

STATE OF MICHIGAN
BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

Hon. Tracy Green

Formal Complaint No. 103

Third Circuit Court

Hon. Betty R. Widgeon, Ret'd

Detroit, Michigan

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The Master's Findings of Fact and Conclusions of Law

I. ALLEGATION

Judge Green ("Respondent") has been a judge at the Wayne County Third Circuit Court since 2019. She is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.202.¹

II. STANDARD OF PROOF

Judicial discipline is a civil proceeding, the purpose of which is to maintain the integrity of the judicial process. *Matter of Mikesell*, 396 Mich 517, 527 (1976); *In re Seitz*, 441 Mich 590,

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

624 (1993); *In re Haley*, 476 Mich 180, 195 (2006). The standard of proof is the preponderance of the evidence. *Id.* at 189; MCR 9.233(A).

III. PROCEDURAL HISTORY

On November 10, 2020, the Judicial Tenure Commission filed the Complaint to initiate this matter. Respondent filed an Answer and raised Affirmative Defenses on December 30, 2020. On March 5, 2021, the Michigan Supreme Court appointed Hon. Betty R. Widgeon, retired (14A District Court), as the Master. The Master issued her first Scheduling Order on March 23, 2021. Thereafter, she issued amended scheduling orders which modified and added hearing days. A total of 12 public hearing days were held—all during 2021. The first nine hearing days were held via the ZOOM video platform with live-streaming on YouTube: May 27; June 28; July 21; August 6; August 23; September 17; September 24; September 27; October 13. Hearing days 10 and 11 were held at the Washtenaw County Trial Court, 101 E. Huron Street, Ann Arbor, MI on October 29 and November 19. The final hearing day, December 1, was held via the ZOOM video platform with live-streaming on YouTube.

The following motions were filed (all dates were in 2021):

- On March 31, Respondent filed a Motion for In-Person Proceedings. The Master denied the motion on April 2.
- On April 12, Disciplinary Counsel filed a Motion in Limine to Admit Evidence Pursuant to MRE 803(6), MRE 803(7), and 801(d)(1)(B). The Master denied the motion on April 29.
- On April 12, Disciplinary Counsel filed a Motion in Limine for a Prehearing Ruling on the Admissibility of Evidence Pursuant to MRE 803(2) and 801(d)(1)(B). The Master denied the motion on April 29.

- On May 24, Disciplinary Counsel filed a Motion to Prohibit Respondent from Communicating with all Witnesses on Disciplinary Counsel's Witness List. The Master granted the motion on May 26.
- On June 2, Disciplinary Counsel filed a Motion to Redact Respondent's Answer to the 28-Day letter. The Master denied the motion on June 26.
- On June 3, Disciplinary Counsel filed a Motion to Admit Child Protective Services Reports for Limited Purposes. The Master granted the motion on June 26.
- On June 9, Respondent filed an Emergency Motion for a Continuance. The Master granted the motion on June 10.
- On August 2, Disciplinary Counsel filed a Motion to Admit as Substantive Evidence Certain Prior Statements and Testimony of Russell Davis-Headd and Gary Davis-Headd, Jr. pursuant to MRE 803(5). On August 21 the Master denied the motion.
- On August 2, Disciplinary Counsel filed a Motion to Admit the Entirety of those prior statements for the Limited Purpose of Rebutting an Inaccurate Inference. On August 21 the Master granted the motion.
- On August 26, Disciplinary Counsel filed a Motion to Admit Evidence from Child Protective Services. On September 15 the Master denied the motion.
- On September 16, the Respondent filed a Motion to Strike the CPS Reports from Evidence. The Master denied the motion on September 22.
- On September 27, Disciplinary Counsel verbally argued a Motion to Strike One Sentence from Exhibit 11B. The Master denied the motion on October 11.
- On September 27, Disciplinary Counsel filed a Motion to Amend its Complaint to add a third count: knowingly making false statements to the commission. The Master granted the motion on October 28. On November 17, Respondent answered the Amended Complaint.
- On October 25, Respondent renewed her Motion for In-Person Proceedings as to the remainder of the hearing dates. The Master granted the motion on October 26 and held hearing days 10 and 11 at the Washtenaw County Trial Court, Ann Arbor, MI.

- On October 29, Disciplinary Counsel filed a Motion to Move Testimony from the Separate Record to the Record. The Master granted the motion on November 11.

Upon mutual agreement of Respondent and Disciplinary Counsel on November 19, the Master held the closing arguments on December 1 via the ZOOM video platform with live streaming on YouTube. On December 1, 2021, the Master directed Counsel to file proposed findings of fact, conclusions of law, and responses by January 24, 2022. By Order dated December 3, 2021, the Commission granted the Master's request to submit her report in the proceeding on or before February 28, 2022.

IV. BACKGROUND

In 2015, Respondent's son, Gary Davis-Headd ("Davis-Headd"), and his wife, Choree Bressler ("Bressler"), divorced. The Hon. Kevin Cox awarded custody of their children, Max² and Russell ("the boys"), to Davis-Headd and gave supervised visitation rights to Bressler. Judge Cox ordered that neither parent use corporal punishment on the boys. Respondent was aware of Judge Cox's order regarding corporal punishment. From April of 2015 to June 24, 2018, Max and Russell lived with Davis-Headd. Respondent saw them at least once a week. Bressler did not visit the boys. During those three years, Davis-Headd used corporal punishment on the boys multiple times. Child Protective Services ("CPS") went to the Davis-Headd household at least three times before June 24, 2018 but did not remove the boys from the home. On the morning of June 24, 2018, a neighbor reported suspected child abuse in the home. The police visited and spoke with Davis-Headd but not with the boys and left without taking any action. Shortly after

² Gary Davis-Headd, Jr. was addressed as Max during his testimony in this hearing, and he will be so identified in this document.

noon that same day, CPS workers flagged down a police car and asked the officers to accompany them to the Davis-Headd home.

Upon entry into the home, CPS investigator Leslie Apple (“Apple”) and Police Officer Melissa Adams (“Officer Adams”) spoke with the boys upstairs while other officers spoke with Davis-Headd outside the home. At that time, Max and Russell showed Apple and Officer Adams various marks on their bodies and stated that Davis-Headd had inflicted the marks. At some point that day, Respondent and her husband arrived. One of the CPS workers told Max and Russell that Respondent offered to take custody of them. In response to that information, Russell grew quiet, and Max appeared to become nervous. Ultimately, CPS decided to place the boys with someone other than Respondent.

In 2018, Gary Davis-Headd’s parental rights were terminated as to all of his children following a Juvenile Court trial, and he was tried in the Wayne County Third Circuit Court for child abuse. Respondent hired Brenda Richard (“Richard”), a personal acquaintance, to represent Davis-Headd in his Juvenile Court trial and guided Richard in Davis-Headd’s defense. Respondent’s involvement in Davis-Headd’s defense included dictating the direction Richard took on certain investigative issues, telling Richards who the witnesses were, telling Richards which laws she could use to support certain positions, engaging in in-depth discussions of the cause while the trial was in progress, assisting with trial strategy, and preparing questions for direct and cross-examination. On September 27, 2019 Davis-Headd was convicted of two counts of felony child abuse second degree; he was subsequently sentenced to concurrent prison terms of 4 to 10 years for each conviction. On November 10, 2020, the Judicial Tenure Commission filed the Complaint in the underlying case alleging that Respondent (1) knowingly concealed

evidence of Davis-Headd's abuse of the boys and (2) knowingly made false statements about her knowledge of the abuse.

V. COUNT I: KNOWINGLY CONCEALING EVIDENCE OF ABUSE

Count I of the Complaint charges Respondent with knowingly concealing evidence that Davis-Headd abused Max and Russell during the time that he had primary custody of them (and was under a court order not to use corporal punishment on them). Disciplinary Counsel allege that, between April of 2015 and June of 2018, Davis-Headd beat, belted, slapped, and spanked Max and Russell, that Respondent knew this, that Respondent failed to protect the boys, and that Respondent attempted to conceal Davis-Headd's abuse of Max and Russell.

Disciplinary Counsel urges the Master to find the Respondent violated the following provisions: MCR 9.104(1) and MRPC 8.4(c), by engaging in conduct prejudicial to the proper administration of justice; MCR 9.104(2), by engaging in conduct that exposes the legal profession or the courts to obloquy, contempt, censure or reproach; MCR 9.104(3), by engaging in conduct that is contrary to justice, ethics, honesty, or good morals; MRPC 8.4(b), by violating a criminal law when doing so reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer; MCL 750.483a(5)(a), which prohibits tampering with evidence; MCL 750.505, for being an accessory after the fact to child abuse; and MCR 9.104(5), by engaging in conduct that violated a Michigan criminal law.

Findings of Fact

The Master finds the following by a preponderance of the evidence:

- A. Respondent knew that, during the time period in question, Davis-Headd slapped and “choked” his then-wife, Katie.
- B. Respondent was aware that Davis-Headd used court-prohibited corporal punishment on Max and Russell.
- C. Respondent admits that, during a team meeting held days after the boys’ June 24, 2018 removal, she told Apple that she knew that her son was a very stern disciplinarian.
- D. Respondent was aware that Davis-Headd smacked Max across the face hard enough to leave a handprint on at least one occasion.
- E. Respondent was aware that David-Headd spanked the boys and used a belt on them.
- F. Max and Russell expressed to the Respondent their concern about what would happen to them physically when they returned home.
- G. On at least one occasion, when he was about 8, Russell told Respondent that he was about to be spanked.
- H. Respondent declined to make any attempt to corroborate the claims that she disbelieved or to independently verify whether Davis-Headd was continuing to use corporal punishment on the boys.
- I. Respondent put makeup on Max on multiple occasions to cover marks from being hit or slapped by Davis-Headd.
- J. On June 24, 2018, as the boys were being removed from the Davis-Headd home, Max told officer Adams and Apple that he did not want to go with his grandmother because “she knew about what the dad was doing to them, about the abuse,” and would allow Davis-Headd to get the boys back.

Discussion of Findings

Respondent argues that, as a threshold issue, Disciplinary Counsel must prove that child abuse occurred before it can prove that Respondent knowingly concealed evidence of such abuse. The Master disagrees. Disciplinary Counsel describes Davis-Headd's treatment of Max and Russell as abuse, and Respondent is correct in her statement that the single slap on a single occasion that she admits to having been aware of has not been determined by a court to be abuse. However, evidence of abuse is not the same as incontrovertible proof of abuse, and Respondent need not have been fully convinced that Davis-Headd had abused the boys to be found liable under this charge. The Master will henceforth refer to specific alleged acts without making a determination about whether they legally constitute abuse, as such a determination is beyond the scope of the Master's authority.

The Master begins her analysis of the evidence submitted in support of Count I with Respondent's admissions and statements. Respondent has stated that she saw Max and Russell at least once a week during the time period in question and that they confided in her. She testified that the boys reported to her that their dad had slapped and "choked" Katy, but she denies having been *aware* of this fact, claiming that she would have had to have believed the boys to have been aware of the situation, and she had not believed them. However, the Master does not find that Respondent's assertion of her nonbelief in uncontradicted reports of her son's bad behavior constitutes a lack of awareness of that behavior. While the question of Respondent's knowledge of Davis-Headd's treatment of Katy is not before the Master, that testimony evidences both a pattern of Respondent's asserting nonbelief in things that she is told about Davis-Headd's

behavior and Respondent's careful use of language showing an attempt to avoid admitting any knowledge that would lead to liability.

In this instant hearing, Respondent testified that the boys, with whom she was close, never told her that their father spanked or belted them during the time period in question. As Respondent frames it, the boys expressed to her an increasing unhappiness with Katy's meanness during the last six months before their removal. She testified that the boys also expressed a vague concern about getting in trouble with their dad. Without asking either of the boys or Davis-Headd if Davis-Headd was still using corporal punishment on the boys, Respondent assumed that the boys were concerned about exclusively non-physical punishment. The Master does not find such a conclusion – without any inquiry and in the context of the then-existing court order – to be reasonable or Respondent's testimony in this area to be convincing.

Respondent admits to having told Apple, in a family team meeting interview shortly after the boys were removed, that she knew Davis-Headd to be a "very stern disciplinarian"; Respondent also testified to similar effect in the Juvenile Court trial. While the term "very stern disciplinarian" does not necessarily connote corporal punishment, this statement was made in the context of allegations that Davis-Headd had physically abused the boys. The Master does not find credible Respondent's contention that– in the middle of a conversation about physical abuse she used the term "very stern disciplinarian" to refer exclusively to the removal of privileges and giving long time-outs.

A reasonable person (1) would assume that Respondent's statements were responsive to the context in which they were elicited and (2) would not find the removal of privileges and issuance of time-outs – no matter how unwarranted they may have been – to constitute stern

discipline in the context of the physical harm Davis-Headd had inflicted on the boys. Although Respondent steadfastly denies that the boys told her that Davis-Headd hit them, she admits to having seen a handprint on Max's face on a single occasion that she knew had resulted from Davis-Headd having slapped Max. Respondent testified that she did not believe that a single slap constituted abuse. She was aware that a single slap violated Judge Cox's order, however, but she did not make an attempt to discover whether the boys had been subjected to any more corporal punishment. Instead, she admits to having covered one handprint with makeup on one occasion.

Respondent testified in Juvenile Court that she knew her son spanked the boys "in the past"; it was not until the hearing in this case that she clarified that she had been referring exclusively to the period of time before Judge Cox's 2015 order prohibiting corporal punishment. The Master does not believe Respondent's claim that she was exclusively referring to a timeframe outside the scope of the Juvenile Court hearing but neglected to mention this fact on the stand.

Respondent admits that, on one occasion when he was about eight, Russell told her that he was afraid Davis-Headd was going to spank him. Although she was aware of Davis-Headd's history of using corporal punishment on the boys, Respondent claims that (1) she did not believe a spanking was imminent, (2) she got Davis-Headd to agree not to spank Russell, and (3) she believed Davis-Headd when he told her he only intended to scare Russell, not actually to spank him. Setting aside the question of whether such a threat would have been an effective scare tactic if Davis-Headd had truly ceased using corporal punishment on the boys in 2015, the Master is skeptical of Respondent's uncritical acceptance of Davis-Headd's assurance that Russell's concern was unfounded. Respondent's unsupported assumptions in favor of Davis-Headd, in the

context of his history with the boys, are indicative more of an intentional attempt to avoid discovering, knowing, or being responsible for incriminating information about Davis-Headd than of either naivete or a concern for the wellbeing of Max and Russell, even if that required actively refusing to believe non-contested reports about Davis-Headd's behavior that were consistent with his past practice.

Finally, Respondent admits to having used makeup to cover a handprint on Max's face that had resulted from Davis-Headd slapping Max. Although she eventually testified that she found such an act on Davis-Headd's part to be "completely inappropriate," she has steadfastly insisted that she did not believe the slap that had left the mark to have been abuse and that she did not cover the mark to hide abuse. Instead, she claims that she put the makeup on Max's face because Russell had been teasing Max about the mark. This explanation raises the question of how, if Russell was inclined to tease Max about such a thing (and both boys testified credibly that he was not), putting makeup on the bruise would alleviate the teasing; Russell would still know about the bruise, and now he would also have the makeup to tease Max about.

Officer Adams and Apple testified that, at the time of his removal from the Davis-Headd household, Max stated that he did not want to go with Respondent because she knew about the abuse and would let him go back with Davis-Headd. Respondent points out that this statement is not included in Officer Adams' report and suggests that this fact undermines the officer's credibility on this point. However, the absence of that statement in the report does not persuade the Master that Officer Adams does not accurately recall this statement.

With regard to Max, Respondent urges the Master to reject the whole of his testimony as unreliable. Respondent urges that Max is entirely lacking in credibility as a witness for two

reasons: (1) Respondent contends that both Max and Russell have been coached by their mother to the extent that they are incapable of uttering independent, truthful statements and (2) Respondent contends that the fact that Max told a lie in 2021 pertaining to one incident in this case proves that he is a “confirmed liar” who should not be afforded any credibility.

With regard to the coaching allegation, Respondent claims that Bressler developed a plan to regain custody of the boys and coached them to report abuse to that end. Respondent supports this theory with a series of emails between Bressler and the boys and an account that the boys had access to wherein Bressler makes statements such as the following:

- “I did everything I could. CPS was going to bring you to me today...Now they don’t believe you’re in any danger”;
- “I can’t call CPS anymore for you two. They are not going to believe me anymore”;
- “You should have spoken up when you had the chance. There is nothing I can do for you now”;
- “That will make it look like I’m making it up. I need you to be big boys. I know that to [sic] hard but it’s the only way you will get out”; and
- “If you go with people your daddy knows he will be able to get you.”

In response to the emails from Bressler, the account in Russel’s name made statements including “Me and [Max] will tell them everything there you will be to guide us” and “The only reason I was scared was because if [sic] it didn’t work.”

Respondent argues that these exchanges are clear evidence that Bressler coached the boys and points out that the boys never made allegations against Respondent until 2018, by which time they had resumed contact with Bressler. The Master does not view these exchanges as a plan to coach the boys into saying whatever was necessary for Bressler to gain custody of them. If Bressler believed that the boys were being abused, it would be reasonable for her to

want them to be removed from that household and to call CPS to report her belief that the boys were in danger. If the boys were intimidated by the prospect of speaking to CPS workers — especially if their only opportunity to do so was in the presence of Davis-Headd— and afterward to be left in the home to face even more punishment as a result, it makes sense that they would need to be encouraged to speak up.

The Master does not see anywhere in these messages an indication that Bressler is encouraging the boys to lie; nowhere in these messages is there any indication that she is coaching them on the content of their disclosures. Furthermore, it has by now been determined that the boys were, in fact, being abused by Davis-Headd during the time period in which these messages were exchanged. However, the boys were not removed from the home until they spoke to CPS workers, just as Bressler instructed them to do. For these reasons, the Master is not persuaded that these emails establish or corroborate a conclusion that the boys were coached. Furthermore, even if some coaching had taken place, the Master is not persuaded that it would necessarily have rendered the boys unable to form any independent thoughts or make any true statements.

Similarly, the Master does not find that anyone who has once been caught in a lie is incapable of telling the truth on other occasions. Neither does she accept Max's testimony uncritically; instead, she carefully considers the nature, context, and content of the testimony before making a determination to accept any statement of any witness as credible evidence. Both boys had emotional moments on cross-examination— Russell broke down in tears at one point, and Max lashed out in anger more than once. Respondent characterizes Max's emotional retorts as his response to being required to take responsibility for his inconsistent statements. The

Master sees the emotional responses of Max and Russell as reactions to Respondent's decision to aggressively question both boys in detail and at length about actual and perceived inconsistencies in their statements over the years, seemingly without regard for their ages or emotional states. This approach had the effect of often agitating and occasionally confusing the boys, but it did not fatally undermine their credibility. For the purposes of Count I, the Master focuses on three specific portions of Max's testimony.

Respondent admitted to putting makeup on a handprint on Max's face, but Max testified that Respondent did so on multiple occasions. The Master finds Max's testimony on this point to be credible. On the one hand, the uncontested evidence establishes that Bressler — with whom Max lived for some time — deeply disliked Respondent, and her dislike may have made an impression on Max. On the other hand, both Respondent and Max were close to each other during the time period in question. Max exhibited obvious reluctance to give testimony that he knew to be incriminating against Respondent as well as anger that he was being forced to testify about her when he did not think she had done anything deserving of the amount of attention that was now being focused on her. Additionally, during the time frame of this proceeding, the Master had to address the fact that Max had started making unsolicited contact with Respondent in an attempt to maintain his relationship with her— contact that Respondent accepted. Moreover, by the time of this hearing, Max was no longer living with Bressler and not in much contact with her.

Max has consistently testified over the course of years that Respondent put makeup on his body to cover marks left by Davis-Headd on multiple occasions. Furthermore, the fact that he had already been caught in a lie and was, subsequently, under even greater scrutiny than before,

is a motive for him not to attempt to tell another lie to counsel. Furthermore, the Master finds Max's testimony that Respondent put makeup on him to cover marks more than once to be credible; however, even the one time that Respondent admitted to is one time too many. Max's lie about the letter appears to have been motivated by a desire to protect Davis-Headd, but that kind of motive is not present with regard to his testimony regarding the makeup. Similarly, even if Bressler exerted some influence on Max in the past to testify against Respondent, the relationship dynamics between Bressler, Respondent, and Max had changed since then and this hearing. The Master finds that application of the make-up is the kind of detail that Max would remember. Additionally, the Master finds that, given Max's strong statements about his aversion to wearing makeup, Respondent has more of a motive to be untruthful about this matter than does Max.

Max testified with derision that he did not want to wear women's makeup to school because he did not think it to be manly. He laughed at the absurdity of the idea that Russell would tease Max about a mark from being hit when they both got hit and both had marks. Max further testified that, during one of the 2021 phone calls where he reached out to Respondent, she attempted to remind him that she had put makeup on his face to keep Russell from teasing him. Max testified that he knew that was not true but did not feel free to argue that point because he was excited to have the contact with his grandmother. Respondent denies that this conversation took place. The Master found Max's testimony on this point credible based on the fact that it was offered as an offhanded afterthought, the witness's apparent lack of understanding of its significance, the witness's clear lack of desire to incriminate Respondent, and the fact that

Bressler was nowhere in the picture at the time, literally or figuratively. Additionally, unlike in the case of the letter, there was no family member to protect in this scenario.

The Master finds it both significant and disturbing that, after taking the position in this matter that Max is not a credible witness because he was irredeemably tainted by the coaching at the hands of Bressler, Respondent reintroduced her explanation for the makeup in a conversation with Max *during the course of these proceedings*. The fact that Respondent would take advantage of Max's obvious desire to maintain a relationship with her and use it to influence him with her theory of the case seems particularly troubling and also evidences an intentional attempt to cover up her concealment of evidence of abuse.

Conclusions of Law

Based upon these factual findings, the Master concludes, as a matter of law, that Disciplinary Counsel have proven by a preponderance of the evidence that Respondent violated the following Michigan Court Rules and Michigan Rules of Professional Conduct cited in the Amended Complaint:

1. MCR 9.104(1) and MRPC 8.4(c), by engaging in conduct prejudicial to the proper administration of justice;
2. MCR 9.104(2), by engaging in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach; and
3. MCR 9.104(3), by engaging in conduct that is contrary to justice, ethics, honesty, or good morals.

VI. COUNT II: MAKING FALSE STATEMENTS ABOUT KNOWLEDGE OF ABUSE

Count II of the Complaint charges Respondent with making false statements about her knowledge that Davis-Headd was abusing her grandsons and about her actions with respect to that abuse. In part, Count II alleges that Respondent made false statements in several of her November 21, 2019 answers to the Commission's questions.

Disciplinary Counsel urges the Master to find the Respondent violated the following provisions: MCR 9.202(B), which prohibits false or misleading statements to the Commission; MCR 9.104(2), which prohibits conduct that exposes the legal profession or the courts to obloquy, contempt, censure or reproach; MCR 9.104(3), which prohibits conduct that is contrary to justice, ethics, honesty, or good morals; MCJC Canon 2(A), which requires that a judge avoid all impropriety and appearance of impropriety; MCJC Canon 2(B), which requires a judge to promote confidence in the integrity of the judiciary; and MRPC 8.4(b), which prohibits a lawyer from conduct involving dishonesty, deceit, or misrepresentation, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer.

Findings of Fact

The Master finds the following by a preponderance of the evidence:

A. In response to written questions from Disciplinary Counsel, Respondent made the following statements:

- a. "I was not...aware of any specific situation or complaint from my grandchildren concerning being punished for misbehavior."

- b. “I was, and remain, unaware of any alleged ‘abuse’ of my grandchildren by my son.
 - c. “I was never, under any circumstances or in any respect of, or told by anyone, the details of alleged abuse of my grandsons at the hands of their father. Specifically, I was never advised about alleged abuse of my grandsons.”
 - d. “As related to being spanked, I have no recall of any specific occasion that this was mentioned by my grandsons. I was not, however, aware of any specific situation or complaint from my grandchildren concerning being spanked for misbehavior. Further, I never saw any signs that my grandchildren might have been spanked by their father.”
- B. Respondent denies she was made aware of “corporal punishment” her son administered to her grandsons, and claims she was only told — by Max — about one incident in which Max was slapped across the face, plus additional spankings. Respondent alleges that she did not see marks on her grandson’s bodies, excluding the slap mark she saw on Max’s face.
- C. In a Juvenile Court hearing in 2019, Respondent testified to the following:
 - a. That Max did not show her bruises on his body; and
 - b. That Max’s testimony that she *did* conceal bruises on his face with makeup was a lie.
- D. Russell expressed to Respondent on at least one occasion that he was concerned that Davis-Headd would spank him.
- E. Respondent now admits to having seen a mark on Max’s face and applying makeup to it.

Discussion of Findings

Respondent has made various statements (her testimony in the Juvenile Court hearing, testimony in this hearing, and written responses to questions from the JTC) that are inconsistent with other testimony — from her or from other witnesses— in the record of this hearing. Many of Respondent's denials of knowledge about abuse, bruises, or corporal punishment inflicted on the boys by Davis-Headd are directly contradicted by Max and Russell's testimony. As analyzed above, with regard to some of the statements in question, the Master finds the boys' testimony to be more credible than the Respondent's testimony.

There are also instances in this hearing in which Respondent either directly contradicted or gave testimony incompatible with her earlier testimony or her statements to the Commission, especially regarding her knowledge of the fact that Davis-Headd had been using corporal punishment on the boys during the time period in question and her application of makeup to bruises on Max's face.

Knowledge That the Boys Were Spanked

On the topic of her awareness that the boys had been spanked, Respondent provided the following answers:

QUESTION NO. 14: Were you aware that your son used corporal punishment on his children before June 24, 2018? If so:

- a. How did you become aware of any corporal punishment?

RESPONSE:

Yes.

- a. Once in the past, Gary, Jr. told me that he had been slapped in the face by his father. I saw what looked like a handprint on his cheek at that time. My

grandsons also had mentioned in the past that they had been spanked by their father for misbehaving.

QUESTION NO. 38: Please explain whether not inquiring into the details of abuse about which your grandchildren informed you, and not protecting your grandchildren from further abuse, was irresponsible or improper conduct in violation of Canon 2(A), and failed to promote confidence in the judiciary in violation of Canon 2(B).

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

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

Additionally, as set forth above in the Count I discussion, on one occasion when Russell clearly communicated to Respondent his fear of an upcoming spanking by Davis-Headd, she, for all practical purposes, dismissed Russell's concerns, choosing instead to reveal those fears to her son and take his word that he only intended to "scare" Russell.

The evidence in the record supports a finding that Grievant was aware that Davis-Headd used corporal punishment on the boys during the time period in question. However, Respondent did not make absolute statements regarding her understanding in this regard. In her response to the Commission — as in her Juvenile Court testimony — Respondent stated that she was aware that Davis-Headd had spanked the boys "in the past." In this hearing, she testified that when she said "in the past" she had been referring to the time before the order prohibiting corporal

punishment had been issued. This explanation is dubious at best, but Respondent benefits from the fact that clarification questions were not asked at the time. Respondent's language in question 38 regarding spanking is similarly vague. She responded that she was not aware of "details" of "alleged abuse." This word choice is significant because (1) it does not preclude a general awareness of "alleged abuse" and (2) Respondent has consistently declined to characterize either spanking or a slap in the face as abuse, so it also does not necessarily preclude a knowledge of either of those actions.

Respondent continues to deny that she ever saw a bruise and to characterize what she has admitted to covering with makeup as a "mark" or a "handprint" that resulted from a slap to the face. WebMD defines "bruise" in this way: "A bruise is a common skin injury that results in a discoloration of the skin. Blood from damaged blood cells deep beneath the skin collects near the surface of the skin, resulting in what we think of as a black and blue mark." The Oxford Dictionary defines a bruise as "an injury appearing as an area of discolored skin on the body, caused by a blow or impact rupturing underlying blood vessels." Blacks Online Law Dictionary defines a bruise as "a contusion; an injury upon the flesh of a person with a blunt or heavy instrument, without solution of continuity, or without breaking the skin." All three definitions are consistent with the recognized everyday usage of the word and with the mark that Respondent described seeing on Max's face. That Respondent's statements about not seeing or applying makeup to a bruise were false is clear.

Covering of Bruises on Max's Body

In the Juvenile Court hearing, Respondent testified that Max had never showed her bruises on his body and he was lying if he said otherwise:

Q. Have you ever used makeup to cover up [Max] and Russell's bruises, specifically, on [Max's] face?

A. Again, I have never seen any bruises.

Q. That wasn't my question.

A. So the answer is no.

Q. If [Max] testified to that yesterday, that would be a lie, correct?

A. Yes, it would.

Later, Respondent admitted to having put makeup on a mark on Max's face. When asked during this hearing about her prior statements, she explained that she had simply forgotten that she had put makeup on Max and that— because she had applied makeup to a “handprint” and not a “bruise” – the line of questioning in Juvenile Court had not sparked her memory. In the Juvenile Court hearing, however, Respondent did not claim not to remember; she testified unequivocally that she had never seen any bruises, that she had never used makeup to cover bruises, and that if Max had testified that she had done so, he had been lying. Similarly, Respondent did not make allowance for the possibility that what she considered to be a non-bruise “mark” Max might have referred to as a “bruise.” Respondent would now have the Master find that all of her inconsistent statements were the result of faulty memory or misunderstandings, but she simultaneously urges the Master to view every inconsistency in the testimony of Max and Russell as outright lies at worst and helplessly compromised credibility at best.

While the Master does not fault a witness for failing to volunteer information that was not specifically requested (whether it be Respondent in the Juvenile Court hearing or the boys in the KidsTalk interviews), she does not find it reasonable to conclude that being questioned about

applying makeup to a bruise on Max's face would in no way trigger a memory of having applied makeup to cover a "mark" left by a slap on Max's face. Furthermore, for Respondent to have flatly denied ever having seen or covered a bruise on Max's face and then later admit to having both seen and covered a mark that meets the definition of a bruise appears more like an attempt to explain prior false statements without admitting to dishonesty than a reasonable nuance or misunderstanding. In fact, Respondent's testimony, admissions, and other statements of her knowledge and actions related to abuse in this case, when taken together paint a portrait of a legal professional using a sophisticated mastery of language to mislead or misinform CPS, the Juvenile Court, and the Commission about her knowledge of Davis-Headd's treatment of Max and Russell while still attempting to preserve plausible deniability concerning false statements.

Conclusions of Law

Based upon these factual findings, the Master concludes, as a matter of law, that Disciplinary Counsel have proven by a preponderance of the evidence that Respondent violated the following Michigan Court Rules and Michigan Rules of Professional Conduct cited in the Amended Complaint:

- A. MCR 9.202(B), which prohibits false or misleading statements to the Commission;
- B. MCR 9.104(2), which prohibits conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach;
- C. MCR 9.104(3), which prohibits conduct that is contrary to justice, ethics, honesty, or good morals; and

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

VII. COUNT III: KNOWINGLY MAKING FALSE STATEMENTS TO THE COMMISSION

Count III alleges that Respondent's claim to have disclosed to CPS her application of makeup to Max's face — a claim that was articulated five times in Respondent's Answer to the Complaint — was false, and it argues that circumstances show that Respondent's intent was to deceive. Disciplinary Counsel urges the Master to find the Respondent violated the following provisions: MCR 9.202(B), which prohibits misleading statements to the JTC or the Master; Canon 2(A), which requires that a judge avoid all impropriety or appearance of impropriety; and MCR 9.202(B), which prohibits conduct prejudicial to the administration of justice.

Findings of Fact

The Master finds the following by the preponderance of the evidence:

A. In her Answer to the Complaint, Respondent admitted that she was aware her son had, on a single occasion, slapped Max. across the face hard enough to leave a handprint, advised CPS of that fact, and disclosed that she had applied some foundation makeup to Max.'s cheek during an interview with a CPS investigator. Respondent stated that, in doing so, she clearly demonstrated that she was not attempting to cover up alleged evidence of child abuse or making a false statement about her knowledge.

B. Disciplinary Counsel called Respondent to testify on September 17, 2021. At that time, Respondent testified that she was certain that she had told CPS of the slapping incident and the handprint, but could not recall with certainty whether she had also told CPS about applying makeup on a single occasion to Max's cheek. Respondent explained that, if she had done so, Apple would have been the person to whom she would have provided the information.

C. The Master is persuaded by the preponderance of the evidence that Respondent did not, in fact, make that disclosure to CPS.

Discussion of Findings

The CPS report contains no reference to any disclosure by Respondent that she had applied makeup to either of the boys. While the Master acknowledges the fact that the reports are generated by fallible humans who may sometimes make mistakes, a disclosure of having applied makeup to a mark on a child where abuse is suspected is exactly the type of information that the evidence has established a CPS worker would include in a report about a case like this— even if Respondent never used the words “bruise” or “abuse.” Initially, the Master ruled that the CPS reports did not have the indicia of reliability contemplated by the hearsay exception under which Disciplinary Counsel originally sought to have them admitted. Subsequently, the Master admitted the reports for the limited purpose of demonstrating whether they contained the disclosure in question, regardless of the truthfulness of the statement.

After the Master ruled to admit the reports, Respondent testified that she could not recall whether she had disclosed to CPS that she used a handprint to cover a mark on Max's face. Respondent claims that this change resulted from a reconsideration of her memory on the

subject, but Disciplinary Counsel argues that the change in position is most probably the result of intentional falsehood in the first instance and backtracking in the face of contradictory evidence in the second. Disciplinary Counsel cites the fervor with which Respondent attempted to keep the CPS reports out of the record as evidence of an attempt to cover up intentional deception.

The Master does not hold against any party a well-founded legal argument challenging the admission of evidence. That being said, the fact that Respondent did not reconsider her memory when preparing her answers to the Commission under oath — or at any other time before the Master’s decision to admit evidence contradicting her claim — undermines the credibility of this explanation. The contents of Respondent’s memories are not available for the Master to examine, but the centrality of her lack of memory relating to key aspects of the case —she does not remember any specific details of abuse told to her by the boys, she did not remember that she had applied makeup to a mark on Max’s face when she unequivocally denied ever having applied makeup to a bruise, and she now she does not remember whether she disclosed her application of makeup to CPS until contradictory evidence was about to be introduced—further undermines Respondent’s credibility. However, doubt about Respondent’s credibility does not necessarily constitute persuasion that she intentionally made (the) false or misleading statements (in question), and the Master does not find the evidence presented in the record for Count III sufficient to persuade her that Disciplinary Counsel proved the allegations in this Count by a preponderance of the evidence.

Respondent claims that Apple is biased against Respondent, at least in part because of her assessment that Apple did not appear to take seriously enough Respondent’s allegations that Bressler was biased against Respondent. Apple was later taken off the case. Respondent argues

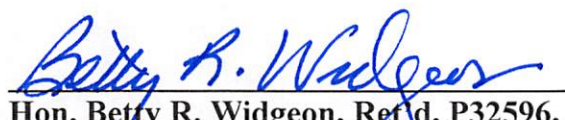
that the CPS reports are not reliable because there are multiple versions of the reports, and they do not all contain the same information. The Master did not find those claims supported by the evidence presented.

Conclusions of Law

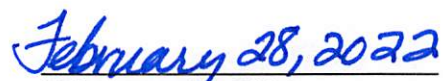
Based upon these factual findings, the Master concludes, as a matter of law, that Disciplinary Counsel have not proven by a preponderance of the evidence that Respondent violated the Michigan Court Rules and Michigan Rules of Professional Conduct cited in the Count III of the Amended Complaint.

VIII. CONCLUSION

The Master concludes that Disciplinary Counsel have met their burden of proving by a preponderance of the evidence that Respondent violated the Michigan Court Rules and Michigan Rules of Professional Conduct specified above as pertaining to Counts I and II of the Amended Complaint. The Master concludes that Disciplinary Counsel have not met their burden of proving by a preponderance of the evidence that Respondent violated the Michigan Court Rules, Michigan Code of Judicial Conduct, and Michigan Rules of Professional Conduct cited in the Count III of the Amended Complaint.



Hon. Betty R. Widgeon, Ref'd, P32596,
Appointed Master



February 28, 2022