STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

HON. TRACY E. GREEN
3rd Circuit Court
Detroit, Michigan

Docket No. 162260
Formal Complaint No. 103

DECISION AND RECOMMENDATION FOR DISCIPLINE

At a session of the Michigan Judicial Tenure Commission, Detroit, Michigan, on July 18, 2022,

PRESENT:

Hon. Jon H. Hulsing, Chairperson
Mr. James W. Burdick, Esq, Vice-Chairperson
Hon. Brian R. Sullivan, Secretary
Hon. Monte J. Burmeister
Danielle Chaney
Hon. Pablo Cortes
Siham Awada Jaafar
Hon. Amy Ronayne Krause
Thomas J. Ryan, Esq.

I. Introduction

The Judicial Tenure Commission of the State of Michigan ("Commission" or "JTC") files this recommendation for discipline against Hon. Tracy E. Green ("Respondent"), who at all material times was a practicing attorney licensed to practice as a member of the State Bar of Michigan, or a judge of the 3rd Circuit Court in the City of Detroit, County of Wayne, State of Michigan. This action is taken pursuant to the authority of the Commission under Article 6, § 30 of the Michigan Constitution of 1963, as amended, and MCR 9.202.

Having reviewed the transcripts of the hearing, the exhibits, the Master's report, disciplinary counsel's objections to the Master's report, Respondent's objections to the Master's report,

disciplinary counsel's response to Respondent's objections to the Master's report, and Respondent's response to disciplinary counsel's objections to the Master's findings, and having considered the oral arguments of counsel, the Commission unanimously concludes that disciplinary counsel has established by a preponderance of the evidence that Respondent committed misconduct. Respondent took the position in this proceeding that she committed no misconduct and that her grandsons were lying about having told her multiple times about the physical abuse Respondent's son inflicted upon them, which the Commission rejects. Respondent also contends that these proceedings are unconstitutional and that she was entitled to an in-person hearing, which the Commission also rejects. Respondent's misconduct included concealing evidence of her son's abuse of her grandsons and then lying about it in a multitude of forums and to a host of people, in some cases under oath as a judge, impeding the investigations of the abuse and these proceedings.

For the reasons set forth herein, the Commission unanimously recommends the Supreme Court remove Respondent from the office of judge of the 3rd Circuit Court.[1]

II. Jurisdiction

As a judge, Respondent is subject to all the duties and responsibilities imposed on her by the Michigan Supreme Court, and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.202. As an attorney licensed by the State of Michigan, Respondent was, and still is, subject to the standards of conduct applicable to an attorney under MCR 9.103(A) and the Michigan Rules of Professional Conduct. Pursuant to MCR 9.202(B)(2), the Judicial Tenure Commission has jurisdiction over Respondent's pre-bench conduct.

[1] The Commission would also recommend that Respondent be ordered to pay costs, fees, and expenses pursuant to MCR 9.202(B), because Respondent engaged in conduct involving deceit and intentional misrepresentation, and based on her misrepresentations and misleading statements made to the Commission and to the Master. But, recognizing that this rule will likely soon be amended to remove this fees and costs provision, the Commission does not make such recommendation. If costs are permitted under proposed new rule MCR 9.254, the Commission respectfully recommends an award of its costs under the new rule if adopted.

III. Procedural Background

On November 10, 2020, the Judicial Tenure Commission (the "Commission") filed Formal Complaint (the "Original FC") 103. The Original FC alleged Respondent committed these violations as a practicing attorney in Michigan and after she became a Wayne County Circuit Court judge. It charged Respondent with two counts of misconduct. Respondent filed her answer and affirmative defenses on December 31, 2020, in which she "categorically denie[d] as untrue" the material allegations of misconduct of the Original FC. On March 5, 2021, the Supreme Court appointed Hon. Betty R. Widgeon as the master ("Master"). On October 28, 2021, the Master granted disciplinary counsel leave to amend the Original FC, which asserted three counts of misconduct (as amended, the "FC"), including adding Count III alleging that Respondent made intentionally false statements to the Commission in her answer to the Original FC. On November 17, 2021, Respondent filed her answer and affirmative defenses to the FC, ("Answer," cited as "R's Ans."), again categorically denying that she committed misconduct.

The FC alleged that Respondent committed misconduct based on multiple alleged violations of criminal statutes, the Michigan Court Rules ("MCR"), the Michigan Rules of Professional Conduct ("MRPC"), and the canons of the Michigan Code of Judicial Conduct ("MCJC" and the "Canons"). The FC alleged Respondent committed these violations as a practicing attorney in Michigan and after she became a Wayne County Circuit Court judge. Count I charged that Respondent covered up evidence of child abuse committed by Respondent's son against Respondent's grandchildren (her son's children, two young boys). Count II charged that Respondent made false statements as a judge under oath at a juvenile court hearing (the "Juvenile Court") while testifying as a witness on behalf of her son, and to the Commission in these proceedings in her responses to the Commission's requests for comment issued September 17, 2019 and October 30, 2019 about her knowledge of her son's child abuse against Respondent's grandchildren. Count III, as

added by amendment to the FC, charged that Respondent made knowingly false statements to the Commission in her Answer which she signed under penalty of perjury.

A total of 12 public hearing days were held—all during 2021 (collectively, the "Hearing"). 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; and October 13. Hearing days 10 and 11 were held at the Washtenaw County Trial Court, 101 E. Huron Street, Ann Arbor, Michigan on October 29 and November 19. The final hearing day, December 1, was held via the ZOOM video platform with live-streaming on YouTube.

IV. Master's Findings of Fact and Conclusions of Law

On February 28, 2022, the Master issued a report containing her findings of fact and conclusions of law (the "Master's Report"). The Master concluded that disciplinary counsel established by a preponderance of the evidence that Respondent committed misconduct in office as alleged under Counts I and II of the FC, but that disciplinary counsel had not met its burden to establish the misconduct alleged in Count III of the FC. As to Count I, the Master concluded that disciplinary counsel carried its burden to establish that Respondent violated 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; and MCR 9.104(3), by engaging in conduct that is contrary to justice, ethics, honesty, or good morals. As to Count II, the Master concluded that disciplinary counsel carried its burden to establish that Respondent violated 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; 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.

Disciplinary counsel timely filed objections to the Master's Report. Disciplinary counsel agreed with the portions of the Master's findings that Respondent committed misconduct charged in Counts I and II. Disciplinary counsel objected on the basis that the Master did not address whether Respondent committed one of the acts charged in Count I regarding Respondent's knowledge and concealment of bruises to her grandsons, and did not address whether the misconduct that the Master found Respondent had committed violated two criminal laws, a court rule, and a Rule of Professional Conduct regarding the commission of crimes. With respect to Count II, disciplinary counsel objected that the Master did not explicitly find whether Respondent made several of the false statements that were charged, and did not address whether Respondent's false statements violated Canons 2(A) and 2(B). As to Count III, disciplinary counsel objected to the Master's conclusion that the preponderance of the evidence did not establish that Respondent's statements to the Commission, although false, were *intentionally* false.

Respondent also timely filed objections to the Master's Report. Respondent first argued that she did not receive due process for a host of reasons.[2] She then argued that there was no finding of "child abuse" as a foundational requirement for finding any misconduct, her innocent explanations for false statements should have been believed, the Master failed to consider certain evidence, and Respondent should have been believed as being more credible than her lying grandsons, in which

[2] The Commission considers Respondent's due process assertions to be lacking in merit. But those are issues for the Supreme Court. To the extent Respondent timely asserts those issues in an objection to this Decision and Recommendation, thereby making them ripe, the Commission will respond. As a general matter, and without waiver of a full response to any issues Respondent may raise, the Commission believes that the Supreme Court's recent decision in *Morrow* establishes that these proceedings, including virtual hearings and the structure of the disciplinary system, provided Respondent with due process. *See In re Morrow*, ___ Mich ___; 2022 Mich LEXIS 126, at *7-12 & n.3 (Mich Jan 13, 2022) (holding "once again" that the judicial disciplinary system in Michigan does not violate the Due Process Clause, and respondent was not prejudiced by a virtual hearing).

case there would be no evidence to support the charges. The parties timely responded to each other's objections.

On June 13, 2022, the Commission held an in-person public hearing on the parties' objections to the Master's Report pursuant to MCR 9.241 in Courtroom B of the Michigan Court of Appeals' Detroit, Michigan location.

V. Standard of Proof

Judicial discipline is a civil proceeding, the purpose of which is not to punish but to maintain the integrity of the judicial process. *Matter of Mikesell*, 396 Mich 517, 527; 243 NW2d 86 (1976); *In re Seitz*, 441 Mich 590, 624; 495 NW2d 559 (1993); *In re Haley*, 476 Mich 180, 195; 720 NW2d 246 (2006). The standard of proof applicable in judicial disciplinary matters is the preponderance of the evidence standard. *In re Ferrara*, 458 Mich 350, 360; 582 NW2d 817 (1998) (cite omitted). Disciplinary counsel bears the burden of proving the allegations by a preponderance of the evidence. MCR 9.233(A). The Commission reviews the master's findings of fact and conclusions of law de novo, and the Commission may, but need not, defer to the master's findings of fact. *In re Chrzanowski*, 465 Mich 468, 482; 636 NW2d 758 (2001). "Although the Commission is not required to accept to the master's findings of fact, it may appropriately recognize and defer to the master's superior ability to observe the witnesses' demeanor and comment on their credibility." *In re Brennan*, 504 Mich 80, 90-91; 929 NW2d 290 (2019), citing *In re Loyd*, 424 Mich 514, 535; 384 NW2d 9 (1986); *In re James*, 492 Mich 553, 569; 821 NW2d 144 (2012).

In *Ferrara, supra*, 458 Mich at 362, the Michigan Supreme Court, citing *In re Tschirhart*, 422 Mich 1207, 1209-1210; 371 NW2d 850(1985), recognized:

> "*[t]he proper administration of justice requires that the Commission view the Respondent's actions in an objective light*. The focus is necessarily on the impact his statements might reasonably have upon knowledgeable observers. Although the Respondent's subjective intent as to the meaning of his comments, his newly exhibited remorsefulness and belated contrition all properly receive consideration,

any such *individual interests are here necessarily outweighed by the need to protect the public's perception of the integrity of the judiciary*."

(emphasis added). It is the Commission's, not the master's, conclusions and recommendations that are ultimately subject to review by the Michigan Supreme Court. *Chrzanowski*, 465 Mich at 481.

VI. Commission's Findings of Fact and Conclusions of Law

The Commission unanimously accepts and adopts the Master's findings of fact and conclusions of law that Respondent committed the misconduct alleged in Counts I and II of the FC. The Commission unanimously accepts and adopts the Master's conclusions of law that Respondent's misconduct in Counts I and II violated 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; MCR 9.202(B), which prohibits false or misleading statements to the Commission; 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.

Additionally, the Commission, upon de novo review of the entire record, finds additional facts of misconduct supported by the record that were not referenced in the Master's Report but which support the Commission's findings of misconduct as to Counts I and II of the FC and its recommendation for discipline. The Commission further concludes that, in addition to the violations that the Master found and the Commission adopts, Respondent's misconduct in Count II also constitutes violations of MCJC Canon 2(A), which requires that a judge avoid all impropriety and appearance of impropriety, and MCJC Canon 2(B), which requires a judge to act in a way that promotes confidence in the integrity of the judiciary.

Finally, although the Commission is troubled by the allegations contained in Count III (Knowingly False Statements to Commission), after review of the record the Commission, like the

Master, concludes that disciplinary counsel did not satisfy its burden of proving the allegations by a preponderance of the evidence. The Commission is suspicious of Respondent's explanations and apparently carefully crafted Answer to the FC aimed at walking a fine line between technical accuracy and deceit, and certainly not with candor at front of mind, but the Commission adopts the Master's conclusion that there was not sufficient evidence of intentionality accompanying Respondent's false statements to the Commission as it relates to her Answer to the FC. This finding is limited to Respondent's Answer, as the Commission finds there is ample evidence of Respondent's intentionally false statements as a judge under oath in other areas besides her Answer, including to the Juvenile Court, to the Commission in other written submissions, and to the Master at the Hearing, constituting the misconduct the Commission finds as to Count II.

Respondent objected that the Master's Report does not contain citations to the record. The Master's Report was not required to contain such citations. The Commission concludes that the Master's findings are supported by the record, and that the record contains ample additional factual support for the findings and conclusions not addressed in the Master's Report. The Commission sets forth its record findings it relies upon herein.

Finally, before addressing the individual counts, the Commission notes and adopts the Master's observations that "Respondent's careful use of language show[ed] an attempt to avoid admitting any knowledge that would lead to liability," which often included using "vague" and evasive language to avoid answering the Commission's questions, using her legal training and a "sophisticated mastery of language to mislead or misinform CPS, the Juvenile Court, and the Commission about her knowledge of [her son's] treatment of [her grandsons] while still attempting to preserve plausible deniability concerning false statements." (Master's Report. pp. 9, 21, 23.) Based on the Commission's de novo review, these findings are applicable to and permeate this entire

proceeding, including with respect to Respondent's intentionally false testimony under oath to the Master at the Hearing.

Respondent told a CPS investigator that she knew her son was a "very stern disciplinarian" during an intervention specifically concerned with physical abuse, but later Respondent concocted an explanation (for the first time in this proceeding) that she was referring only to non-physical forms of discipline, which makes no sense in the context of the discussion with the CPS investigator. (Ex. 2, pp. 64-65; Tr. 1305, 1967-1968, 2034, 2075-2076.) Respondent admitted under oath at the Juvenile Court hearing that she knew her son used corporal punishment against his sons, but later, for the first time in these proceedings, when she realized that her sworn testimony was an admission that she knew her son was violating a 2015 order of a judge in her son's divorce proceeding prohibiting corporal punishment, Respondent "clarified" her previously unqualified testimony to say that she only knew of her son using corporal punishment *before* the 2015 order of the divorce court, some three plus years prior to the sworn testimony she was giving to the Juvenile Court without providing that caveat in real time. This is despite the facts that Respondent regularly visited her son and her grandsons, and (a) Child Protective Services ("CPS") workers went to Respondent's son's home on at least four occasions from 2015 to 2018 to respond to possible child abuse, until Respondent's grandsons were ultimately removed from the home by police due to child abuse after CPS's June 24, 2018 visit to the home; and (b) Respondent's grandsons gave credible testimony that they repeatedly told Respondent about and showed her marks of their father's physical abuse while the divorce court order was in place, and Respondent covered it up, including with makeup.[3]

[3] Respondent urged the Master to reject her grandsons' testimony as unreliable. Respondent urged that Max is entirely lacking in credibility as a witness because he was purportedly coached by his mother and because Max told a lie in 2021 pertaining to one incident in this case, therefore proving he is a "confirmed liar" who should not be afforded any credibility. The Commission has reviewed the entire record and unanimously and decidedly agrees with and adopts the Master's conclusions as to credibility. *See Brennan*, 504 Mich at 90-91; *In re Loyd*, 424 Mich at 535; *In re James*, 492 Mich at 569. As to coaching, the Commission agrees with the Master's finding that none of the emails

As to this makeup, Respondent strategically limited her admission of knowledge to only a single instance of a "slap" to her grandson Max's face, which she admits left a hand print across his face but incredibly asserts she never considered this to be an instance or evidence of abuse. She unconvincingly claims that her only motivation for applying makeup to Max, which he vigorously opposed because he is a young boy who associates makeup with femininity, was so that Max's brother, Russell, would not tease Max about the slap mark on his face. (Ex. 3, pp. 13, 14, 20, 21; Tr. p. 1976.) Max thoroughly rebutted this explanation, including that he and Russell would never tease each other for having marks that their father inflicted on them, as it was not funny to them, and Max was adamantly opposed to wearing the makeup. (Ex. 29, pp. 107, 109; Ex. 30, pp. 10-13; Ex. 34, pp. 14-15, 19-22, 24-25; Ex. 35, pp. 91, 112; Ex. 45, p. 37; Ex. 46, pp. 40-41 TR. pp. 312-313, 315, 469-470, 478, 480-482, 486, 638, 652, 996-997, 1006, 1010, 1011, 1016, 1017.)

And on the subject of a "single" slap, Respondent's limitation of her admitted knowledge in this regard is not plausible, either. Especially with her background as a family law attorney advocating for minors, she was far too involved and present in her son's and grandchildren's lives to credibly claim ignorance of what was going on, especially since her grandsons' much more credible testimony was that they repeatedly told her about the abuse and showed her evidence of it in the form of their bruises and other bodily marks.

Respondent's evasiveness and incredible explanations do not spare her a finding of misconduct. While she did in fact attempt "plausible deniability," which may have assisted her in

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Respondent relies upon for her coaching theory establish her contention that her grandsons' mother was coaching the boys into saying whatever was necessary for the mother to gain custody of them, or otherwise renders the grandsons' testimony less genuine. (Master's Report pp. 11-13.) As to Max's credibility, the "lie" Respondent relies upon regarded a letter and appeared to have been motivated by a desire to protect his father. The Master noted the aggressive questioning of both boys and noted several other sound bases on which to deem Max's testimony credible, (*Id*. pp. 13-16), which the Commission adopts. Finally, the Master did not rely upon any expert testimony for her reliability determination, and neither does the Commission.

narrowly escaping a finding of misconduct in Count III alleging knowingly false statements to the Commission in her Answer to the FC, she was unsuccessful having this strategy lead to complete absolution. The Commission finds that her explanations and responses aimed at avoiding a finding of misconduct in Counts I and II were not credible and were intentionally false.

The Commission's de novo review of the entire record leaves it with the definite and firm conviction that Respondent lied as a judge, and she did so repeatedly in a host of forums under oath in the Juvenile Court, in responding to the Commission's investigation, and to the Master at the Hearing, which impeded the administration of justice in a manner that placed her grandsons in peril, whenever the subject was her knowledge of her son's physical abuse of her grandsons and her attempts to conceal it.

If only the misconduct in Count I (covering up child abuse as an attorney) was at issue, the Commission would not be recommending removal.[4] Although very serious, that was pre-bench conduct involving difficult personal family issues that did not involve lying under oath, and there appears to be little precedent for removal on this basis. *See In re Brown*, 461 Mich 1291, 1292-1293; 625 NW2d 744 (1999) ("[t]he most fundamental premise of the rule of law is that equivalent misconduct should be treated equivalently"). But the maxim 'the cover up is worse than the crime' plays itself out in a variety of contexts and legal proceedings. Without passing on whether the cover up was worse than the misconduct in this case (as the misconduct involved jeopardizing the welfare of minors by an attorney who purports to advocate for children), Respondent's cover up at very least unquestionably triggers the harshest discipline of removal under the Supreme Court's significant line

[4] As the Supreme Court recognized in *In re Brennan*, 504 Mich at 85 n11, when dealing with multiple different acts of misconduct, which may "range from those warranting the most severe sanction of removal (such as lying under oath) to those that are still unacceptable, but might warrant a lesser sanction," the Court is "not called upon to assess an appropriate sanction for each discrete finding of misconduct," rather the Court "must determine the appropriate sanction for all of respondent's misconduct taken as a whole." That is the approach the Commission has taken here.

of precedent holding that, "[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." *In re Justin*, 490 Mich 394, 424; 809 NW2d 126 (2012). As the *Brennan* Court noted, the Michigan Supreme Court "'has consistently imposed the most severe sanction by removing judges for testifying falsely under oath.'" 504 Mich at 85 n11, 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 at 516; *In re Ferrara*, 458 Mich at 372-373; *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 at 568-570.

A. Count I: Covering Up Evidence of Child Abuse.

Count I charged that Respondent, as an attorney before she took the bench, covered up evidence of child abuse committed by Respondent's son against Respondent's grandchildren (the sons of her son).[5] If established, Respondent committed misconduct under: (a) MCR 9.104(1) and MRPC 8.4(c), by engaging in conduct prejudicial to the proper administration of justice; (b) MCR 9.104(2), by engaging in conduct that exposes the legal profession or the courts to obloquy, contempt, censure or reproach; and (c) MCR 9.104(3), by engaging in conduct that is contrary to justice, ethics, honesty, or good morals.[6]

[5] Respondent argued that none of the misconduct can be found against her without an underlying or "foundational" finding of child abuse. The Commission agrees with the Master that Respondent is incorrect. (Master's Report p. 8.) Taken to its logical conclusion, Respondent's argument is that a person who *successfully* conceals evidence of child abuse (or any crime for that matter) has done nothing wrong, because there would never be a finding of the successfully concealed crime. As the Master stated, and the Commission adopts, "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." (*Id.*)

[6] Disciplinary counsel alleged that the misconduct set forth in Count I, if established, also constituted crimes committed by Respondent giving rise to other bases for finding misconduct, including under MRPC 8.4(b), which deems it professional misconduct if a lawyer engages in conduct involving violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty,

In 2015, Respondent's son, Gary Davis-Headd, and his prior wife, Choree Bressler, divorced. They had a lengthy trial regarding custody of their children, Gary, Jr. (whom the parties referred to as Max) and Russell. Hon. Kevin Cox awarded custody to Mr. Davis-Headd and gave supervised visitation rights to Ms. Bressler. (Hearing Exhibit ("Ex.") 48.) He ordered that neither parent use corporal punishment. (*Id*.) Respondent was aware of this order. (R's Ans. ¶11; Hearing Transcript ("Tr.") p 2027.) Thereafter, in 2015 through June 24, 2018, Respondent was aware that on multiple occasions her son had been abusive to his next wife, Katy Davis-Headd, by slapping her and choking her. (Tr. pp. 628-629; Ex. 29, p. 88.) That is, Respondent was aware that her son was prone to abusive behavior. (*Id*.)

During this time, from April of 2015 to June 24, 2018, Max and Russell lived with Respondent's son. (*See* Ex. 48.) Respondent saw them at least once a week. (Ex. 3, p. 6.) The boys' mother did not visit them. During those three years, Davis-Headd used corporal punishment on the boys multiple times, and Respondent was aware that Davis-Headd used court-prohibited corporal punishment on Max and Russell. (Tr. 310-312, 319, 321, 322, 432, 481, 1069, 1070; Ex. 2, p. 65; Ex. 26, p. 19; Ex. 29, pp. 87, 88, 101; Ex. 30, pp. 16-18, 28; Ex. 32, pp. 41, 46-47, 87, 101; Ex. 34, pp 17-18; Ex. 46, 6-10-21, 16:18-16:32, 17:08-17:56.) Respondent admits to having seen a handprint on Max's face that she knew had resulted from Davis-Headd having slapped Max. (Ex. 3, pp. 9-14.) Respondent admits to having covered up the handprint with makeup. (*Id*.)

CPS workers 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

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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 criminal law of the State of Michigan. The Master did not find these violations, and neither does the Commission. Unlike in *In re Konschuh*, 507 Mich 984, 985; 959 NW2d 708 (2021), where the respondent had pled no contest to the subject crime prior to the Commission's disciplinary proceedings, Respondent has not been adjudged guilty of or pleaded no contest to the crimes alleged by disciplinary counsel in any criminal proceeding.

suspected child abuse in the home. (Ex. 1.) The police visited and spoke with Davis-Headd but not with the boys and left without taking any action. (Tr. pp. 305-306, 514-515.) Shortly after noon that same day, CPS workers flagged down a police car and asked the officers to accompany them to the Davis-Headd home. (Tr. p. 31.) 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. (Tr. 42-43.) 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. (Tr. p. 43, 1321.)

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. (Tr. 48, 49.) Max got nervous and scared; he was shaking, his voice was cracking, he was fidgety, and he started crying. (*Id*. at pp 49, 52; Tr. p. 1321.) He told Ms. Apple and Officer Adams that he did not want to go with Respondent because "she knew about what the dad was doing to them, about the abuse," and would allow the dad to get them back. (Tr. pp. 62, 1322-1323.) As Officer Adams testified:

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

(Tr. pp. 107-108) Ultimately, CPS decided to place the boys with someone other than Respondent.

After she became a judge, Respondent testified under oath at a hearing in the Juvenile Court on March 13, 2019 that she knew her son spanked the boys "in the past," but it was not until the Hearing in this matter that she "clarified" that she had been referring exclusively to the period of time before Judge Cox's April 2015 order prohibiting corporal punishment. (Tr. 1963, 2029.) The Master did not believe, and neither does the Commission, Respondent's claim that she was

exclusively referring to a timeframe from nearly four years earlier outside the scope of the Juvenile Court hearing but neglected to mention this fact on the witness stand in the Juvenile Court. Rather, Respondent knew she had to cover her tracks at the Hearing in this matter because her earlier testimony in the Juvenile Court otherwise betrayed her knowledge of her son's violation of Judge Cox's order prohibiting corporal punishment. When Respondent told Ms. Apple that she knew about spankings, she had just met with Ms. Apple for the team meeting that was concerned only with her son's very recent abuse of the boys as of June 24, 2018, not events from more than three years earlier. (Tr. pp. 1304, 1306, 1307.) When Respondent testified in Juvenile Court, she was a family court judge who had been a family law lawyer, and she knew the focus in Juvenile Court was the recent abuse. In fact, it was Respondent who provided the timeframe for her Juvenile Court testimony as being between when her son got custody of the boys in 2015 and June 24, 2018. (Ex. 2, pp 52-53.) Yet when Respondent told Ms. Apple and the Juvenile Court jury that she was aware of spankings, she did not tell them she was *only* aware of those that took place in a completely different context three and four years earlier *before the 2015 order* of the divorce court judge. That was a newly concocted assertion for the Hearing in this matter. It is not credible, and it was an intentional misrepresentation to the Master.

During its investigation, the Commission asked Respondent six different questions about her knowledge of spankings. Again, she knew very well that the investigation that prompted those queries concerned her knowledge of her son's recent abuse of the boys. Each of her six answers admitted she knew about the spankings "in the past," without adding that by "in the past" she only meant "more than four years earlier" before the 2015 order prohibiting corporal punishment. (Ex. 3, pp. 8, 11, 17, 20.) In fact, one of the questions explicitly asked her when the children told her their father struck them. This was a written question, and she had as much time as she needed to consider her answer, yet she again said only "in the past" without further clarification. (Ex. 3, p 10.) Until

Respondent testified in the Hearing in this matter, she never suggested that she was only aware of spankings that preceded Judge Cox's 2015 order, even though each time she was asked about recent abuse, the circumstances gave her every reason to make that clear if it was true. Her vague assertions are also directly contradicted by her grandsons' testimony that they told her repeatedly about the abuse after 2015. Respondent's sworn statement that "in the past" referred only to pre-2015 is not credible; it was a lie.

Similarly, Respondent testified in Juvenile Court that she knew her son used a belt on his boys. (Ex. 2, p 65.) Now, Respondent claims that she only became aware that he used a belt during the CPS investigation; that is, after the boys were rescued. (Tr. pp. 2003-2004.) When Respondent testified in Juvenile Court, she had to know the inquiry was focused on her knowledge of abuse while it was occurring, and she had to know it was significant to the jury whether she was aware that her son belted the boys while he had sole custody of them. (Ex. 2, pp 52-53.) Yet, Respondent – a judge and family lawyer who told the Juvenile Court jury without qualification that she was aware of her son's use of a belt – told the Master that she simply did not then think to clarify that she had only first learned about the belt use *after* the abuse had ended. This is also not credible; it was a lie.

In about 2018 Respondent heard her son slap Max across the face hard enough to leave a handprint, which she later concealed with makeup. Respondent has consistently admitted that she was aware of a slap and she has admitted to the Commission she concealed it with makeup. (Ex. 3, pp. 8-14) Respondent also told Ms. Apple that she heard her son slap Max, (Tr. p. 1307), and Max testified that Respondent was once present when he got slapped. (Tr. 478.) Yet Respondent now denies she was present when any corporal punishment took place. She says Ms. Apple "lied" about her having said she heard her son slap Max, and Max "lied" about Respondent having been present when he was slapped. (Tr. pp. 2036-2037.) Ms. Apple has no reason to lie about Respondent. She and Respondent did not even know each other before CPS rescued the boys. (Tr. pp 2037-2038.) Ms.

Apple, whose responsibility was to record the witness' statements, is credible; Respondent's version is not credible. The Commission also does not believe that Max was lying about this; the Commission believes Respondent is lying. It is also not credible to assume or believe that Ms. Apple and Max conspired to tell the same lie Respondent attributes to them.

Respondent saw other marks on Max's face on other occasions, marks that Max told her had been inflicted by his father. Respondent denies knowing this, but the boys' multiple, consistent, statements contradict her. Russell testified in this Hearing that Max had bruises on his face, and that he and Max told Respondent that their father put marks on their bodies. He also testified that Max told Respondent about the marks on his body every time Russell did. (Tr. 310-312, 319, 321, 322, 432.) Max has also said that Respondent knew about the beatings and abuse. (Ex. 32. pp 87, 101; Ex. 29, p 88) Max's testimony was consistent with his prior statements about Respondent's knowledge that her son was slapping him. (Tr. pp 1069-1070; Ex. 29, pp. 107,109; Ex. 34, pp. 14-15, 19-22, 24-25; Ex. 35, pp. 91, 112; Tr. pp. 469-470 478, 480-481, 638, 652, 1006, 1010, 1011, 1016-1017.)

When Russell was about eight, he told respondent he was going to be "spanked" by his father, and Respondent left the home as the "spanking" was about to take place. The repeated, consistent statements by both boys show that Respondent knew the boys were about to be beaten at least once, and Respondent admits that Russell told her he was going to get a spanking or a "whooping." (Ex. 29, pp. 90-91; Ex. 34, pp. 16-17; Tr. pp. 525, 629, 2005.) Respondent now denies that she thought the "whooping" was imminent, and claims that before she left on that occasion, she got her son to agree not to spank Russell. She claims she simply accepted her son's explanation that he just wanted to "scare" Russell and would not follow through with a "whooping." (Tr. 2006.)

This, again, is not plausible. The boys had informed Respondent of the beatings, as described above. Despite all these red flags, by her own admission Respondent never so much as asked Russell and Max how they were being spanked or whether they were okay. (Tr. pp 2048-2049; Ex. 2, p. 65;

Ex. 3, pp. 16-17.) She admits that she relied completely on her son's assurance, and that she did not do anything more to protect the boys or to make sure her son was complying with Judge Cox's order. The Commission agrees with the Master's assessment that Respondent's uncritical acceptance of Davis-Headd's assurance and her unsupported assumptions in favor of Davis-Headd, in the context of his history of abusing the boys and ex-wife, are indicative more of an intentional attempt by Respondent to avoid discovering, knowing, or being responsible for incriminating information about her son than of either naivete or a concern for the wellbeing of Max and Russell.

The totality of the evidence shows that Respondent was aware that her grandsons were being abused by her son, she covered it up, and she lied about knowing about it. Within two days after the boys were finally rescued in late June 2018, Respondent told the CPS investigator, Ms. Apple, that Respondent had not realized that "it" (meaning the abuse) was "this bad." (Tr. pp 1305-1306.) Respondent's statement to Ms. Apple revealed that Respondent knew her son was abusing her grandsons. Respondent now denies this. (Tr. p 2034.) She claims that, subjectively, she was referring only to civilized punishments her son imposed – banishing the boys to their rooms or prohibiting them from using their iPads. (Tr. pp. 20752076.) However, Respondent admits she did not say anything like that to Ms. Apple, (*id*. p. 2034/16-20), nor does she explain why she would regard such non-physical discipline as so "bad" in comparison to everything else she knew about. Again, her after-the-fact explanation is a thinly veiled attempt to escape a finding of misconduct in this proceeding.

In 2018, when her son was to stand trial 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. It seems evident to the Commission that Respondent was more interested in protecting her son than disclosing inculpatory information she personally possessed about her son's abuse of his sons.

The gravity of Respondent's son's abuse of his children is reflected by the results of his legal proceedings. Gary Davis-Headd's parental rights were terminated as to all of his children following a Juvenile Court trial. He was tried in the Wayne County Third Circuit Court for felony child abuse. Despite Respondent's knowing concealment of evidence of Davis-Headd's abuse of the boys and active direction and assistance for his defense, 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. Thus, while the JTC might not otherwise get involved in purely personal family matters, this case presented extreme facts of a family law attorney turned judge who withheld evidence of severe abuse to minors.

B. Count II: False Statements About Knowledge of Child Abuse.

Count II charged that Respondent made false statements under oath at the Juvenile Court hearing while testifying as a witness on behalf of her son and to the Commission in these proceedings in her responses to the Commission's requests for comment issued September 17, 2019 and October 30, 2019 about her knowledge of her son's child abuse against Respondent's grandchildren. Respondent's Hearing testimony establishes that she gave false testimony under oath to the Master, as well. If established, Respondent committed misconduct under: (a) MCR 9.202(B), which prohibits false or misleading statements to the Commission's investigators, the Commission, and the Master; (b) MCR 9.104(2), which prohibits conduct that exposes the legal profession or the courts to obloquy, contempt, censure or reproach; (c) MCR 9.104(3), which prohibits conduct that is contrary to justice, ethics, honesty, or good morals; (d) MCJC Canon 2(A), which requires that a

judge avoid all impropriety and appearance of impropriety; (e) MCJC Canon 2(B), which requires a judge to act in a way that promotes confidence in the integrity of the judiciary; and (f) MRPC 8.4(b), which prohibits a lawyer from conduct involving dishonesty, deceit, or misrepresentation, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer.

Much of the evidence of Respondent's false statements about the nature and extent of her knowledge that her son was abusing her grandsons and about her actions with respect to that abuse, under oath in her testimony at the Juvenile Court, in responding to the Commission's investigation, and to the Master at the Hearing, is detailed above with respect to Count I. For the reasons demonstrated above, the following statements in Respondent's November 21, 2019 answer to the Commission's questions during its investigation were false:

- Respondent stated that none of her grandchildren had ever told her they had been abused. (Ex. 3, p. 12.)
- "I was, and remain, unaware of any alleged 'abuse' of my grandchildren by my son." (Ex. 3, pp. 13-14.)
- "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." (Ex. 3, pp. 19-20.)
- "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." (Ex. 3, pp. 19-20.)
- Respondent denied she was made aware of "corporal punishment" her son administered to her grandsons, and claimed she was only told about one incident in which Max was slapped across the face, plus additional spankings. (Ex. 3, pp. 10-12, 19-20.)
- Respondent denied knowing that Max and Russell had been hit by their father. (Ex. 3, pp. 9-10.)
- Respondent stated that she did not see marks on her grandson's bodies, excluding the slap mark she once saw on Max's face. (Ex. 3, pp. 7-8, 12-13, 19-20.)
- Respondent stated she was not "advised" that her son had left any marks on her grandsons' bodies, excluding the slap mark that she saw on Max's face. (Ex. 3, pp. 7-8.)

As demonstrated above under Count I, each of the above statements was false. Respondent saw Max and Russell frequently, and on several occasions Max told her about the abuse while she was driving them in her car and he was around nine or ten years old. Russell also told Respondent that he was being hit by his father. Respondent witnessed her son hit Max across the face, leaving a handprint that she concealed with makeup. When Russell was about eight years old, while at Respondent's house, he showed her bruises on his face, neck, arms, legs, and back that he said her son had inflicted. He showed her other bruises that he said her son had inflicted on other occasions as well. When Max was nine or ten years old, Respondent put makeup on him several times in the bathroom of her house, to cover marks that, as she was informed and was otherwise aware, had been inflicted by her son. Respondent heard her son strike Max on the face at least one time, hard enough to leave a handprint which she later concealed with makeup. Contrary to Respondent's false assertion, she did not put makeup on Max because Russell was making fun of him for being slapped by his father and for the mark on his cheek. Russell never teased Max about being slapped by their father or having a mark on his cheek, and neither of the boys ever told Respondent or anyone else that Russell teased Max for this reason. Max vigorously opposed the application of makeup.

The evidence set forth above under Count I demonstrates by a preponderance of the evidence that Respondent was told about the abuse and shown injuries she knew were inflicted by her son upon her grandsons. Russell and Max repeatedly told her about the abuse and showed her their injuries. Russell told Respondent they were hit by a belt, they told her about the spankings and beatings, she heard them scream while being beat, she was aware Russell was about to be "whooped," and was present when Max was slapped on the face. This evidence therefore also shows by a preponderance of the evidence that each of her statements to the Commission that is described in paragraphs 19-26 and 28 of Count II if the FC is false.

Respondent also made several false statements at that Juvenile Court hearing, including:

- That Max did not show her bruises on his body, (Ex. 2, p. 63);
- That she did not use makeup to conceal Max's and Russell's bruises, (Ex. 2, p. 65);
- That Max's testimony that she *did* conceal bruises on his face with makeup was a lie. (Ex. 2, p. 66.)

Further, if Respondent's newly orchestrated explanation is to be believed – that her testimony at the Juvenile Court hearing regarded her knowledge of abuse relating to *only* the pre-2015 Judge Cox order prohibiting corporal punishment – then Respondent was not providing forthright testimony in that proceeding, begging the question, 'are you lying now or were you lying then?'

Similarly, Respondent's testimony at Juvenile Court that she did not use makeup on any bruises contradicts her November 21, 2019 answer (#18) to the Commission that she put makeup on Max's face because Russell was teasing him. (Ex. 3, pp. 12-13.) Respondent's feigned distinction between a bruise and a handprint for the purpose of making misleading denials and obstructing the administration of justice does not absolve her deceitfulness. Her statement to the Juvenile Court and her statement to the Commission cannot reasonably both be true. In the Juvenile Court, Respondent denied any connection to the abuse. But her grandchildren steadfastly testified otherwise. So she later acknowledged to the Commission that she concealed a single handprint which was not a bruise. Once she admitted doing that, though, she had to create a reason for doing so. The explanation she gave the Commission, embodied in her answer #18, is that she was preventing Russell's teasing, along with her unreasonable opinion that a slap leaving a hand print is not evidence of abuse. Respondent's admission and explanation are in tension with her claim in Juvenile Court that she did not conceal any bruises. Her explanation is also false, because Russell and Max did not tease each other about getting slapped by their father.

Reprising the Master's apt observations about Respondent discussed above, Respondent's strategy to get away with her misconduct was to employ "careful use of language showing an attempt to avoid admitting any knowledge that would lead to liability," which often included using

"vague" and evasive language to avoid answering the Commission's questions, and using her legal training and a "sophisticated mastery of language to mislead or misinform CPS, the Juvenile Court, and the Commission about her knowledge of" her son's abuse of his children "while still attempting to preserve plausible deniability concerning false statements." (Master's Report. pp. 9, 21, 23.) This is deceit and it is untruthful, regardless of how Respondent may try to spin it. And it is unquestionably prejudicial to the administration of justice, as it impedes investigators' and factfinders' quest for truth for the protection and welfare of the minor children involved.

VII. Conclusions of Law

Respondent's conduct breached the standards of judicial conduct, and she is responsible for the following:

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

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

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

d. false or misleading statements to the Commission's investigators, the Commission, and the Master, contrary to MCR 9.202(B);

e. failure to avoid all impropriety and appearance of impropriety, contrary to MCJC Canon 2(A);

f. failure to act in a way that promotes confidence in the integrity of the judiciary, contrary to MCJC Canon 2(B); and

g. conduct involving dishonesty, deceit, or misrepresentation, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, contrary to MRPC 8.4(b).

VIII. Disciplinary Analysis

The Commission unanimously concludes that disciplinary counsel has established by a preponderance of the evidence that Respondent committed misconduct by concealing her knowledge

and evidence of the physical abuse her son was inflicting on her grandchildren while she was an attorney, and by making knowingly false statements under oath as a judge to the Juvenile Court in testifying regarding the abuse of her grandchildren, to the Commission's investigators in responding to its written investigative questions, and to the Master in falsely testifying under oath at the Hearing.

Based on its finding of misconduct, the Commission unanimously recommends Respondent be removed from judicial office. This recommendation is based on the following evaluation of the factors set forth in *In re Brown*, 461 Mich 1291, 1292-1293; 625 NW2d 744 (1999). The Commission is aware of MCR 9.244(B)(1), and has included its consideration in the recommendation as well.

A. The *Brown* Factors.

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

The evidence established Respondent's misconduct was repeated over a lengthy period of time with the twofold objective of protecting her son from legal trouble or from losing custody of his children by covering up evidence of his abuse of his children, including by falsely denying her own knowledge of it, and avoiding a finding of misconduct against herself in these proceedings.

In *In re Gorcyca*, 500 Mich 588, 637; 902 NW2d 828 (2017), the Court noted "[t]he fact that a statement may be incorrect does not, by itself, render the statement 'false' within the context of a legal proceeding." The *Gorcyca* decision involved a judge's representation regarding the meaning of a gesture she made with her finger. The representation at issue in *Gorcyca* was isolated and finite in nature. By contrast, the record in the instant case reveals a series of Respondent's misrepresentations that she made intentionally as part of her pattern of deceit with a clear purpose of hiding her son's abuse and avoiding a misconduct determination in these proceedings.

In re Adams is instructive. As in *Adams*, Respondent did not "mistakenly" give false testimony. *See* 494 Mich at 180. Instead, she "repeatedly and quite vehemently denied," among other things, knowledge of her son's abuse of her grandchildren that she in fact knew about it, as her grandsons credibly testified. *See id*. As in *Adams*, Respondent "lied to the JTC about a variety of different matters" in these proceedings, *see id*., including in her 2019 written responses to the Commission's investigator's questions and to the Master at the Hearing. The *Adams* Court continued with observations that are directly applicable to Respondent here: "And now, respondent continues to lie to this Court about the very same matters. She continues to shirk any responsibility for her wrongdoings or express any indication of remorse." *Id*. at 181. In *Adams*, the respondent "lied to [her divorce court judge], lied to the JTC, lied to the master, and lied to th[e Supreme] Court." *Id*. "Therefore, respondent did not just engage in an 'isolated instance of misconduct.'" *Id.* Here, too, Respondent lied under oath in the Juvenile Court, lied to the Commission's investigators, and lied to the Master. Thus, the first *Brown* factor weighs heavily in favor of a more serious sanction.

(2) Misconduct on the bench is usually more serious than the same misconduct off the bench.

Prior to becoming a judge, Respondent concealed evidence of her son's abuse of his children. But much of Respondent's misconduct occurred after she became a judge, including her false statements under oath. She gave false testimony to the Juvenile Court as a judge, she gave false answers in response to the Commission's 2019 investigation as a judge, and she gave false testimony to the Master at the Hearing as a judge. In each case, the false testimony under oath was designed by Respondent to advance her own self interests in avoiding legal consequences for her son and avoiding discipline.

The Michigan Supreme Court considers conduct that occurs in a judge's capacity as judge, but not literally "on the bench," to be "on the bench conduct." *See Chrzanowski*, 465 Mich at 490 (2001); *In re Barglind*, 482 Mich 1202, 1203 (2008); *In re Adams*, 494 Mich 162; 833 NW2d 897

(2013); *Brennan*, 504 Mich at 111. And such misconduct may be considered "on the bench" even where the misconduct does not occur during the Respondent's performance of her duties in her official capacity but is closely related to her responsibilities as a judge.

In re Adams is again instructive on this point. In that case, when evaluating *Brown's* "on or off the bench" factor number two, the Supreme Court agreed with the Commission's conclusion that, although none of respondent's conduct technically occurred while respondent performed her official duties as judge, this factor still supported a more severe sanction. 494 Mich at 181-82. The respondent had attempted to leverage her position as a Wayne County Circuit Court judge to obtain special treatment in her divorce case, and "[i]n addition, although respondent's misconduct did not occur while she herself was on the bench, *she did repeatedly testify falsely under oath in a courtroom*, with all the gravity that such a venue should communicate, especially to a judge, in response to questions asked of her by a judge on the bench." 494 Mich at 182 (emphasis added). These facts supported a more severe sanction under the second *Brown* factor. *See id*. Here, Respondent was a judge when she tried to direct the defense of her son's abuse case, and she gave false testimony under oath in the Juvenile Court to a judge and to the Master, a retired judge. In each instance, she understood "the gravity that such a venue should communicate, especially to a judge, in response to questions asked of her by a judge." *See id*. In any event, the Commission does not believe that whether Respondent's lies under oath are considered "on the bench" conduct makes a material difference as to the appropriate sanction of removal. The fact remains that, while she was a judge, she repeatedly gave deliberately false testimony under oath, including to the Master at the Hearing. Such conduct warrants removal in its own right under established precedent of the Michigan Supreme Court, discussed above and below, regardless of whether it is considered on the bench misconduct.

(3) *Misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety.*

&

(4) *Misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does.*

As to factor number three, Respondent's misconduct was extremely prejudicial to the actual administration of justice. "[T]here is not much, if anything, that is more prejudicial to the actual administration of justice than testifying falsely under oath." *In re Adams*, 494 Mich at 182. Again, the evidence showed that Respondent lied under oath during a Juvenile Court hearing to protect her son, and in sworn statements to the Commission and its investigators during its investigation and to the Master under oath at the Hearing. This factor weighs heavily in favor of a harsher sanction.

As to factor number four, although her son was ultimately convicted, it was not for want of Respondent's effort to actually obstruct and impair the administration of justice in his child abuse case. She also sought to actually impair CPS's investigation to the potentially grave detriment of her grandchildren. This factor, too, weighs heavily in favor of a harsher sanction. *See id* (considering factors three and four together and determining that they both supported a harsher sanction).

(5) *Misconduct that occurs spontaneously is less serious than misconduct that is premediated or deliberated.*

Respondent's misconduct was premeditated and deliberate rather than spontaneous, as discussed with respect to Respondent's pattern and practice under the first *Brown* factor. Indeed, all of Respondent's misconduct was deliberate and premeditated. Further, Respondent's attempts to mislead the Commission were deliberate. She had ample time to reflect on her written responses to the Commission before submitting them and, as the Master noted, she deliberately employed "sophisticated mastery of language to mislead or misinform CPS, the Juvenile Court, and the Commission about her knowledge of [her son's] treatment of [her grandsons] while still attempting

to preserve plausible deniability concerning false statements." (Master's Report. pp. 9, 21, 23.). Therefore, it cannot be said that her misrepresentations were made spontaneously. Respondent had the time and opportunity to consider disclosing the relevant information but repeatedly failed to do so on purpose.

The Commission and the Supreme Court dealt with similar facts in concluding that this factor warranted a more severe sanction in *Adams*. Even crediting respondent's first lie under oath as possibly not premeditated, her continuingly disingenuous protestations before both the JTC and the Supreme Court of not having done so intentionally "were most certainly premeditated," as were her other false statements before the JTC and the Supreme Court. *Id*. "That is, although respondent's initial false testimony . . . may have been 'spontaneous,' all of her lies thereafter were made after she had time to reflect upon these matters, i.e., after periods of 'deliberations.'" *Id*. at 188-183. Here, Respondent deliberately lied about (but not limited to): (a) having knowledge of her son's use of corporal punishment on his sons *only before* Judge Cox's 2015 order in Respondent's son's divorce case prohibiting corporal punishment; (b) the scope of her 2019 testimony under oath in the Juvenile Court being limited to this pre-2015 order knowledge, but not testifying then about this limitation and only raising it in these proceedings; (c) the scope of her admission to the CPS investigator that she knew her son was a "stern disciplinarian" to being limited to only non-physical forms of discipline, which she did not clarify for the CPS investigator in real time when discussing physical abuse but asserted for the first time as an explanation in this proceeding; (d) the scope of her statement to the CPS investigator that she did not realize her son's treatment of his children was "this bad" being limited to non-physical discipline, which, again, she did not clarify for the CPS investigator in real time when discussing physical abuse but asserted for the first time as an explanation in this proceeding; (e) the scope of her knowledge of evidence of her son's abuse of his children being limited to a single instance of a slap to Max's face leaving a handprint; (f) being

unaware that her son used belts on and spanked her grandchildren; (g) being unaware of bruises inflicted by her son on her grandchildren; (h) using makeup only "one time" on Max; and (i) her motivation for using makeup on Max was to curtail teasing by Russell. Thus, as in *Adams*, the fifth *Brown* factor also weighs heavily in favor of a more serious sanction.

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

For the same reasons discussed above as to *Brown* factors one and five, Respondent's misconduct was deliberately aimed at undermining the ability of CPS and the juvenile justice system to discover the truth of what happened to Respondent's grandsons, and the ability of the Commission to discover Respondent's misconduct. "Testifying falsely under oath -- conduct in which respondent repeatedly engaged -- is certainly 'misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy.'" *In re Adams*, 494 Mich at 183. This factor weighs in favor of the most extreme sanction.

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

There is no evidence that Respondent' misconduct was based on any consideration of a class of citizenship. This factor is not in issue in this case.

In sum, the Commission's consideration of the totality of all seven *Brown* factors weighs in support of the imposition of the most severe sanction of removal.

In addition to the *Brown* factors, the Michigan Supreme Court has consistently concluded that "dishonest or selfish conduct warrants greater discipline than conduct lacking such characteristics." *In re Morrow*, 496 Mich 291, 302-303; 854 NW2d 89 (2014). Further, in *In re Adams*, 494 Mich at 181, the Court reasoned that a sanction may be less severe where a respondent

acknowledges his or her misconduct and is truthful throughout the disciplinary proceeding, but "where a respondent is not repentant, but engages in deceitful behavior during the course of a Judicial Tenure Commission disciplinary investigation, the sanction must be measurably greater." (Quoting *In re Noecker*, 472 Mich 1, 18; 691 NW2d 440 (2005) (Young, J., concurring)). This principle further supports the Commission's conclusion that Respondent's dishonest conduct, committed for selfish, personal reasons, warrants a more severe sanction, as the record shows Respondent has failed to take responsibility for her misconduct and has attempted to minimize, and to provide false explanations for, her misconduct throughout these proceedings.

B. Other Considerations.

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

> *(1) The judge's conduct in response to the Commission's inquiry and disciplinary proceedings. Specifically, whether the judge showed remorse and made an effort to change his or her conduct and whether the judge was candid and cooperated with the Commission.*

The Michigan Supreme Court has endorsed this factor, and has held that misrepresentations, lies, and deceitful testimony are a sufficient basis for removal from office. In *In re Justin*, the Court stated:

> "[o]ur judicial system has long recognized the sanctity and importance of the oath. An oath is a significant act, establishing that the oath taker promises to be truthful. As the 'focal point of the administration of justice,' a judge is entrusted by the public and has the responsibility to seek truth and justice by evaluating the testimony given under oath. When 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."

490 Mich 394, 424; 809 NW2d 126 (2012). The Court also noted that:

> *"[S]ome misconduct, such as lying under oath, goes to the very core of judicial duty and demonstrates the lack of character of such a person to be entrusted with judicial privilege.... Lying under oath, as the respondent has been adjudged to have done, makes him unlit for judicial office.*"

Id. at 424 (emphasis in original); *see also In re Ryman*, 394 Mich 637, 642-643; 232 NW2d 178 (1975); *In re Loyd*, 424 Mich at 516; *In re Ferrara*, 458 Mich at 372-373; *In re Noecker*, 472 Mich at 3; *In re Nettles-Nickerson*, 481 Mich at 322; *In re James*, 492 Mich 553, 568-570; 821 NW2d 144 (2012); *In re Morrow*, 496 Mich at 310 (noting the "line [the Court has] drawn in cases where a judge has lied under oath").

As noted above, Respondent lied under oath in the Juvenile Court, she made false statements to the Commission's investigators in responding to its investigation, and she gave false testimony to the Master at the Hearing. In addition to these false statements, Respondent has persistently refused to acknowledge that she committed any misconduct. At the formal hearing, she repeatedly took positions and offered incredible explanations which were discredited by other more credible witnesses, who Responded said were lying, particularly her grandsons, a CPS investigation, and Officer Adams. Respondent's false statements under oath and her lack of remorse alone are sufficient basis to remove her from office.

In *In re Adams*, 494 Mich at 173, the respondent signed her attorney's name to a pleading without permission and then filed the pleading in the respondent's divorce case. In addition, the respondent lied under oath in her divorce proceedings and made misrepresentations to the Commission during its investigation. *Id*. at 171, 175. While the Commission recommended that the respondent be suspended without pay for 180 days, the Court "[did] not believe that such a sanction would sufficiently address the harm done to the integrity of the judiciary." *Id*. at 184. Rather, the Court concluded that "because testifying falsely under oath is 'antithetical to the role of a Judge who is sworn to uphold the law and seek the truth,' (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.

The Court's statements in *Adams* leave little doubt that removal from office is the appropriate sanction in this case. Respondent made intentional and false representations, under oath, during the juvenile proceeding and the Commission's investigation and at the Hearing. Dishonesty in these circumstances erodes the public's confidence in the judiciary, *In re Noecker*, 472 Mich at 13, and renders a judge "unfit to sit in judgment of others." *In re Justin*, 490 Mich at 424. Further, Respondent has continued to deny and to minimize her misconduct throughout these proceedings. The Commission therefore concludes that Respondent's misconduct warrants removal from office.

(2) The effect the misconduct had upon the integrity of and respect for the judiciary.

Respondent's misconduct has been the subject of repeated media coverage in Wayne County, which casts not only Respondent, but the judiciary as a whole, in a negative light.

(3) Years of judicial experience.

This factor focuses on whether a judge's relevant experience is an aggravating or mitigating factor. Respondent committed her misconduct as an attorney specializing in family law and child protection and continued her misconduct after she became a judge. She made false statements after years as a lawyer and, in many instances, after she became a judge. Respondent's length of relevant service only exacerbates her misconduct.

C. The Basis for the Level of Discipline and Proportionality

The primary concern in determining an appropriate sanction is to "restore and maintain the dignity and impartiality of the judiciary and protect the public." *In re Ferrara*, 458 Mich at 372. In determining an appropriate sanction in this matter, the Commission is mindful of the Michigan Supreme Court's call for "proportionality" based on comparable conduct, as it set forth under MCR 9.244(B)(2). The Commission has undertaken to ensure that the action it is recommending is reasonably proportionate to the conduct of the Respondent and reasonably equivalent to the action that has been taken previously in equivalent cases. Based on the facts, the Commission concludes

removal from office is an appropriate and proportional sanction for Respondent's misconduct, and is reasonably equivalent to removal that has occurred previously in equivalent cases.

Respondent's misconduct eroded public confidence in the judiciary, exposed the court to obloquy, contempt, censure and reproach, and was prejudicial to the proper and actual administration of justice. Lying is so corrosive to the judiciary that only removal from office is proportionate to the misconduct.

The preponderance of evidence establishes that Respondent committed misconduct as alleged under Counts I and II of the Formal Complaint, as amended. That misconduct included multiple knowingly false statements under oath while she was a judge. The misconduct occurred before Respondent became a judge and continued after she became a judge. *Brown* observed that "[t]he most fundamental premise of the rule of law is that equivalent misconduct should be treated equivalently." 461 Mich at 1292.

The precedent of the Michigan Supreme Court discussed above establishes that judges who lie under oath seeking to manipulate legal proceedings in their self-interested favor, which is exactly what Respondent did, must be removed. *See In re Brennan*, 504 Mich at 85 n11; *In re Adams*, 494 Mich at 186; *In re Ryman*, 394 Mich at 642-643; *In re Loyd*, 424 Mich at 516, 535-536; *In re Ferrara*, 458 Mich at 372-373; *In re Noecker*, 472 Mich at 12-13; *In re Nettles-Nickerson*, 481 Mich at 322; *In re Justin*, 490 Mich at 396-397; *In re James*, 492 Mich at 568-570; *In re Morrow*, 496 Mich at 310 (noting the "line [the Court has] drawn in cases where a judge has lied under oath").

Thus, in consideration of all the *Brown* factors and additional factors considered by the Supreme Court, the Commission concludes removal is the appropriate and proportionate discipline for Respondent.

IX. Conclusion and Recommendation

On the basis of her judicial misconduct, the Commission unanimously recommends that Respondent be removed from office. Respondent's misconduct is comparable to, or worse than, the misconduct that caused the Supreme Court to remove other judges. *In re James*, 492 Mich at 570; *In re Brennan*, 504 Mich at 112, 117-18; *In re Justin*, 490 Mich at 419; *In re Adams*, 494 Mich at 181-183.

JUDICIAL TENURE COMMISSION

/s/ *Hon. Jon H. Hulsing*
HON. JON H. HULSING
Chairperson

/s/ *James W. Burdick*
JAMES W. BURDICK, ESQ.
Vice-Chairperson

/s/ *Hon. Brian R. Sullivan*
HON. BRIAN R. SULLIVAN
Secretary

/s/ *Hon. Monte J. Burmeister*
HON. MONTE J. BURMEISTER

/s/ *Danielle Chaney*
DANIELLE CHANEY

/s/ *Hon. Pablo Cortes*
HON. PABLO CORTES

/s/ *Siham Awada Jaafar*
SIHAM AWADA JAAFAR

/s/ *Hon. Amy Ronayne Krause*
HON. AMY RONAYNE KRAUSE

/s/ *Thomas J. Ryan*
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