard (Count VI).

On August 15, 2022, Respondent filed a 32-page brief entitled, "Brief in Support and Opposition of Report of Master." On August 22, 2022, Respondent filed her Reply. As noted in the Decision, Respondent's briefs were not clear as to what if anything from the Master's Report she was challenging. Respondent's counsel confirmed at the September 12, 2022 oral argument on the parties' positions regarding the Master's

Report that Respondent does not object to *any of the Master's findings of misconduct in any substantive or material way*. Decision p 7 (emphasis added).

Specifically, because Respondent's August 15 and 22, 2022 briefs regarding the Master's Report stated they were "in Support and Opposition of" the Master's Report, but nothing in those briefs identified what specifically about the Master's Report that Respondent opposed, the Commission asked Respondent's counsel about this issue at the September 12, 2022 hearing. The Chief Commissioner asked Respondent's counsel: "And during your presentation you indicated that you essentially agreed with the master's report except for one or two findings. During your oral presentation I haven't heard you challenge findings. Without getting into the reasons for those challenges, what are the one or two findings of the master that you disagree with?" Oral Argument TR 9/12/22 p 58/10-16; *see also id* at p 38/11-12 (where Respondent's counsel generally referred to "one or two parts of what [the Master] did that I didn't agree with"). To respond, counsel asked for and received several moments and a lengthy pause to review his notes and other written materials. After consulting his notes, counsel confirmed that "***it was not significant enough that it makes a difference. Let me put it that way***." Oral Argument TR 9/12/22 p 58/20-22[4] (emphasis added).

In her Petition, Respondent pays almost no mind to her admitted six counts of judicial misconduct over a very short span of judicial performance, stating only that she "made some mistakes" that were "inappropriate." Pet p 37 & n1. Respondent's admitted misconduct was objectively more serious than that. As the Commission

[4] *See also* https://www.youtube.com/watch?v=tcLdy15hyZc at 1:31:22 to 1:32:28.

detailed in its *Brown* analysis, much of Respondent's uncontested misconduct was committed on the bench and actually prejudiced the administration of justice in myriad ways, such as by unlawfully jailing and fining litigants, dismissing or adjourning cases without basis, making no records of cases, thereby preventing or severely hampering appellate rights, and improperly recording some proceedings on her personal cell phone. Decision pp 37-46. She also defied the PIP, falsely portrayed herself as a member of the police force to gain undue advantages in the public, and sought preferential treatment in public due to being a judge to the detriment of at least one disabled citizen who found her driver's side door inaccessible as a result of Respondent's illegal parking. *Id*.

Yet, Respondent incredibly argues that, had she "not been subject to Judge Blount's actions, Respondent would not have been a respondent facing the JTC." Pet p 47. There is no way to reconcile this argument with her admissions of misconduct. None of Respondent's arguments in her Petition have any bearing upon and should not distract from these six counts of admitted judicial misconduct.

II. <u>The Commission's Findings Of Additional Charged Misconduct Were Supported By A Preponderance of the Evidence</u>.

A. Respondent Committed Additional Misconduct Charged In Counts I, III, IV, and V And Lied Under Oath Under Count VII.

i. <u>Respondent abused her contempt power as to Ms. Eck under Count I</u>.

The Master found and Respondent agreed that Respondent committed misconduct by abusing her contempt power in one of the cases alleged in Count I of the FC but not the other case. The Commission detailed the evidence upon which it based

its additional finding of misconduct in Count I that Respondent also abused her contempt power as to Ms. Eck in case number 307300LT, *Detroit Real Estate v Sharon Hayes*, at pages 19 to 21 of the Decision. Contrary to Respondent's contention, the Commission did not "rule[] against the Master" in this regard. Pet p 8. Rather, the Commission found, as it is permitted to do, that the record established by a preponderance of the evidence that Respondent committed this misconduct, notwithstanding the Master's different finding.

Importantly, although the conclusions differed, many of the factual findings did not. The Master found, Respondent concedes, and the Commission agrees that Respondent's order of $3,500 in punitive damages and fines *was not lawful*. Decision p 19; MR 7-8. Respondent argues that the plaintiff's underlying conduct in that case was improper and, therefore, any legal errors in the contempt proceedings are forgivable and should not constitute misconduct. Pet pp 7-8. But, as the record demonstrates and the Commission explained, this premise is flawed. The Master incorrectly interpreted the evidence to be that plaintiff's attorney admitted that she had *previously* counseled Ms. Eck to cease the practice of prematurely posting eviction notices, which could be evidence (albeit tenuous) of prior contempt. Decision p 20, citing MR 2, 7. But the record shows that counsel's actual statement at the eviction hearing was only that she *was going to* advise her client to cease posting eviction notices prior to the court actually signing the writ. Decision p 20, citing DC Ex 6 at p 12. Thus, not only was the damages award admittedly erroneous, there was no order that was violated or any other basis on which to find contempt without due process. Nevertheless, Respondent

aggressively told Ms. Eck that her conduct was "fraudulent" and "disgusting" and threatened her with imminent jail if she did not write checks to the defendant and the court. The Commission concluded that "lack of training" was not a viable excuse for such aggressive and erroneous treatment of a contempt proceeding which, by nature, requires caution. Decision p 21.

Thus, this Court should adopt as supported by a preponderance of the evidence the Commission's conclusion that Respondent's treatment of Mr. Eck, unfounded and prejudged finding of contempt without due process, and legally impermissible punitive damages award 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; and 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.

ii. Respondent committed misconduct with her discourteous, threatening, and unprofessional email correspondence to Chief Judge Blount, retired Judge Paruk, and others under Count III.

Respondent admits the Master's finding of misconduct as to Count III that she intentionally failed to find coverage for missed days of work around Christmas time in December 2018 in violation of court policy and she failed to comply with the PIP. Respondent also admits the content and her authorship of the subject emails to former Chief Judge Blount, former Judge Paruk, and court administrator Ms. Moore. The only remaining issue under these undisputed facts was whether these emails constituted misconduct. The Master concluded they did not; the Commission disagreed and

concluded they did. Contrary to Respondent's attempt to downplay her misconduct, her disrespectful and threatening emails do not merely "involve[] Bible verses." Pet p 10.

Like the Master's Report, Respondent's Petition avoids using the actual words that Respondent wrote in her emails. The Commission will not repeat them all here, *see* Decision pp 22-23, but Respondent indirectly called the judges and administrators racist, "wicked," "cowardly," "vile," "murderers," "sexually immoral," and "liars" who "practice magic arts" and who should be "thrown into the fire, into miry pits, never to rise" and should be "consigned to the fiery lake of burning sulfur." This is not normal or acceptable behavior of a judge.

Incredibly, Respondent's justification for her emails is that she "was merely exercising her First Amendment rights, not only for freedom of speech, but also for freedom of religion," and she "never sought to make harmful statements against anyone" whereas "[a]ll she was doing was to quote verses from the Bible as a means of letting the 36th District Court know that she was in the courthouse." Pet p 11. None of this makes sense. Her First Amendment Rights do not insulate her from judicial discipline when she fails to treat her Chief Judge and her Regional and Court Administrators with dignity, courtesy and respect, in violation of MCR 9.202(B) (persistent failure to treat persons fairly and courteously) and Canons 3(A)(3) and 3(A)(14). And her purported decision to quote these verses "as a means of letting the 36th District Court know that she was in the courthouse," Pet p 11, serves only to underscore her obstinance and maliciousness. If she was truly cooperating with the PIP, she would simply indicate that she had arrived at work.

iii. Respondent intentionally disabled the video equipment in courtroom 340 under Count IV, and then lied about it under oath under Count VII.

Count IV alleges that Respondent knowingly failed to ensure that proceedings over which she presided in January and February 2019 were recorded, including that Respondent deliberately disabled the video equipment in courtroom 340. Respondent does not dispute that she knowingly failed to make such official records of proceedings, which is an independent ground of misconduct that the Master found, Respondent conceded, and the Commission adopted, but Respondent denies having physically disabled the video equipment. The Commission's findings supporting its conclusion that Respondent committed misconduct under Count IV by intentionally disabling the video equipment in courtroom 340 (and therefore lied about it by repeatedly denying it under oath in these proceedings under Count VII) is set forth at pages 24 to 29 of the Decision.

The court's I.T. staff came to Respondent's courtroom on January 22, 2019 – the first day Respondent presided over the business license docket in that courtroom – to ensure that her video equipment was set up properly. Hearing Tr 7/8/22, p 205/4-6. Respondent has not contested this fact, nor has she presented any explanation for how the video equipment suddenly became disabled or unworking or unavailable to her immediately thereafter. Respondent was not happy to be in courtroom 340. It was a change from her prior courtroom when Respondent was involuntarily reassigned to the business license docket, and it was too far down the hall. Pet p 45. Ms. Drew testified that on this day, January 22, 2019, 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" and saying: "They're not recording me. I don't trust them." Ms. Drew understood "them" to mean court administration. Hearing Tr 7/8/22, pp 204/10-19, 205/1-3. On the same day, Ms. Hairston also saw Respondent "pulling the cords off . . . messing around with them." Hearing Tr 7/8/22, p 240/19-22. Both witnesses testified as to their vantage points and ability to see what Respondent was doing. *E.g.*, Hearing Tr 7/8/22, pp 219/21-25, 258/12-17.

Ms. Drew has worked at the 36th District Court for twenty-three years and was Respondent's courtroom clerk from 2017 to 2019. Hearing Tr 7/8/22, p 199/6-7 & 14-23. Morgan Hairston worked as a court officer at the 36th District Court from October 2018 through March 2019, and was assigned to Respondent's courtroom at the beginning of 2019. Hearing Tr 7/8/22, p 238/2-7 & 14-23. These two court employees – Dionne Drew and Morgan Hairston – both testified that they saw Respondent disconnect her courtroom's video recording equipment. Hearing 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. Yet, Respondent says they "were the ones who made misrepresentations as to the video recording equipment, not [Respondent]." Pet p 43. The Master found that these witnesses on this issue "were credible in their testimony they saw the respondent move and unplug cords," MR 20, which the Commission adopted, but that they may not have seen what they thought they saw, with which the Commission respectfully disagreed based upon the record evidence. Decision p 25.

Further, Shannon Walker testified. She is, and was in 2019, a Supervising Assistant Corporation Counsel with the City of Detroit Law Department. Hearing Tr 7/8/22, p 266/25-267/2. Former attorney and now now-Judge Elisabeth Mullins (currently a judge for the 28th District Court) was Assistant Corporation Counsel for the City of Detroit Law Department. Judge Mullins raised the issue with Ms. Walker that proceedings in Respondent's courtroom were not being recorded. Hearing 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." When Ms. Walker 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." Hearing Tr 7/8/22, p 268/14-24. The Master did not address this testimony, including Respondent's admission to Ms. Walker that Respondent disabled the video equipment. *See* MR 20.

Based on this evidence, the Commission concluded that not only had Respondent intentionally disabled the video equipment, but she repeatedly falsely denied under oath that she disconnected the video recording equipment,[5] including in her answers to requests for comments, DC Exs 130A, answer 14a, in her answer to the FC, Answer ¶ 170, and at the Hearing. 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

[5] Respondent asserts that her false denial of intentionally disabling the courtroom video equipment was "a basis [by the Commission] for establishing a preponderance of the evidence [for] *all of the claims of misrepresentations set forth in Count VII*" of the FC. Pet p 44 (emphasis added). This is blatantly wrong. The Commission expressly adopted the Master's finding that no other misrepresentations alleged in Count VII of

record of court proceedings. DC Ex 130A, answers 16b, 17b, 18, 19, 20b, 21b, 22b. Respondent also 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. FC ¶ 250, DC Ex 131A, answer 17. At no time did Respondent deny Ms. Walker's assertion at the Hearing. The FC 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. FC ¶246; DC Exs 130A, answer 26; 131A, answer 6.

In short, the Commission did not find Respondent's denials credible when stacked against the other witnesses' testimony and evidence. In her Petition, Respondent simply quibbles with (or ignores) the evidence and implores this Court to defer – not to the Commission's more than adequately supported findings – but to the Master's findings. Pet pp 41, 43. She wanted the Commission to believe her rather than the other witnesses and evidence. But, again, as Respondent must concede, the Commission had no obligation to defer to the Master's findings. Pet p 27.

Respondent contends that the Master was in a better position to assess the witnesses' credibility in person. Pet pp 41, 43. While this might be a generally true statement in the abstract, Respondent ignores that the bases for the Commission's disagreements with the Master were not related to observing the witnesses in person. As the Commission explained in detail in the Decision and as partly set forth above, the Master on more than one occasion specifically found a witness who gave testimony

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the FC were established by a preponderance of the evidence. Decision pp 32-33.

contrary to Respondent's testimony *to be credible*, but then proceeded to discount the testimony on other grounds that were infirm, such as the passage of time when the testimony regarded contemporaneous utterances, or failed to account for or misconstrued corroborating testimony or evidence.

Thus, the Commission's finding that Respondent repeatedly lied under oath in denying that she intentionally disabled the video equipment in courtroom 340 is not "floccinaucinihilipilification," as Respondent contends in her Petition at page 44, it is amply supported by well more than a preponderance of the evidence, including the testimony of multiple witnesses who have no motive to lie or hurt Respondent (and who the Master explicitly deemed credible in general, as did the Commission), and the circumstances surrounding Respondent's disgruntlement over being assigned to courtroom 340 without a court reporter.

iv. Respondent published court proceedings to Facebook Live under Count V.

There is no dispute that Respondent committed misconduct under Count V of the FC by recording court proceedings on her personal cell phone. Respondent only denied ever publishing any such proceeding she recorded with her cell phone to Facebook Live. Ms. Walker testified that she had been Facebook friends with Respondent "for a while" as of 2019. Hearing Tr 7/8/22, p 270/17-22. Ms. Walker testified that in early 2019, on more than one occasion, she viewed courtroom proceedings on Facebook that showed Respondent presiding. The Master considered Ms. Walker to be the only witness on the issue, but rejected Ms. Walker's testimony, stating that "while no doubt [Ms. Walker] earnestly recounted," the Master did not trust Ms. Walker's memory three years after

the fact. MR 23. The Commission disagreed. Decision p 30. The testimony was that Ms. Walker *contemporaneously* told Judge Mullins about the publication, not simply that Ms. Walker was recalling a three-year-old event. *Id*, citing Hearing Tr 7/8/22, p 271/20-23 (Ms Walker testifying that she told Judge Mullins, "I just heard your voice. I think she's putting your proceedings on Facebook Live."). The Commission concluded that disciplinary counsel met its burden to establish publishing, which was an additional violation of Canon 3(A)(11).

B. Former Chief Judge Blount Is Not Respondent's Scapegoat.

Notwithstanding her admission of six counts of misconduct and the record evidence establishing additional misconduct, Respondent asserts, in a brand new argument never before asserted below and unsupported by any record evidence, that all of her woes disappeared as soon as former Chief Judge Nancy Blount was succeeded by Chief Judge William C. McConico at the beginning of 2020, at which point Respondent purportedly "no longer had any difficulties." Pet pp 38-40. Judge McConico was not called as a witness at the Hearing. Respondent did not mention him in her 32-page "Brief in Support and Opposition of Report of Master" dated August 15, 2022. Respondent did not mention him in her 35-page Reply for same dated August 22, 2022. Respondent's counsel did not mention him at the September 12, 2022 oral argument. Respondent has not asked to reopen the Hearing or expand the record to provide testimony of Judge McConico or otherwise develop this new argument. *See In re Iddings*, 500 Mich 1026, 1026; 897 NW2d 169 (2017) (noting that respondent had "filed

a motion to expand the record on May 12, 2017," and this Court later "entered an order under seal granting the motion to expand the record").

There are a total of three passing references to Judge McConico over the course of the entire Hearing, none of which were by Respondent or her counsel or regard Respondent's current argument. Judge Blount testified on the first day of the Hearing that she personally used the video recording equipment at the 36th District Court when Judge McConico assigned to her the cases that Respondent "used to do" in early 2020. Hearing Tr 7/7/22 p 76/2-8. Then, on the fifth day of the Hearing, the Master twice referenced Chief Judge McConico as a witness the Master hoped to hear from to testify regarding the layout of courtroom 340, Hearing Tr 7/15/22 p 460/2-22, which did not happen. That is it. There is nothing in the record about how everything changed and Respondent enjoyed a flourishing judicial tenure under Chief Judge McConico's stewardship, or anything of the sort.

Respondent's argument overlooks that it was not only former Chief Judge Blount who had issues with Respondent's misconduct. Former judge and Regional Court Administrator retired Judge Paul Paruk and Ms. Moore (36th District Court Administrator) likewise had issues with Respondent's misconduct, including that they were targets of some of Respondent's menacing emails with biblical passages and Judge Paruk was assigned to implement the PIP that Respondent defied, as charged in Count III. Decision pp 11-12, 22-23; *see also* Pet pp 10-11. Respondent's new argument also requires an unsubstantiated inference by this Court that Respondent did not really commit any misconduct; rather, it was all manufactured by Judge Blount. *See*

Pet p 47 (had she "not been subject to Judge Blount's actions, Respondent would not have been a respondent facing the JTC."). There is no record or support for this new argument or inference. Thus, this argument should be rejected.

In any event, it is unclear what Respondent seeks to achieve by blaming former Chief Judge Blount and the supposed "disparate treatment" she received from her. Pet p 45. Respondent still must contend with the six counts of misconduct *she admits*. And the additional misconduct found by the Commission did not involve Judge Blount. As discussed above in the Introduction section, Judge Blount did not make Respondent act the way she did. The only thing Respondent identifies is that she did not receive a court reporter despite her preference. That is no excuse. Her recourse was to accept her superior's decision and to use the courtroom's video equipment that was set up by staff and provided for her to make the required official record of proceedings. She was not at liberty to defy the decision, pout, unplug the cords, seek no assistance from anyone, and simply conduct proceedings without making a formal record because she did not get her way.

C. The Perceived Inconvenience Of Responding To The Commission's Investigation (While Being Paid Not to Work) Is No Excuse For Judicial Misconduct.

Respondent generally complains that the Commission's investigation was too exhaustive and onerous because it included multiple rounds of what she considered too many questions and voluminous materials. Pet pp 1-2. Respondent fails to explain what the point of this argument is, other than merely to complain. She does not contend that the scope of the investigation is a legal justification for committing judicial misconduct. She does not contend that any of her answers were mistaken or

the product of haste or that she did not have sufficient time to complete them or that she wishes to amend any of them as a result of the breadth of the investigation and/or time constraints. *See supra*, n2. As far as the Commission can surmise, Respondent asserts her complaints only in the hope that this Court will imply without proof some sort of animus by the Commission against her, such as considering her a "pariah," Pet p 5, which does not exist.

Moreover, Respondent fails to connect highly pertinent dots of the various timelines she provides to the Court. On the one hand, Respondent complains about supposedly voluminous investigation requests of "May 28, 2020" and "June 17, 2020," Pet pp 1-2, 4-5, but on the other hand, Respondent concedes that she has been suspended from her judicial position *with pay* since "June 17, 2020." Pet p 39. Respondent admits that she sought a protective order on these requests, which was not denied until the Commission's July 22, 2020 order, Pet p 5, under which she was given additional time to answer the questions. In other words, by the time Respondent actually responded to these requests she could have made it her full time job to respond to the vast majority of them because she was being paid not to work as a judge while the questions were pending. In fact, the *only* requests predating May 28, 2020 that Respondent specifically identifies in her Petition are the "23 paragraphs" of requests dated April 7, 2017. This can hardly be considered overly burdensome or onerous. The Commission is authorized to investigate judicial misconduct, and judges are obligated to cooperate. *See* MCR 9.220; MCR 9.221(B); MCR 9.221(E).

This entire argument about being inconvenienced by the Commission's investigators is indicative of Respondent's overall attitude that she cannot be bothered to fulfill her obligations or heed authority, just like when she ignored Judge Blount's order not to dismiss cases involving Mr. Bell and defied the PIP. This argument is a distraction aimed at attributing ill motives without evidence to the Commission, former Chief Judge Blount, and anyone else having the gall to hold Respondent accountable for her actions. None of it presents an excuse to the six counts of judicial misconduct that Respondent admits or the additional misconduct that the Commission found by a preponderance of the evidence.

III. Disciplinary Analysis - The *Brown* and Other Factors.

The Commission set forth its complete disciplinary analysis, including its analysis of the factors under *In re Brown*, 461 Mich 1291, 1292-1293; 625 NW2d 744 (1999), and other factors this Court routinely considers under its precedent, at pages 36 to 44 of the Decision. The Commission need not repeat its analysis or address every factor again here.

Indeed, even limiting the analysis to the specific misconduct found by the Master under Counts I through VI that Respondent ***admits*** (let alone the additional misconduct the Commission found), Respondent cannot and does not deny that such admitted misconduct is more serious because: it was on the bench (*Brown* factor #2); it not only implicated but indeed prejudiced the actual administration of justice (*Brown* factor #s 3 and 4); it was deliberate, not spontaneous (*Brown* factor #5); and it undermined the ability of the justice system to discover the truth of what occurred in

cases pending before her and to reach the most just result in those cases. (*Brown* factor #6).[6] Decision pp 37-41.

Respondent selectively takes aim at only a couple of the factors. Under *Brown* factor # 1 regarding a "pattern or practice" of misconduct, Respondent opposes judicial notice of her false statement in her Affidavit of Identity. She also contends that the Commission should not have considered the effect that her misconduct has had upon the integrity of and respect for the judiciary because it was improper to reference news media stories. *See* Pet pp 31-32; Decision pp 4 n1, 37, 41-44. Respondent is wrong. The Commission correctly and properly analyzed all of the relevant factors and determined that the proportionate discipline to recommend to this Court is removal with a conditional six-year suspension.

A. *Brown* Factor #1 Supports Consideration of the AOI.

The first *Brown* factor provides that misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct. Respondent contends that the Commission committed a "*faux pas*" in considering her admitted false statement in her Affidavit of Identity. Pet p 33. She is wrong for at least two reasons, including that (1) other acts of uncharged misconduct are properly considered in determining *an appropriate sanction* (as opposed to an underlying finding of misconduct) under the first *Brown* factor; and (2) Respondent's admitted false statement in her Affidavit of Identity is both an admission of a party opponent, *see*

[6] As set forth in the Decision, there is no evidence that Respondent' misconduct was based on any consideration of class of citizenship and, thus, *Brown* factor # 7 is not at issue in this case. Decision p 41.

MRE 801(d)(2), as well as a judicially noticeable fact found by the Court of Claims and the Court of Appeals under MRE 201.

As the Commission set forth in the Decision, the Commission considered Respondent's sworn false statement in the AOI ***only*** as a consideration in fashioning its recommendation for discipline, and not for any of the underlying findings of misconduct in Counts I through VII of the FC. Decision p 4 n1, citing *In re Moore*, 464 Mich 98, 117 & n16; 626 NW2d 374 (2001), and *In re Morrow*, 508 Mich at 504 n4 (citing *Moore*). Respondent's unsupportable contention that the Commission actually did consider the AOI *to find misconduct* as well as her attempt to distinguish the *Moore* and *Morrow* cases are unavailing.

In *In re Moore*, 464 Mich 98 (2001), the Commission recommended that Judge Moore be suspended for nine months without pay, and explained that this recommendation was based on the *collective acts* of Judge Moore *throughout his judicial career*, noting that he had received *two admonitions and a public censure*. *Id* at 117. It was proper for the Commission, while limiting its findings of misconduct to the allegations of the complaint, to consider other "behavior in its sanction determination," as such "behavior is relevant." *Id* n16. The Commission's finding with respect to *Brown* factor number 1 (not the underlying finding of misconduct) was:

> Respondent's misconduct is not an isolated instance. It represents a pattern of misconduct continuing throughout Respondent's career and resulting in admonitions, public censure, and repeated criticisms and reversals by reviewing courts.

Id at 119.

As in *In re Moore*, Respondent's deceitful conduct for selfish motives, such as by falsely portraying herself as a police officer to illegally park, falsely stating that she did not disable the video equipment in courtroom 340 to avoid discipline, and falsely stating that she owed no money on the AOI to seek reelection, demonstrates that her dishonest conduct is not an isolated incident. Such multiple dishonest acts warrant a determination under the first *Brown* factor that Respondent's deceitful misconduct as found by a preponderance of the evidence in Counts VI (police placard) and VII (courtroom video equipment) of the FC is more serious because it "is not an isolated instance," rather it "represents a pattern of misconduct continuing throughout Respondent's career," and even resulting in the Court of Claims' and Court of Appeals' findings that Respondent made a false statement on the sworn AOI, which Respondent admitted in those proceedings.

The *In re Moore* decision makes practical sense and is in keeping with the entire purpose of the first *Brown* factor. When determining an appropriate sanction, this Court wants to know whether the misconduct is isolated. Respondent's conspicuous approach has been to minimize her misconduct and deny any false statements relative to disabling the video equipment in courtroom 340 (contrary to the preponderance of the evidence), while asking that no one look at her *admitted* sworn false statement on the AOI which resulted in her being prohibited by law from being on the ballot. Her conduct is not viewed in a vacuum. Thus, the AOI should be considered under the first *Brown* factor, and it weighs heavily in favor of a more serious sanction.

Even aside from the *In re Moore* analysis, Respondent wholly fails to account for her own admission of the false statement of the AOI as well as judicial notice of the facts found by the Court of Claims and the Court of Appeals. Respondent conceded her false statement, which the Court of Claims and Court of Appeals each noted as a finding in their respective decisions when recounting that Respondent "executed an affidavit of identity (AOI) containing a false statement." *Davis v Sec'y of State*, unpublished per curiam opinion of the Court of Appeals decided Aug 22, 2022 (Docket No 362455) (Decision Ex A); *Davis v Sec'y of State, Court of Claims*, Case No 22-000072-MB, Opinion & Order dated June 1, 2022 (Gleicher, J) (Decision Ex B) ("Plaintiff now admits, however, that she owed fees related to the July 2017 quarterly statement at the time, making her AOI inaccurate."). The Commission was entitled, as is this Court, to take a judicial notice of this undisputed fact found by both the Court of Claims and the Court of Appeals. *See In re Ford*, 469 Mich 1251, 1253 & 1255; 674 NW2d 147 (2004) (adopting the Commission's findings, conclusions and recommendation, including that the Commission took "judicial notice that Respondent has been convicted by his no contest plea to aggravated assault in the 11th Circuit Court"); *see also* MRE 201(b) ("A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."); *In re Hall*, unpublished per curiam opinion of the Court of Appeals decided Sept 12, 2017 (Docket

No 336477) (the trial court could take judicial notice of "facts elicited from the unpublished opinion" of the Court of Appeals), citing MRE 201.

Finally, consideration of the AOI makes Respondent's lying under oath more serious because it shows a pattern, but it does not alter the result. Respondent's lies to the Commission's investigators and the Master under oath in these proceedings when she denied having intentionally disabled the video equipment in courtroom 340 independently warrant removal under this Court's long line of authority, with or without the AOI. *See In re Justin*, 490 Mich 394, 424; 809 NW2d 126 (2012) ("[w]hen a judge lies under oath, he or she has failed to internalize one of the central standards of justice and becomes unfit to sit in judgment of others."); *see also In re Brennan*, 504 Mich 80, 85 n11; 929 NW2d 290 (2019) (the Michigan Supreme Court "'has consistently imposed the most severe sanction by removing judges for testifying falsely under oath.'"), quoting *In re Adams*, 494 Mich 162, 186; 833 NW2d 897 (2013), citing *In re Ryman*, 394 Mich 637, 642-643; 232 NW2d 178 (1975); *In re Loyd*, 424 Mich 514, 516; 384 NW2d 9 (1986); *In re Ferrara*, 458 Mich 350, 372-73; 582 NW2d 817 (1998); *In re Noecker*, 472 Mich 1, 12-13; 691 NW2d 440 (2005); *In re Nettles-Nickerson*, 481 Mich 321, 322; 750 NW2d 560 (2008); *In re Justin*, 490 Mich at 396-397; *In re James*, 492 Mich 553, 568-570; 821 NW2d 144 (2012).

Respondent tries to escape the outcome of these holdings by relying on totally inapposite case. She cites *In re Servaas*, 484 Mich 634; 774 NW2d 46 (2009), and *In re Simmons*, 444 Mich 781; 513 NW2d 425 (1994), neither of which even involved any misrepresentations, as well as *In re Simpson*, 500 Mich 533; 902 NW2d 383 (2017),

where this Court determined that one of the statements by the respondent was "uncertain" rather than an intentional misrepresentation, whereas at least two other statements were proven to be false or misleading. Pet pp 48-51. Here, Respondent flatly denied doing something that she in fact did. Further, the thing she denied doing – disabling video equipment – was an independent ground for misconduct under Count IV. Her denials of this misconduct were lies based upon the testimony of multiple eye witnesses who saw her do it and were more credible, as well as the corroborating evidence that court staff set up the equipment when Respondent first took the bench with no explanation as to how the equipment became disabled under some other theory, along with Respondent's well-documented recalcitrance and dissatisfaction with her assignment to the business license docket in courtroom 340 after not getting her way with a court reporter.

This case is much more like *In re Adams*, 494 Mich at 184-185, where this Court concluded that any discipline less than removal was not adequate due to respondent's lying under oath. This Court explained its reasoning for removing respondent even though the JTC had recommended a 180-day suspension without pay: "Because we can discern no compelling reason to treat this case any differently, and because testifying falsely under oath is 'antithetical to the role of a Judge who is sworn to uphold the law and seek the truth,' *In re Ferrara*, 458 Mich at 369 (quotation marks and citation omitted), and also because respondent has not demonstrated any apparent remorse for her misconduct and continues to deny responsibility for her actions, we believe that the only proportionate sanction is to remove respondent from office." *Id* at 186-187. This

Court's analysis in *In re Adams* is apt. Not only did Respondent lie, but she continues in her Petition to show no remorse or accept responsibility for even misconduct that she previously *admitted*. Instead, according to her, she is the "victim," and it is really Judge Blount, courtroom personnel and staff, and the JTC who are to blame for her troubles. This lack of remorse coupled with the many instances and forms of misconduct and lying under oath warrant removal with a conditional six-year suspension.

B. The Commission Appropriately Considered The Effect the Misconduct Had Upon the Integrity of and Respect for the Judiciary, Including With Resort to News Stories.

Respondent admits that, "unfortunately," she was the subject of "hostile media coverage." Pet p 31. Yet, she criticizes the Commission for considering such hostile coverage (even accusing the JTC of getting "into the bed with those in the media"). Pet pp 31-32. Yet, as fully explained in the Decision, "[t]he effect the misconduct had upon the integrity of and respect for the judiciary," which includes assessing news coverage of the misconduct, *is a factor under this Court's precedent that the Commission should consider*. Decision p 43; *see also, e.g.*, *In re Frankel*, 414 Mich 1109, 323 NW2d 911 (1982); *In re Templin*, 432 Mich 1220; 436 NW2d 663, 664 (1989); *In re Thomas*, 441 Mich 1206, 1206; 494 NW2d 458 (1992); *In re Bourisseau*, 439 Mich 1230; 480 NW2d 270, 271 (1992); *In re Gilbert*, 469 Mich 1224, 1225; 668 NW2d 892 (2003). Thus, Respondent's criticism is really a criticism of this Court, which should be flatly rejected as unfounded and contrary to the Court's precedent of analyzing such media coverage as relevant to the well-settled factor of the negative affect her misconduct had upon the integrity of and respect for the judiciary.

IV. The Basis for the Level of Discipline and Proportionality.

"The most fundamental premise of the rule of law is that equivalent misconduct should be treated equivalently." *In re Brown*, 461 Mich at 1292. As set forth in the Decision and above, the settled sanction for a judge who lies under oath, as Respondent did repeatedly here, is removal. This case is fairly unique simply due to the sheer breadth and scope of additional misconduct by Respondent besides her lies over such a short tenure. The Commission views the misconduct proven in Counts I through VI taken as a whole worthy of the sanction of removal for the maintenance of the integrity of the judicial process, but removal and a conditional six-year suspension is independently warranted under established precedent due to Respondent's false statements under oath as to Count VII. *See In re Brennan*, 504 Mich 80, 85 n11; 929 NW2d 290 (2019).

CONCLUSION

For the foregoing reasons, and the reasons stated in the Commission's Decision, the Commission asks this Court to reject Respondent's Petition, and to instead accept in full the Commission's recommendation to remove Respondent with a conditional six-year suspension.

DYKEMA GOSSETT PLLC

Dated: November 10, 2022

By: /s/ *William B. Murphy*

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