

**STATE OF MICHIGAN  
BEFORE THE JUDICIAL TENURE COMMISSION**

**IN RE HON. TRACY GREEN**

3<sup>rd</sup> Circuit Court  
Wayne County, MI

**Complaint No. 103**

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**RESPONDENT, JUDGE TRACY GREEN'S PROPOSED FINDINGS  
OF FACT AND CONCLUSIONS OF LAW**

Respondent, Judge Tracy Green ("Judge Green"), through her attorneys, Plunkett Cooney, respectfully submits the following Proposed Findings of Fact and Conclusions of Law:

**INTRODUCTION**

1. Disciplinary Counsel have alleged that Respondent, Judge Tracy E. Green, covered up evidence of child abuse, made false statements about her knowledge of child abuse, and knowingly made false statements to the Commission.

2. Judge Green was unaware that her two grandsons, Gary Davis-Headd, Jr. ("Gary, Jr.") and Russell Davis-Headd ("Russell") (collectively "her grandsons" or "the boys") were victims of child abuse at the hand of their father.

3. Judge Green admits that, on a single occasion, she observed a red handprint on the cheek of one of her grandsons and applied makeup to the handprint.

4. Disciplinary Counsel have not proved that a red handprint left on the cheek of a child as a result of a slap to the face is child abuse.

5. Disciplinary Counsel have not proved by a preponderance of the evidence that the handprint was child abuse, that Judge Green was aware that the handprint was evidence of child abuse, and that Judge Green applied makeup to the handprint in an attempt to cover up evidence of child abuse.

6. Judge Green denies that she ever saw a bruise on the body of either of her grandsons.

7. Disciplinary Counsel have not proved by a preponderance of the evidence that the red handprint was a bruise.

8. Judge Green admitted and never denied that she applied makeup on a single occasion to a red handprint.

9. Judge Green denied that she ever applied makeup to a bruise on the body of either of her grandsons.

10. Judge Green did not knowingly make a false statement to the Commission related her application of makeup to the cheek of one of her grandsons.

11. Judge Green initially recalled that she had told Child Protective Services (“CPS”) that she had both observed a red handprint on the cheek of one of her grandsons and applied makeup to the handprint.

12. Upon further review and reflection during the course of this matter, Judge Green acknowledged that she could recall with certainty telling CPS that she had both observed a red handprint on the cheek of one of her grandsons, but could not recall with certainty if she also told CPS that she had applied makeup to the handprint.

13. Disciplinary Counsel have not proved by a preponderance of the evidence that Judge Green knowingly made a false statement to the Commission when earlier stating that she had told CPS that she had both observed a red handprint on the cheek of one of her grandsons and applied makeup to the handprint.

## **COUNT I – COVERING UP EVIDENCE OF CHILD ABUSE**

### **PROPOSED FINDINGS OF FACT**

#### ***The Existence of Child Abuse***

14. Two foundational elements must be proved by a preponderance of evidence before the charge can be considered. The first is the existence of child abuse. Child abuse is a nebulous concept with varying definitions. Not anyone can simply adjudge something to be child abuse. Child abuse is a legal standard that requires elemental proofs and a finding or adjudication that it occurred.

15. There is no evidence in the record that, prior to June 24, 2018, Gary, Jr. and Russell were victims of physical child abuse. Likewise, there is no legal finding or adjudication cited in the record that, prior to June 24, 2018, Gary, Jr. and Russell were victims of physical child abuse. There are no specific factual bases in the record of an incident of alleged physical child abuse before June 24, 2018.

16. Gary, Jr. and Russell did not testify to specific factual details establishing beyond a reasonable doubt or by a preponderance of evidence that they were victims of physical child abuse before June 24, 2018.

17. A legal finding or adjudication of the existence of child abuse under a Michigan statute or case law is a foundational premise to a claim that Judge Green covered up evidence of child abuse. The required foundational premise has not been established in the record. No testimony has been introduced, or exhibit admitted, that establishes the first foundational premise.

18. The only fact not in dispute is that sometime prior to June 24, 2018, Gary, Jr. was slapped on the cheek by his father and Judge Green applied makeup to the resulting handprint. The handprint was “pinkish” according to Gary, Jr. and everyone in his class knew he had been slapped. (Transcript, Volume III, pp 652-653)

*The Testimony of Marion Minnis*

19. There is no testimony in the record that a “pinkish” handprint was a bruise. Gary, Jr. testified that everyone in his class knew he had been slapped because of the handprint. Marion Minnis, his 3<sup>rd</sup> grade teacher testified that: she is a certified schoolteacher in the State of Michigan and the Assistant Principal of the Palmer Park Academy in Detroit (Transcript, Volume XI, pp 1904-1905); she taught 3<sup>rd</sup> Grade during the 2016/2017 school year and Gary, Jr. was her student (Transcript, Volume XI, pp 1905-1906); she did not recall ever observing any marks on the body of Gary, Jr. of any sort and never saw a red mark such as a handprint that may have been the result of a slap to the face (Transcript, Volume XI, p 1907); she is a trained, mandatory reporter of signs of suspected child abuse or neglect (Transcript, Volume XI, p 1907); and, she did not recall ever making a report with regard to a concern of child abuse or neglect related to Gary, Jr. (Transcript, Volume XI, p 1907).

*The Testimony of Kaitlin Noffsinger*

20. Kaitlin Noffsinger, Gary, Jr.'s 4<sup>th</sup> grade teacher, testified that: she has been a certified schoolteacher in the State of Michigan since 2012 and a teacher at David Ellis Academy in Detroit for the last eight years (Transcript, Volume IX, p 1724); she taught 4<sup>th</sup> Grade during the 2017/2018 school year and Gary, Jr. was her student (Transcript, Volume IX, pp 1724-1725); she never observed any marks on the body of Gary, Jr. at any time and never saw a red mark such as a red mark that may be left by a handprint that resulted from a slap to his cheek (Transcript, Volume IX, p 1727); she is a trained, mandatory reporter of signs of suspected abuse or neglect (Transcript, Volume IX, p 1728); and, she never reported any concern of any sort related to child abuse or neglect of Gary, Jr. (Transcript, Volume IX, p 1728).

21. Judge Green did not consider the slap and resulting handprint child abuse and it never occurred to her that anyone would consider it child abuse. (Transcript, Volume XI, pp 1974 & 1979).

22. The only expert that testified in this case was called by Judge Green. That witness, Nancy Diehl, was proffered as an expert in the Michigan forensic interview protocol and Michigan Child Protection Law. (Transcript, Volume IX, p 1658) Ms. Diehl was appointed by Governor Engler in 1993 to a Michigan government task force charged with developing a forensic interview protocol

for children. (Transcript, Volume IX, p 1653). Ms. Diehl testified that she had never seen a case in which a slap to the face of a child that left a red mark was found to be child abuse. (Transcript, Volume IX, p 1680). Notably, Disciplinary Counsel did not call an expert in the case or present any evidence to rebut the testimony of Ms. Diehl.

23. The Michigan Criminal Jury Instruction related to parental discipline and child abuse, M Crim JI 17.24, states:

(1) It is not a crime to discipline a child. A parent [or guardian, or any person otherwise allowed by law or authorized by the parent or guardian] may use force to discipline a child. But this does not mean that any amount of force may be used. The law permits only such force as is reasonable.

The Instruction goes on to say:

(2) The defendant is not required to prove that *the acts alleged here* were reasonable. The prosecutor must prove beyond a reasonable doubt that the force used was not reasonable as discipline.” (Emphasis added)

Disciplinary Counsel are not entitled to simply state as a matter of fact and law, without objective proofs confirming the details of the who, what, when, why,

how, and where, that Gary, Jr. and Russell were victims of child abuse before June 24, 2018. There are no proofs in the record substantiating the “acts” alleged.

***Knowledge of the Existence of Child Abuse***

24. The second foundational element that must be proved by a preponderance of evidence before the charge can be considered is that Judge Green had actual knowledge of the existence of child abuse.

25. Judge Green has categorically denied that she was aware of any evidence that her grandsons were being physically abused by her son. (*Answer to Amended Complaint*, ¶ 13 and Transcript, Volume XI, p 2011)

26. There is no evidence in the record that, prior to June 24, 2018, Judge Green was aware that Gary, Jr. and Russell were victims of physical child abuse. Gary, Jr. and Russell did not testify to specific factual details establishing by a preponderance of evidence that Judge Green was ever aware that they were victims of physical child abuse before June 24, 2018.

***The Testimony of Police Officer Melissa Adams***

27. The testimony of Officer Adams does not establish that Judge Green had actual knowledge of the existence of child abuse. Officer Adams testified that: she was requested by CPS to come to the 12730 Manor, Detroit home on June 24, 2018 for a wellbeing check (Transcript, Volume I, pp 31-32); she saw



“fresh red and black-and-blue marks” on the legs of Gary, Jr. (Transcript, Volume I, pp 38-39); and, she saw “fresh” “red, black, and blue” marks on the arms, hands, and legs of Russell (Transcript, Volume I, p 43).

28. Officer Adams recalled that Gary, Jr. and Russell were told they were being removed from the home and they asked if they could go with their mother (Transcript, Volume I, pp 45-46), but they were not asked in front of her if the boys wanted to go with their grandmother. (Transcript, Volume I, p 46) At some point, she told the boys that they could possibly go with their grandmother and Gary, Jr. said that he did not want to go with his grandmother because she “knew that the dad abused them - - and she never did anything about it.” (Transcript, Volume I, pp 51-52) Russell did not say that he did not want to go with his grandmother. (Transcript, Volume I, p 63)

29. The statement related to Judge Green attributed to Gary, Jr. is not found in the exhaustive police report authored by Officer Adams following the call. Remarkably, Officer Adams testified that:

- She prepared a nine-page police report following her appearance at the 12730 Manor, Detroit home on June 24, 2018. (Transcript, Volume I, p 75)
- Her report contained three and a half pages of single-spaced narrative. (Transcript, Volume I, pp 76-77)
- She prepared her report based on her handwritten notes and memory. (Transcript, Volume I, p 80)

- Her duty as a Detroit Police Department officer is to accurately record events that occur during the course of a call. (Transcript, Volume I, p 81)
- There is not a single reference to Judge Green in her report of June 24, 2018. (Transcript, Volume I, pp 81-83)
- The things that were said by the boys were significant and she should have included them in her report but did not do so. (Transcript, Volume I, p 83)
- There is not a single reference to the boys' reaction to hearing that their grandmother offered to take them in her report. (Transcript, Volume I, p 84)
- Her report does not say a single word about Judge Green. (Transcript, Volume I, pp 84-85)
- Her report does not say a single word about the boys being told that they may go with their grandmother. (Transcript, Volume I, p 85)
- She is not trained in the forensic protocol for interviewing of children and never interviewed the boys. (Transcript, Volume I, p 95)
- There is no reference in her report to the events that she testified to regarding Judge Green. (Transcript, Volume I, p 102)

30. The testimony of Officer Adams does not prove that Judge Green had actual knowledge of the existence of child abuse.

*The Testimony of Theodius Cross*

31. Theodius Cross, a friend of Judge Green's family, spent time with Gary, Jr. and Russell. Mr. Cross testified:

- He has known Gary, Jr. and Russell since 2016 as a friend of the family, role model, and occasional babysitter. (Transcript, Volume IX, pp 1742)
- He babysat for Gary, Jr. and Russell at least twice, once in approximately the end of 2017 or beginning of 2018, and once sometime thereafter; he never observed any marks on the bodies of either Gary, Jr. or Russell, any indication that would have led him to believe that they were being physically abused in any way, and never saw any marks on either of their faces representative of them possibly being slapped. (Transcript, Volume IX, pp 1743-1747)
- When the boys were removed from their father by CPS, he transported the boys between two locations and stopped along the way at McDonald's. (Transcript, Volume IX, pp 1747)
- When transporting the boys between two locations and stopping at McDonald's he did not observe any marks of any sort on their bodies or any marks on either of their faces, specifically on their cheeks, that may have been representative of them being slapped. (Transcript, Volume IX, pp 1748-1749)

32. Mr. Cross never observed any signs of child abuse when he was with Gary, Jr. and Russell.

### *The Testimony of Simone Headd*

33. Simone Headd is the daughter of Judge Green. Gary, Jr. and Russell are her nephews; she has known them since birth. (Transcript, Volume X, pp

1829-1830) Ms. Headd has spent a significant amount of time with Gary, Jr. and Russell. She testified that: she has visited with Gary, Jr. and Russell a lot over the years; they have spent nights and weekends at her home (Transcript, Volume X, pp 1832-1833); she never saw any marks on the bodies of Gary, Jr. and Russell (Transcript, Volume X, pp 1833-1834); and, she never saw any marks on the face of either Gary, Jr. or Russell (Transcript, Volume X, pp 1834).

34. Ms. Headd never observed any signs of child abuse when she was with Gary, Jr. and Russell.

*The Testimony of Andre Green*

35. Andre Green is the husband of Judge Green. Gary, Jr. and Russell are his grandsons. He has known them from birth. (Transcript, Volume X, pp 1846-1847) Mr. Green has spent a significant amount of time with Gary, Jr. and Russell. He testified that: Gary, Jr. and Russell have had many and often overnight visits with he and Judge Green in their home (Transcript, Volume X, pp 1848-1849); he never observed any marks on the bodies of Gary, Jr. and Russell that would have led him to conclude that they had been physically abused (Transcript, Volume X, p 1850); and, he never observed any marks on the face of either Gary, Jr. or Russell. (Transcript, Volume X, p 1850)

36. Mr. Headd never observed any signs of child abuse when he was with Gary, Jr. and Russell.

Testimony of Marcus Holmes

37. Marcus Holmes is a church ministry leader who has spent a significant amount of time with Gary, Jr. and Russell. Mr. Holmes testified that: he is a church music ministry leader for children and youth ministry (Transcript, Volume IX, p 1758); he has known Gary, Jr. and Russell during their involvement in the children and youth choir since the approximate ages of six and four, respectively (Transcript, Volume IX, p 1762); and, at no time during his interaction with Gary, Jr. and Russell did he ever observe any marks on their bodies of any sort. (Transcript, Volume IX, p 1764)

38. Mr. Holmes never observed any signs of child abuse when he was with Gary, Jr. and Russell.

Testimony of Tamika Brown-Edwards

39. Tamika Brown-Edwards is a youth ministry leader who has also spent a significant amount of time with Gary, Jr. and Russell. Ms. Brown-Edwards testified that: she is a church ministry leader involved with youth in her church and has been for 12 years (Transcript, Volume IX, pp 1786-1787); she has known Gary, Jr. and Russell all of their lives and interacted with them personally and through church and the youth ministry (Transcript, Volume IX, pp 1786-1787); at no time over the years when interacting with Gary, Jr. and Russell did she ever observe marks on their bodies or their faces (Transcript,

Volume IX, p 1791); and, never observed something like a red mark or a handprint on one of their cheeks that may have been left by a slap (Transcript, Volume IX, p 1792)

40. Ms. Brown-Edwards never observed any signs of child abuse when she was with Gary, Jr. and Russell.

*The Testimony of Gary, Jr.*

41. Gary, Jr. is a self-acknowledged and confirmed liar. He has admitted that he lied numerous times in conjunction with this case. At some point prior to April 3, 2021, he exchanged social media messages with his father. (Exhibits 9 & 9A) The messages resulted in Gary, Jr. writing a letter to a friend of his father by the name of John Cromer. The letter, which is referred to in this case as the “Uncle John” letter, was mailed on April 3, 2021 at the behest of the father of Gary, Jr. (Exhibit 8) The “Uncle John” letter became an issue - - Gary, Jr. claimed that Judge Green told him to write it. That was a lie. Gary, Jr. lied to Latisha, a KidsTalk interviewer, about the letter and the backstory on May 12, 2021. (Transcript, Volume II, pp 541-542 & Volume III, pp 625) Gary, Jr. lied to Disciplinary Counsel about the letter and the backstory on June 1, 2021, after the Formal Hearing in this matter had already commenced. Disciplinary Counsel was preparing Gary, Jr. for his testimony in this case. (Exhibit 44 & Transcript, Volume III, pp 624) Gary, Jr. again lied to

Disciplinary Counsel about the letter and the backstory on June 11, 2021; however, after learning that a Detroit Police Department IT specialist might be called in to look at his computer, Gary, Jr. confessed to the longstanding ruse. (Exhibits 45A & 45B) Disciplinary Counsel asked him to explain the backstory of the lie, and he did so in this case at the June 28, 2021 Formal Hearing. (Transcript, Volume II, pp 540-556)

42. The “Uncle John” letter series of lies was long, complex, and intentional. The perpetuation of the series of lies spanned nearly three months. On cross-examination, Gary, Jr. had to acknowledge it for what it is:

Q. So let's talk about this lie that you told concerning this letter, Max. Now, you actually started the lie and continued it during an hour-and-a-half interview with Ms. Weingarden; right?

A. Yes.

Q. And during that hour-and-a-half interview you literally lied to her face about all aspects of this Uncle John letter, didn't you?

A. Yes.

Q. And you purposely tried to trick her, didn't you?

A. Yes.

Q. And then as opposed to explaining your lie on the video yourself, you shared the lie with Ms. Weingarden off the record

away from the video, and instead you let her explain it for you on the video, didn't you?

A. Isn't she my lawyer? Isn't that what they do? I think that's what somebody told me.

Q. Could you answer my question, please?

A. I did.

(Transcript, Volume III, pp 722-723)

Q. Max, do you remember that interview with Ms. Weingarden on June 11th of 2021?

A. Yes.

Q. That was all a lie, wasn't it?

A. I already said that. Yes.

Q. And to be clear, the only reason that you admitted it was a lie was because you were in the middle of tricking Ms. Weingarden and she talked about having a police officer get a warrant to check your electronics. As a result of that, you panicked because you thought you were going to be caught and that's the reason why you confessed to the lie. Right?

A. Yes.

Q. That is the only reason you told Ms. Weingarden that you had lied, isn't it?

A. Yes.

(Transcript, Volume III, p 725)



43. Gary, Jr. is clearly an intelligent young man. He does, however, lash out sardonically when he is shown that he is not telling the truth or has to answer for inconsistencies in his statements and testimony. (See, e.g., Transcript, Volume III, p 725) One outburst was explosive and unsettling. (Transcript, Volume III, p 791)

44. While he claims there was more than one occasion in which Judge Green applied makeup to his body, he is only able to describe the specifics of one. Interestingly, he recalls the occasion as does Judge Green. Gary, Jr. testified that Judge Green applied makeup to a “pinkish” handprint from a slap and everybody in his class knew he got slapped. (Transcript, Volume III, pp 652-653)

45. The testimony of Gary, Jr. is not credible. Respectfully, in light of his intentional deceit, his testimony should receive no weight or credibility.

#### *The Testimony of Russell*

46. Russell was an eight-year-old when he was removed from his father’s home on June 24, 2018. He was five when his mom lost custody and he started living exclusively with his father and stepmother. During his testimony, he gave repeated answers along the lines of, “Yeah. No,” “I really can’t remember,” and “No, yeah - - wait.” (See, e.g., Transcript, Volume II, pp 335, 336)

& 339) Overall, he had a general lack of specific recollection concerning his prior statements, testimony, and allegations against his grandmother.

47. On critical issues, Russell's recollection was inconsistent. With regard to Judge Green applying makeup, he testified:

- Tracy put makeup on his arm but acknowledged, "I don't really remember, but I know maybe my legs if I was wearing shorts." (Transcript, Volume II, p 313)
- In response to whether Grandma Tracy put makeup on any marks on his face, "Yeah, I don't really remember, so, no, I can't say for sure. I don't remember." (Transcript, Volume II, pp 313- 314)
- He could not recall the type of makeup and acknowledged, "I don't know. Like, it was just a brush. That's what I remember." (Transcript, Volume II, p 314)
- He stuttered and stammered when asked if he had told his mother that Grandma put makeup on him, "No, yeah – wait. Did I tell my mom, you said? I don't know if I told her on e-mail, but I told her when we went to live with her. (Transcript, Volume II, p 315)
- Yes, No, and he could not remember as to if his Grandma put makeup on his face, "Yeah. No, not on my face. Well, I really can't remember if she did to my face, but I know for a fact that she did to my brother's face. (Transcript, Volume II, p 339)
- When asked if it (the Formal Hearing) was the first time he had ever testified that Judge Green put makeup on his forearm, hand, and leg, he admitted he did not know where, "I've told people that she put makeup on me before. But this was years ago so I don't remember exactly where it was at." (Transcript, Volume II, p 340)

- Shortly after saying he did not know if his Grandma put makeup on his face, he recalled that she had not, “I don't think any times.” (Transcript, Volume II, p 340)

48. The longer he testified, it became apparent that he lacked a clear recollection of almost everything, was mixing up what he did recall, and admitting things that he did not realize were inconsistencies. Russell again claimed that Judge Green put makeup on him with a brush (Transcript, Volume II, p 350), could not say whether it was a cream or powder, “but it was cold.” (Transcript, Volume II, p 353); and, despite his insistence that he saw Judge Green put makeup on the face of Gary, Jr., he admitted that he told Disciplinary Counsel in his September 9, 2019 interview that he never saw her put makeup on Gary, Jr. (Transcript, Volume II, p 362)

49. Russell made numerous admissions. For example, he admitted that his stepmother, Katy, had put makeup on him (Transcript, Volume II, p 314); he had teased Gary, Jr. when he had a handprint on his face caused by his father (Transcript, Volume II, p 315); his mother (Choree Bressler) told him she has a problem with Grandma Tracy (Transcript, Volume II, p 336); he never said or testified that Judge Green put makeup on him to conceal abuse until his father's August 30, 2019 criminal trial (Transcript, Volume II, p 346) - - after he had been living again with his mother for more than a year; and, he had multiple

discussions with his mother and Gary, Jr. concerning Grandmother Tracy applying makeup to conceal abuse (Transcript, Volume II, pp 353-354).

50. Even more recently with Disciplinary Counsel during his interviews for this case, he could not keep his story straight. In September 2019, he told Disciplinary Counsel that he was not sure if he spent the night at Judge Green's house when she put makeup on his face; but then, in June 2021, he told Disciplinary Counsel that his dad brought him over to Judge Green's house before school one morning so she could apply the makeup to the mark on his face left by his dad. (Transcript, Volume II, p 358) Tellingly, Russell had said in an earlier statement that he did not "think" Judge Green had put makeup on his face to conceal abuse, "I don't think any times." (Transcript, Volume II, p 340)

51. The transcript (Volume II) is replete with inconsistencies, impeachment, and admissions due to Russell's inaccurate and distorted recollection. These are a random sampling and do not include the outrageous claims related to wild sex parties, a man being killed at the house, etc.

52. The testimony of Russell is not credible.

53. Disciplinary Counsel introduced no witness that testified that they observed marks or signs that Gary, Jr. and Russell were victims of physical child abuse prior to June 24, 2018.

54. Disciplinary Counsel introduced no evidence, by testimony, exhibit, or otherwise, that Gary, Jr. and Russell were victims of physical child abuse prior to June 24, 2018.

55. Other than Gary, Jr. and Russell, Disciplinary Counsel introduced no witness that testified that they were otherwise aware that Gary, Jr. and Russell were victims of physical child abuse prior to June 24, 2018.

56. Disciplinary Counsel introduced no evidence, by testimony, exhibit, or otherwise, that corroborated the statements made by Gary, Jr. and Russell that they were victims of physical child abuse prior to June 24, 2018.

*The Testimony of Judge Green*

57. Judge Green testified clearly concerning her relationships with her son and grandsons, and her knowledge of the relationship between them. Judge Green testified that: at the time of the custody hearing in 2015, she had never seen any marks on the bodies of her grandsons or red marks on their faces (Transcript, Volume XI, p 1958); she was unaware of her son ever abusing her grandsons between May 29, 2015 and June 24, 2018, and was unaware of any corporal punishment during that time period (Transcript, Volume XI, p 2003); she never saw injuries on the faces of her grandsons (Transcript, Volume XI, p 2006); she did not put makeup on any injuries to Gary, Jr. or attempt to cover

injuries (Transcript, Volume XI, p 2009); and, she was never aware of her grandsons being abused at the hand of her son (Transcript, Volume XI, p 2011)

58. With regard to the single occasion that she applied makeup to Gary, Jr., she recalls the specific details of the event and who was present. Judge Green testified that the slap had occurred in approximately 2017-2018 (Transcript, Volume XI, p 1969). Gary, Jr. came up to her and she saw a faint outline of some fingers, not a whole hand, but at least three fingers on his cheek. (Transcript, Volume XI, p 1969-1970) The outline was pinkish as Gary, Jr. had described. (Transcript, Volume XI, p 1971) Russell had been teasing Gary, Jr. about the handprint. (Transcript, Volume XI, p 1973) She did not consider what she saw physical child abuse. (Transcript, Volume XI, p 1974) She applied some liquid foundation from a pump. (Transcript, Volume XI, p 1977-1978) In applying the makeup, she was not covering up marks that were evidence of child abuse. (Transcript, Volume XI, p 1979)

59. Unequivocally, Judge Green testified that, other than the handprint that she described, she never applied makeup to a mark on the body of either Gary, Jr. or Russell. (Transcript, Volume XI, p 2011)

60. Judge Green has been cross-examined twice in this case. She provided her direct testimony once. She was not impeached nor was she shown to have provided inconsistent testimony or statements.

## CONCLUSIONS OF LAW

61. Disciplinary Counsel have failed to prove by a preponderance of evidence that Judge Green violated any of the Michigan Court Rules cited in the Amended Complaint. Specifically, the claimed violations of the Michigan Court Rules in Count I are premised upon a single allegation - - that Judge Green “*concealed evidence*” that her son had abused her grandsons and, by doing so, committed misconduct in violation of:

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

**Conclusion:** The record does not reflect that Judge Green concealed evidence. There are no proofs in the record as to what “evidence” was concealed, how it was concealed, and when it was concealed. In addition, there are no proofs in the record as to when, how, why, and where the proper administration of justice was prejudiced.

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

**Conclusion:** The record does not reflect that Judge Green concealed evidence. There are no proofs in the record as to what “evidence” was concealed, how it was concealed, and when it was concealed.

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

**Conclusion:** The record does not reflect that Judge Green concealed evidence. There are no proofs in the record as to what “evidence” was concealed, how it was concealed, and when it was concealed.

- d. 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, trustworthiness, or fitness as a lawyer;

**Conclusion:** The record does not reflect that Judge Green concealed evidence. There are no proofs in the record as to what “evidence” was concealed, how it was concealed, and when it was concealed. In addition, there are no proofs in the record as to what criminal law Judge Green violated or when, how, and where the law was violated.

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



**Conclusion:** The record does not reflect that Judge Green tampered with evidence. There are no proofs in the record as to what “evidence” was tampered with, how it was tampered with, and when it was tampered with.

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

**Conclusion:** The record does not reflect that Judge Green was an accessory after the fact to child abuse. There are no proofs in the record as to what “child abuse” was involved, when and where it occurred, who was involved, and in what criminal act of child abuse she served as an accessory. MCL § 750.505 defines an accessory after the fact as “one who, with knowledge of the other’s guilt, renders assistance to a felon in the effort to hinder his detection, arrest, trial or punishment.”<sup>1</sup> See *People v Perry*, 460 Mich 55, 594 NW2d 477 (1999); *People v Williams*, 117 Mich App 505, 324 NW2d 70 (1982); and *Wildberger v State of Maryland*, 74 Md App 107, 112 (1988)(stating an accessory after the fact is one who, knowing that a felony has been committed, harbors and protects the felon or

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<sup>1</sup> An accessory after the fact is someone who knowingly helps a felon avoid discovery, arrest, trial or punishment. M Crim JI 8.6 Accessory After the Fact.

renders him or her assistance to elude punishment). The accessory after the fact to child abuse charge in tandem with MCL § 750.505 cannot be sustained. The statute is meant to be a catch-all and it prohibits conduct for which there is no provision expressly made in any statute of this state. *Id.*; *See also, People v Waterstone*, 296 Mich App 121, 818 NW2d 432 (2012)(stating that MCL § 750.505 provides for criminal penalties and punishment when a person commits an offense that was indictable at the common law, absent a statutory provision that expressly punishes the charged offense). The charge, as stated, does not exist.

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

**Conclusion:** The record does not reflect that Judge Green violated a criminal law of the State of Michigan. There are no proofs in the record as to what “law” was violated, how it was violated, and when it was violated.

## **COUNT II – FALSE STATEMENTS ABOUT KNOWLEDGE OF CHILD ABUSE**

### **PROPOSED FINDINGS OF FACT**

62. As with Count I, two foundational elements, the existence of child abuse and knowledge of the existence of child abuse, must be proved by a preponderance of evidence before Count II can be considered. As detailed above, and incorporated here by reference, there is no evidence in the record that, prior to June 24, 2018, Gary, Jr. and Russell were victims of physical child abuse and that Judge Green had actual knowledge of the child abuse.

63. In her responses to the Commission's requests for comment, Judge Green denied that her grandsons had ever told her that they had been abused and that she was aware of any alleged abuse. There is no evidence in the record that Judge Green's responses were not truthful.

64. As noted by the Michigan Court of Appeals, Gary, Jr. and Russell testified in the underlying criminal trial involving their father that they had never disclosed the abuse to anyone other than their mother. *People v Gary Lawrence Davis-Headd*, unpublished per curiam opinion of the Court of Appeals, issued January 6, 2022 (Docket No. 351635), p 4.

65. Judge Green was unaware that her son spanked his children at any time following the entry of a court order on April 30, 2015 that prohibited the use of corporal punishment. This is not revisionist history. Judge Green made that truthful statement in response to the Commission's requests for comment and testified in this case consistent with the statement: she knew that her

grandsons had been spanked before the divorce, that an order was entered in April 2015 prohibiting corporal punishment, and was unaware of them being spanked after that time. Judge Green was clear in her testimony that: between May 29, 2015 and June 24, 2018, she was unaware that her son was abusing her grandsons; during the same time period she was unaware that her son used corporal punishment on her grandsons; and, was unaware until after the commencement of the CPS investigation on June 24, 2018 that her son had hit her grandsons with a belt. (Transcript, Volume XI, pp 2003-2004)

66. Disciplinary Counsel is claiming that Judge Green made false statements about her alleged knowledge of child abuse by not “qualifying” her answers to questions. Specifically, they claim that Judge Green, when responding to the Commission’s request for comments stating that the boys told her that they had been spanked by their father for misbehaving, did not qualify that answer and say that they had told her that *before* April of 2015. (Transcript, Volume XI, pp 2026-2027) Judge Green testified that she was simply answering the questions that had been asked. (Transcript, Volume XI, p 2027) Disciplinary Counsel have not proved that any response to any question, whether asked by the Commission, asked during testimony at a hearing, or during an interview, was false. In essence, Judge Green is being accused of making false statements that Disciplinary Counsel cannot prove to be false so

must argue *were* false because she did not volunteer and provide *more* information than what was requested in the questions. There is no factual or legal evidence in the record that Judge Green did not truthfully and in good faith answer any question at any time. The converse fact is instructive - - there is no factual or legal evidence in the record that Judge Green intentionally and knowingly made a false statement by not answering any question truthfully and in good faith.

67. Disciplinary Counsel goes further into the realm of the unprovable by alleging that Judge Green made false statements when she did not simply accept and agree with statements made by others. In ¶ 31 of the Amended Complaint, Disciplinary Counsel allege that Judge Green made several false statements during her March 13, 2019 testimony in the juvenile court hearing. First, she denied “That there were *not* times that Gary, Jr. showed her bruises on his body.” (Emphasis added) In other words, the allegation is that there were times when Gary, Jr. *did* show her bruises on his body. Here, Judge Green is being forced to prove a negative. Gary, Jr. never showed her bruises on his body. This is apparently alleged to be a false statement simply because Gary, Jr. said that he had done so. Essentially the statement by Gary, Jr. is being accepted as truth and any denial of that “truth” is a false statement. The same situation of proving a negative is found in the second question in which Judge Green

testified that she did not use makeup to cover up Gary and Russell's bruises. Again, Judge Green has to prove a negative. She never applied makeup to any bruise on the body of either grandson at any time. It appears, however, that Gary, Jr. and Russell testified that she did do so. With that testimony being accepted as truth, Judge Green must somehow prove that her testimony is not false. Finally, Disciplinary Counsel claim that Judge Green made a false statement in stating that Gary, Jr.'s testimony that she covered up bruises on his face with makeup was a lie. The same analysis applies.

68. Judge Green has been truthful in responding to the Commission's questions and testifying at a hearing concerning the use of makeup. There was a single occurrence when she applied liquid foundation to the cheek of Gary, Jr. when he had been slapped in the face by his father. The Judge explained precisely what had occurred in her response to the very first request for comment and the explanation has remained the same since that time. (Exhibit 3 & Transcript, Volume XI, pp 1969-1979) The explanation has been consistent from day one. Disciplinary Counsel has not introduced any evidence to suggest that the single event did not occur exactly as described by Judge Green. Of significant note here is that Judge Green applying makeup to the cheek of Gary, Jr. to cover a red or "pinkish" handprint following a slap from his father is something that all three of the only present, fact witnesses agree.

69. The allegations of false statements made by Judge Green distill down to the fact that Disciplinary Counsel are demanding that the Master accept the statements and testimony of Gary, Jr. and Russell as fact and find that Judge Green has made false statements because she has denied the truth of the statements and testimony.

70. The Amended Complaint admits that is premised upon statements made when Gary, Jr. and Russell were both under eleven years of age. (*Amended Complaint*, ¶ 6)

71. Judge Green disagrees with the statements and/or testimony of Gary, Jr. and Russell upon which the allegations in Count II are premised. There is no credible or corroborating evidence in the record that supports the statements or testimony.

*The Testimony of Michael Elrick*

72. While not an allegation in the Amended Complaint, Disciplinary Counsel attempt to use a six second clip of a May 14, 2019, Fox 2 News interview to challenge the veracity of Judge Green. (Exhibit 7)

73. Michael Elrick testified that Judge Green had said during her interview that she did not “put any makeup on the boy’s face.” (Transcript, Volume I, p 200) Elrick was impeached and had to acknowledge on cross-examination that what Judge Green actually said was, “I didn’t put makeup on

any bruises to conceal any abuse.” (Transcript Volume I, pp 203-204 & Exhibit 7) He also admitted that Judge Green, “went further to say that she did not put makeup on the boy’s face to cover up any bruises.” (Transcript, Volume I, p 204) Elrick also conceded on cross-examination that omitting information that is relevant and misleading viewers is a violation of journalistic canons. (Transcript, Volume I, p 223)

74. Judge Green did not apply makeup to either of her grandsons’ bodies at any time to conceal a bruise. She did apply makeup once to the cheek of Gary, Jr. (Transcript, Volume XI, pp 1969-1979). The makeup was applied to a red handprint on the cheek. The handprint was not a bruise. Judge Green knows the difference between a red mark and a bruise on the skin. (Transcript, Volume XI, p 1973)

### **CONCLUSIONS OF LAW**

75. Disciplinary Counsel have failed to prove by a preponderance of evidence that Judge Green violated any of the Michigan Court Rules or Canons of the Michigan Code of Judicial Conduct cited in the Amended Complaint. Specifically, the claimed violations of the Michigan Court Rules and Canons in Count II are premised upon the statements and testimony of Gary, Jr. and Russell being accepted as fact and that Judge Green, in turn, has made false



statements because she has denied the truth of the statements and testimony of her grandsons and, by doing so, committed misconduct in violation of:

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

**Conclusion:** There is no credible or corroborating evidence in the record supporting a finding that Judge Green made false and misleading statements by denying baseless statements made by her grandsons.

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

**Conclusion:** There is no credible or corroborating evidence in the record supporting a finding that Judge Green made false and misleading statements by denying baseless statements made by her grandsons.

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

**Conclusion:** There is no credible or corroborating evidence in the record supporting a finding that Judge Green made false and

misleading statements by denying baseless statements made by her grandsons.

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

**Conclusion:** Canon 2(A) states:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The Canon relates to “conduct” by judges. Disciplinary Counsel have presented no legal support for their claim that denying the truth of a statement is “conduct” contemplated by Canon 2(A). The Michigan Ethics opinions interpreting Canon 2(A), J-008, JI-135, and JI-137 through JI-140, do not support the “conduct” claim as alleged.

- e. MCJC Canon 2(B), which requires a judge to act in a way that promotes confidence in the integrity of the judiciary; and

**Conclusion:** Canon 2(B) states:

A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect.

The Canon relates to the "conduct and manner" of a judge. As with Canon 2(A), Disciplinary Counsel have presented no legal support for their claim that denying the truth of a statement is "conduct" contemplated by Canon 2(B). The same argument applies to "manner" which under this Canon relates to the manner in which a judge should "treat" a person. Denying the truth of a statement is not what is contemplated by "manner" in this Canon. The Michigan Ethics opinions interpreting Canon 2(B) (citations omitted) do not support the "conduct and manner" claim as alleged.

- 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.

**Conclusion:** There is no credible or corroborating evidence in the record supporting a finding that Judge Green made false and

misleading statements by denying baseless statements made by her grandsons.

### **COUNT III – KNOWINGLY FALSE STATEMENTS TO THE COMMISSION**

#### **PROPOSED FINDINGS OF FACT**

76. In her Answer to Complaint, Judge Green admitted that she was aware her son had, on a single occasion, slapped Gary, Jr. across the face hard enough to leave a handprint, advised Child Protective Services of that fact, and advised that she applied some foundation to the cheek of Gary, Jr., during an interview with a CPS investigator. She 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. [See, e.g., *Answer to Complaint*, ¶ 10(f)] Judge Green was certain at the time that she made the statements and submitted her Answer to Complaint in December 2020 that she had advised Child Protective Services of those facts during a CPS interview clearly demonstrating that she was not attempting to cover up alleged evidence of child abuse or making a false statement about her knowledge. Judge Green believed to the best of her knowledge, information, and belief at the time she made the statements that she *had* advised Child Protective Services that she applied some foundation to the cheek of Gary, Jr. on that occasion; however, upon further reflection, the passage of time, and the testimony and documents

presented during the course of this case and Formal Hearing in this matter, she could no longer say with certainty at this late date whether that had occurred.

77. Judge Green was called to testify by Disciplinary Counsel on September 17, 2021. She 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 the cheek of Gary, Jr. (*Transcript*, Volume VI, p 1154) She explained that, if she had done so, Leslie Apple would have been the person to whom she would have provided that information. (*Transcript*, Volume VI, pp 1154-1155)

78. Judge Green explained in more detail the reasons for her uncertainty as to whether she told CPS about applying makeup to the cheek of Gary, Jr. when she told the investigator about the slapping incident and handprint. In December 2020, when she filed her Answer to Complaint, she had recalled to the best of her knowledge, information, and belief that she had done so. She recalled the slapping incident, handprint, and makeup combined as a single act. (*Transcript*, Volume VI, pp 1999-2002) Disciplinary Counsel argue that Judge Green's later uncertainty between December 2020 when she filed her Answer to Complaint, and September 2021 when she testified that she was certain about telling CPS about the slap and handprint but not certain about the makeup, confirms that she "knowingly" made a false statement to the

Commission in her Answer to Complaint. That is not so. The fact that she was so candid as to admit and clarify after the fact that her recollection had become uncertain after filing her Answer belies the argument that she had knowingly made a false statement. If it were a false statement that she knowingly made in December 2020, why would she not have simply maintained that position throughout the case? Disciplinary Counsel say that it is because she knew that Leslie Apple, the initial CPS investigator on the underlying abuse case, would be testifying and would deny that Judge Green had told her about the makeup. That is also not so. Ms. Apple was initially only allowed to testify to non-case-specific matters. She did so on Day One, May 27, 2021. Regardless, that would not have changed the dynamic - - it would still have been word-against-word between Ms. Apple and Judge Green - - which is precisely the fact question that still exists in this case and that Disciplinary Counsel cannot resolve. The fact question can be resolved by way of weight and credibility. The CPS reports are not reliable and the testimony of Ms. Apple is not credible.

*The Testimony of Leslie Apple*

79. Leslie Apple was the first CPS investigator assigned to the file involving Gary, Jr. and Russell. She was initially called by Disciplinary Counsel to provide non-fact-based testimony. Disciplinary Counsel subsequently made a separate record of her fact-based testimony, which was later allowed into the

case as substantive testimony. Ms. Apple testified concerning her role in the CPS investigation, her CPS reports, Judge Green's charge of bias against her, and her "reassignment" from the case. Specifically, Ms. Apple testified:

- She was reassigned from the CPS investigation case involving Gary, Jr. and Russell and that prohibited her from doing any further work on the case. (Transcript, Volume VII, pp 1331-1332)
- There were two CPS investigative reports, one with a Complaint Date of June 24, 2018 in two different versions (Exhibits 16 & 42), and the other with a Complaint Date of August 6, 2018 also in two different versions (Exhibits 17 & 18).
- One version of the CPS investigative report is 25 pages long, dated September 13, 2018 and September 28, 2018, and signed. (Exhibit 16)
- One version of the CPS investigative report is 26 pages long, dated September 13, 2018 and September 28, 2018, but unsigned. (Exhibit 42)
- One version of the CPS investigative report is ten pages long, dated September 18, 2018 and October 4, 2018, but unsigned. (Exhibit 17)
- One version of the CPS investigative report is 34 pages long, dated September 18, 2018 and April 15, 2019, but unsigned. (Exhibit 18)
- One version of her CPS investigative report (Exhibit 17) records an August 9, 2018 at 11:35 a.m. telephone conversation with Judge Green in which Judge Green told her of her concerns and things that needed to be investigated about Choree Bressler including psychiatric hospitalization,

mental health records, perjury, and tendency for violence. (Transcript, Volume VII, pp 1356-1357 & Exhibit 17)

- The version of her CPS investigative report (Exhibit 17) that records the August 9, 2018 at 11:35 a.m. telephone conversation with Judge Green does reflect that Judge Green told her of concerns and things that needed to be investigated about Choree Bressler, including psychiatric hospitalization, mental health records, perjury, and tendency for violence, but does not reflect that she investigated the concerns. (Transcript, Volume VII, pp 1356-1357, pp 1361-1362, & Exhibit 17)
- Another version of her CPS investigative report (Exhibit 16) does not reflect that she investigated the concerns about Choree Bressler raised by Judge Green. (Transcript, Volume VII, p 1359 & Exhibit 16)
- Another version of her CPS investigative report (Exhibit 42) does not reflect that she investigated the concerns about Choree Bressler raised by Judge Green. (Transcript, Volume VII, pp 1359-1361 & Exhibit 42)
- Another version of her CPS investigative report (Exhibit 18) does not reflect that she investigated the concerns about Choree Bressler raised by Judge Green. (Transcript, Volume VII, pp 1368-1371 & Exhibit 18)
- An investigation of the concerns regarding Choree Bressler raised by Judge Green is not found in any of the four versions of her CPS report until after she was reassigned off of the case. (Exhibit 18)
- She does not know where she would find her notes on her investigation of Choree Bressler “because [she] don’t know why there are so many different versions of [the] case reports either.” (Transcript, Volume VII, pp 1364-1365)



- None of the four CPS investigative reports contain “all [her] work” because “things disappeared after a meeting” and “Things were taken out of the report” and she “did not sign off on them” and she “put things in that report and they do not appear to be there” and “some of [her] work product was removed from [her] report without [her] permission.” (Transcript, Volume VII, pp 1371-1373)
- She expressed her “dismay with how things were being handled” to the ranks of CPS and she “was advised that [it] was not [her] case anymore and [she] should not be concerned about it.” (Transcript, Volume VII, p 1373)
- She expressed her “dismay with how things were being handled” to the ranks of CPS and she “was advised that [it] was not [her] case anymore and [she] should not be concerned about it” after Judge Green contacted her supervisors indicating concerns of bias. (Transcript, Volume VII, p 1373)
- She was reassigned off the case after Judge Green raised the claim of bias. (Transcript, Volume VII, p 1375)

80. In response to questions asked by Disciplinary Counsel, Ms. Apple testified that Judge Green had told her about the slapping incident and handprint but did not tell her that she had put makeup on the handprint. (*Transcript*, Volume VII, pp 1309-1310) The testimony is not credible. As noted in the citations to her testimony above, Ms. Apple was biased against Judge Green. Ms. Apple was asked by Judge Green on August 9, 2018 to investigate the fitness of Choree Bressler, the mother of her grandsons, as a custodial parent of the boys. (*Transcript*, Volume VII, pp 1356-1357, pp 1361-1362, &

Exhibit 17) The request was documented in one of the CPS reports. (Exhibit 17) Ms. Apple never investigated the concerns. She was biased in favor of Choree Bressler and against Judge Green. Eventually, Judge Green went to Ms. Apple's supervisors which resulted in her reassignment off of the case. (Transcript, Volume VII, p 1375) Notably, after the new investigator took over the case, the concerns related to Choree Bressler were investigated.

81. In addition to bias, the testimony of Ms. Apple concerning what Judge Green did or did not tell her is not credible because Ms. Apple's reports are not reliable. As noted, there were multiple versions of the same reports, each containing different information. None of the reports reflect that Judge Green told Ms. Apple about applying makeup to the cheek of Gary, Jr. - - but there is no way to tell if that information had been communicated and recorded in one of the versions of the reports but subsequently revised or deleted. Remarkably, Ms. Apple testified that none of the four CPS investigative reports contain "all [her] work" because "things disappeared after a meeting" and "Things were taken out of the report" and she "did not sign off on them" and she "put things in that report and they do not appear to be there" and "some of [her] work product was removed from [her] report without [her] permission." (Transcript, Volume VII, pp 1371-1373) Ms. Apple was so concerned that her reports had been tampered with that she expressed her "dismay with how

things were being handled” to the ranks of CPS and she “was advised that [it] was not [her] case anymore and [she] should not be concerned about it.” (Transcript, Volume VII, p 1373)

*The Testimony of Adam Baker*

82. Ms. Apple was biased against Judge Green, did not investigate her concerns regarding the fitness of Choree Bressler to have custody of her grandsons, and was removed from the case as a result. Adam Baker, the District manager of CPS, testified concerning the handling of the underlying case by Ms. Apple:

- Bias complaints are sometimes addressed by having a new investigative worker assigned to a matter. (Transcript, Volume IV, p 871)
- CPS tries to resolve bias complaints as soon as possible when they become aware of them. (Transcript, Volume IV, p 872)
- Formal bias complaints may be submitted in writing, such as via e-mail, and by phone call. (Transcript, Volume IV, p 911)
- Ms. Apple was removed from the CPS investigation because of her report and the incompleteness of the report. (Transcript, Volume VIII, p 1534)
- One of the reasons that Ms. Apple was removed was that there was no investigative work done by her following up on the August 9, 2018 complaints made by Judge Green. (Transcript, Volume VIII, p 1613)
- There was nothing in Ms. Apple’s record about doing an investigation about the complaints made by Judge Green on

August 9, 2018 until *after* Ms. Apple was replaced on the case and then somebody else investigated the complaints. (Transcript, Volume VIII, p 1613)

83. With regard to the reliability of the CPS reports, Mr. Baker's testimony was markedly different from the testimony of Ms. Apple. With regard to the reports, he testified:

- An unsigned but dated CPS report is "an official complete final copy." (Transcript, Volume IV, p 854)
- No part of a 154 CPS investigative report can be modified, revised, or amended after it is finalized or closed in the system unless the case is reopened. (Transcript, Volume IV, pp 908-909)
- A 154 CPA investigative report cannot be reopened once finalized or closed in the system for purposes of revising, amending, or modifying any of the prior work that was completed. (Transcript, Volume IV, p 910)
- CPS cannot reopen a finalized or closed report to add or subtract something unless approval is given for purposes of conducting additional work but not for purposes of striking something from the investigative report. (Transcript, Volume IV, pp 931-932)
- He is not aware of anyone at CPS removing any of the notes of Ms. Apple from any investigative report or her file. (Transcript, Volume VIII, p 1570)
- He has never altered, revised, corrected, or amended any of Ms. Apple's investigation reports or files. (Transcript, Volume VIII, p 1571)

84. Ms. Apple was so biased against Judge Green that Judge Green found herself inappropriately added to the CPS Central Registry. Mr. Baker testified that Judge Green was placed on Central Registry but was subsequently removed because the report that did so was *incomplete*, CPS made a determination that she was *not* responsible for the care and custody of the boys, and there was *no* basis for her to be on the Registry. (Transcript, Volume VIII, pp 1560-1561)

*The Testimony of Bobbi Jo Ferguson*

85. Securing copies of the underlying CPS report, that ended up being four reports, was a difficult task. Bobbi Jo Ferguson, the State Administrative Manager of MDHHS, testified and further demonstrated that the CPS reports are not reliable. She said:

- There are only three CPS investigative reports in the system, two with a Complaint Date of June 24, 2018 and one with a Complaint Date of August 6, 2018. (Transcript, Volume VIII, pp 1486-1487)
- Formatting changes due to computer software updating does not delete a CPS investigator's notes in a report. (Transcript, Volume VIII, p 1494)
- There are two different reports with a Complaint Date of August 6, 2018. (Transcript, Volume VIII, pp 1496-1497, Exhibit 17 & Exhibit 18)
- There is no question that the investigative note that was recorded on August 9, 2018 (related to the requested

investigation of Choree Bressler) in Exhibits 17 & 18 was completed (recorded) before September 13, 2018. (Transcript, Volume VIII, pp 1498-1499, Exhibit 17 & Exhibit 18)

- The investigative note that was recorded on August 9, 2018 (related to the requested investigation of Choree Bressler) is not found in Exhibits 16 & 42. (Transcript, Volume VIII, p 1499, Exhibit 16 & Exhibit 42)
- If information contained in a CPS report is relevant to both cases she would expect that information to remain in both reports. (Transcript, Volume VIII, p 1503)
- In the four different versions of CPS reports in this case there is no notation in any one report that an amendment occurred. (Transcript, Volume VIII, p 1504, Exhibits 16, 42, 17 & 18)
- At least 24 pages of information was added to the CPS report after the report was finalized on September 18, 2018. (Transcript, Volume VIII, p 1519)

### Choree Bressler

86. Choree Bressler is the mother of Gary, Jr. and Russell. She is the former daughter-in-law of Judge Green. Ms. Bressler hates Judge Green and has mounted a campaign to destroy her. Ms. Bressler was to appear to testify in this case under both a subpoena and separate order to appear. She failed to appear. Two of Ms. Bressler's YouTube channel videos and a video from an AM radio station interview in which she participated have been admitted into evidence. (Exhibits 36A, 36B & 36C) The things that Ms. Bressler says about

Judge Green are vitriolic and rancorous. In one rant, she speaks directly to

Judge Green and states:

“You are not mentally stable. You are not emotionally stable. And you are not all there. There’s some missing, missing pieces to your brain puzzle.”

(Exhibit 36B @ 8:12-8:24) In another, she states:

“Tracy Green is a very demonic human being. She is extremely manipulative. Extremely, extremely mean-spirited in her heart. Her soul is rotten.”

(Exhibit 36A @ 3:35-3:59)

87. Judge Green is the excuse that Ms. Bressler uses to explain why she lost custody of Gary, Jr. and Russell:

“The reason that I did not have custody of my children for three years, and Gary was able to abuse them the way that he did, is because, when I divorced him Tracy Green, his mother, was a lawyer at the time and she had a relationship, friendship, whatever you want to call it with the judge on my divorce, Judge Kevin Cox, who granted Gary sole legal and physical custody of my children.”

(Exhibit 36A @ 0:35-1:03) Her baseless claims against Tracy are preposterous:

“...she took my children from me and gave them to her son.”

(Exhibit 36A @ 8:57-9:02) She confirms her hate of Judge Green with vicious rants:

“So when I tell you that Tracy Green is a piece of garbage, I mean that in every sense of the word. This woman is so nasty and vindictive.”

(Exhibit 36A @ 8:28-8:40)

88. Ms. Bressler abandoned Gary, Jr. and Russell in 2015 when she divorced their father and lost custody. The boys were 8 and 6 at that time. She had no confirmed contact with her sons for nearly three years. At some point, in approximately December 2017, she attempted to re-establish contact. She sent an e-mail to Gary, Jr. on December 26, 2017, stating: “Happy Birthday Gary. Tell Russy I love him and I love you!! We will be together soon.” (Exhibit 11A) This communication and the e-mails that followed disclose her plan to regain custody. In order to have parenting time with her sons, Ms. Bressler had to work with Growth Works to arrange supervised parenting time. Ms. Bressler never attempted to exercise her supervised visitation rights through Growth Works before June 5, 2018. (Exhibit 52)

89. Ms. Bressler understood that, on account of her abandonment and lack of contact, there was a chance that Gary, Jr. and Russell would be placed with Judge Green and her husband if they were removed from the custody of their father. Ms. Bressler had lengthy e-mail communications with her sons in late June 2018, just before and during the time they were being removed from



their father's home. The e-mails further reveal and illustrate Ms. Bressler's plan to regain custody:

On Fri, Jun 22, 2018 at 7:23 PM Russell Davis-Headd <[russelldavisheadd@gmail.com](mailto:russelldavisheadd@gmail.com)<<mailto:russelldavisheadd@gmail.com>>> wrote:  
I'm so sorry!!!!!!

On Fri, Jun 22, 2018 at 7:38 PM Choree's Cards <[cab87noir@gmail.com](mailto:cab87noir@gmail.com)<<mailto:cab87noir@gmail.com>>> wrote:  
You don't have to be sorry. If you want you live with your dad that is fine. I did everything I could. CPS was going to bring you to me today. I told Gary that. Now they don't believe you're in any danger.

On Friday, June 22, 2018, Choree's Cards <[cab87noir@gmail.com](mailto:cab87noir@gmail.com)<<mailto:cab87noir@gmail.com>>> wrote:  
I can't call CPS anymore for you two. They are not going to believe me anymore.

On Fri, Jun 22, 2018 at 8:20 PM Russell Davis-Headd <[russelldavisheadd@gmail.com](mailto:russelldavisheadd@gmail.com)<<mailto:russelldavisheadd@gmail.com>>> wrote:  
Me and Gary wil tell them everything there you will be there to guild us

On Fri, Jun 22, 2018 at 9:21 PM Choree's Cards <[cab87noir@gmail.com](mailto:cab87noir@gmail.com)<<mailto:cab87noir@gmail.com>>> wrote:  
It's too late now. You should have spoken up when you had the chance. There is nothing I can do now. I will still bring you for visits but it will take some time.

On Saturday, June 23, 2018, Choree's Cards <[cab87noir@gmail.com](mailto:cab87noir@gmail.com)<<mailto:cab87noir@gmail.com>>> wrote:

That will make it look like I'm making it up. I need you to be big boys. I know that to hard but it's the only way you will get out.

On Sat, Jun 23, 2018 at 8:15 AM Russell Davis-Headd <[russelldavisheadd@gmail.com](mailto:russelldavisheadd@gmail.com)<<mailto:russelldavisheadd@gmail.com>>> wrote:

The only reason I was scared was because if it didn't work

On Sat, Jun 23, 2018 at 11:19 AM Choree's Cards <[cab87noir@gmail.com](mailto:cab87noir@gmail.com)<<mailto:cab87noir@gmail.com>>> wrote:

Honey your father is not as powerful as you think. That lady would not have left you there if you had

----- Forwarded message -----

From: Choree's Cards

<[cab87noir@gmail.com](mailto:cab87noir@gmail.com)<<mailto:cab87noir@gmail.com>>>

Date: Sat, Jun 23, 2018 at 11:30 AM

Subject: Re:

To: Russell Davis-Headd

<[russelldavisheadd@gmail.com](mailto:russelldavisheadd@gmail.com)<<mailto:russelldavisheadd@gmail.com>>>

GiveGary this email address

[gdavisheaddjr@outlook.com](mailto:gdavisheaddjr@outlook.com)<<mailto:gdavisheaddjr@outlook.com>> the password is Mommy2018

(Exhibit 11B, thread reversed for ease of chronological reference, emphasis supplied)

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On Sun, Jun 24, 2018 at 3:24 PM Russell Davis-Headd <[russelldavisheadd@gmail.com](mailto:russelldavisheadd@gmail.com)<<mailto:russelldavisheadd@gmail.com>>>

They said it is not likely that we are going with you 😞 but it is possible

On Sun, Jun 24, 2018 at 3:28 PM Choree's Cards  
<[cab87noir@gmail.com](mailto:cab87noir@gmail.com)<<mailto:cab87noir@gmail.com>>> wrote:

I want to to go to my mother in laws not with me

----- Forwarded message -----

From: Choree's Cards

<[cab87noir@gmail.com](mailto:cab87noir@gmail.com)<<mailto:cab87noir@gmail.com>>>

Date: Sun, Jun 24, 2018 at 3:29 PM

Subject: Re:

To: Russell Davis-Headd

<[russelldavisheadd@gmail.com](mailto:russelldavisheadd@gmail.com)<<mailto:russelldavisheadd@gmail.com>>>

If you go with people your daddy knows he will be able to get to you.

(Exhibit 11C, thread reversed for ease of chronological reference, emphasis supplied)

90. Ms. Bressler coached Gary, Jr. and Russell on what to say regarding Judge Green. The record is devoid of a single instance of either of the boys making a disparaging remark about their grandmother, let alone alleging that she was aware that they were being abused and did nothing to stop it, before Ms. Bressler re-entered the picture. The words in the e-mails demonstrate the plan, "I did everything I could," "I can't call CPS anymore for you two," "Me and Gary wil [sic] tell them everything there [sic] you will be there to guild [sic] us," "You should have spoken up when you had the chance," and "The only reason I was scared was because if it didn't work." (Exhibit 11B)

91. Ms. Bressler's e-mail to Russell at the very time they were being removed from their father's home ("If you go with people your daddy knows he will be able to get to you."), proves her concern that the plan might not work if Gary, Jr. and Russell were allowed to go with Judge Green and her husband.

92. The obvious coaching, obvious because neither Gary, Jr. nor Russell had ever made an accusation against Judge Green before June 24, 2018 when they were being removed, and concern that Ms. Bressler was not fit for custody due to the three-year abandonment and other safety issues, is what led Judge Green to request that CPS investigate Ms. Bressler. When that did not happen, Judge Green went to CPS alleging bias. The bias was substantiated. (See, e.g., the testimony of Adam Baker cited on pp 36-38)

93. The coaching and abandonment issues were real concerns. With regard to these issues, during cross-examination, Ms. Apple conceded:

- She does not have ways to determine whether child victims of physical abuse are coached by an adult. (Transcript, Volume I, p 148)
- There is nothing about her training in the forensic interview protocol that helps her assess whether a child is being coached. (Transcript, Volume I, pp 148-149)
- One of the most critical jobs of a CPS investigator is the placement of children who have been removed from their homes. (Transcript, Volume I, p 151)

- She does not know what a mandated petition is. (Transcript, Volume I, p 181)
- A desertion by a parent for 90 days is considered “severe neglect.” (Transcript, Volume I, p 181)

While Ms. Apple acknowledged on cross-examination that “One of the most critical jobs of a CPS investigator is the placement of children who have been removed from their homes,” not one of the four CPS reports contains a single note from Ms. Apple concerning Choree Bressler’s three-year abandonment of her sons as reported by Judge Green (Exhibits 16, 17, 18 & 42) - - even when a 90-day period of abandonment is considered “severe neglect.” (Transcript, Volume I, p 181)

94. During his cross-examination, on the topic of abandonment, Mr. Baker testified:

- It would violate CPS policy to place children with a parent who deserted them for a minimum of three months. (Transcript, Volume IV, p 902)
- Abandonment of young children is a situation of abuse for which the CPS laws in Michigan mandate the filing of a petition to terminate parental rights. (Transcript, Volume IV, pp 902-903)

95. Judge Green explained why she is uncertain as to whether she told Ms. Apple about applying makeup to the red handprint on the cheek of Gary, Jr. She may have done so; she may not have done so. No one knows at this point.

Attempts by Disciplinary Counsel to now rely upon the testimony of Ms. Apple and the CPS reports to establish that she did not, does not prove what took place. Ms. Apple was biased against Judge Green. The CPS reports are clearly not reliable (which was the initial ruling of the Master). Disciplinary Counsel cannot make the necessary showing.

96. In addition and critically, Disciplinary Counsel cannot prove by a preponderance of the evidence that Judge Green “knowingly” made a false statement in her Answer to Complaint. She does not recall exactly what occurred. Her Answer to Complaint was verified based upon the best of her knowledge, information, and belief *at the time*. If her base of knowledge, information, and belief later resulted in uncertainty, and she is honest to admit that as she has done here, there is no factual or legal bases upon which to deem a statement made *before* the uncertainty “knowingly false.”

### **CONCLUSIONS OF LAW**

97. Disciplinary Counsel have failed to prove by a preponderance of the evidence that Judge Green violated any of the Michigan Court Rules or Canons of the Michigan Code of Judicial Conduct cited in the Amended Complaint. Specifically, the claimed violations of the Michigan Court Rules and Canon in Count III are premised upon a lack of certainty as to what exactly she told to CPS in 2018 and recalled in 2020. The lack of certainty was explained by Judge

Green twice, first on cross-examination and again on direct examination. Disciplinary Counsel have alleged that she knowingly made a false statement in her Answer to Complaint, when she said that she told CPS that she applied makeup to the cheek of Gary, Jr., and violated:

- a. Michigan Court Rule 9.202(B), which prohibits misleading statements to the Judicial Tenure Commission or the Master;

**Conclusion:** There are no proofs in the record that a statement made upon information, knowledge, and belief that later becomes uncertain due to the passage of time and discovery and review of additional information renders that statement “knowingly false.” There is no factual or legal bases in the record that establish by a preponderance of the evidence that Judge Green knowingly made a false statement.

- b. Canon 2(A), which requires that a judge avoid all impropriety or appearance of impropriety; and

**Conclusion:** There are no proofs in the record that a statement made upon information, knowledge, and belief that later becomes uncertain due to the passage of time and discovery and review of additional information renders that statement “knowingly false.” There is no

factual or legal bases in the record that establish by a preponderance of the evidence that Judge Green knowingly made a false statement.

- c. Michigan Court Rule 9.202(B), which prohibit conduct prejudicial to the administration of justice.

**Conclusion:** There are no proofs in the record that a statement made upon information, knowledge, and belief that later becomes uncertain due to the passage of time and discovery and review of additional information renders that statement “knowingly false.” There is no factual or legal bases in the record that establish by a preponderance of the evidence that Judge Green knowingly made a false statement.

### **OBSERVED INTERACTION WITH HER GRANDSONS**

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### **CHARACTER EVIDENCE**

98. Judge Green has lived her life, both personally and professionally, in support of children. (Exhibit 51) With regard to her interactions with her grandsons, her husband, Andre Green, has observed Judge Green as always having had loving, caring, and intentional interactions with Gary, Jr. and Russell. (Transcript, Volume X, p 1848) Her daughter, Simone Headd, has always observed Judge Green as very loving to Gary, Jr. and Russell. (Transcript, Volume X, p 1832) Church ministry leader, Marcus Holmes, testified that he has



observed Judge Green interacting with Gary, Jr. and Russell and it is apparent that she adores her grandsons. (Transcript, Volume IX, p 1769) Tamika Brown-Edwards, another church ministry leader, said that family comes first for Judge Green. She testified that:

She goes above and beyond for them. I mean, she does things that I wouldn't do, and I love my grandchildren. She brings them to church. Now, I bring my grandchildren, but the parents got to give them to me. Tracy, she kind of -- she just shows a lot of love and compassion and dedication. She has shown that to her grandchildren. I mean, she -- she has done a lot of things in their life that I have been a part of, like going out of town and things like that. You know, Tracy has been the one that steps up and does that type of stuff with her grandchildren. So I would say that family is very, very, very important to her.

(Transcript, Volume IX, p 1797-1798)

99. Judge Green enjoys an excellent reputation as a Christian, a family member, a lawyer, and a judge. In discussing her character, her husband, Andre Green, paid Judge Green the highest of compliments:

- He considers his wife a pillar of faith whose faith influences almost every decision she makes and is an example of faith in action. (Transcript, Volume X, pp 1853-1854)
- He has had occasion to hear comments made about his wife by church family members that, "She's a wonderful child of God. She's a worshiper. She's a believer. She's genuine. She's caring and kind...she represents Jesus, our savior, very well." (Transcript, Volume X, pp 1854-1855)

- He has developed his own opinion of the character of his wife as “the best person [he] knows,” “of the highest character,” someone who “does not lie...or abide liars,” and or “like bullies.” (Transcript, Volume X, pp 1855)

Her daughter, Simone Headd, shared that her mother is a woman of faith, attends church faithfully, and leads her life with love. (Transcript, Volume X, pp 1834-1835). Ms. Headd also noted that she has developed her own opinion of the character of her Mother as one of being very kind, honest, loving, nurturing, persistent, encouraging, resilient, brave, ambitious, and strong. (Transcript, Volume X, pp 1837)

100. Her church ministry leaders have also observed Judge Green and developed opinions regarding her character. Mr. Holmes said that he has developed his own opinion regarding Judge Green and considers her faithful to her family, faithful to the church, someone who would help anybody, patient, gracious, forgiving, and loving. (Transcript, Volume IX, p 1770) Ms. Brown-Edwards shared a similar opinion: “Tracy is one of the most dedicated...highly dedicated to whatever it is that she does. Tracy is very committed...Tracy shows a lot of dignity in everything that she does...Tracy is just a very loving, caring, very, very caring person. I mean, there's not one thing that I could really say bad about Tracy. Tracy is a very loving, caring person. Very honest and

high integrity. I mean, she's just very nice. I have a lot of love for Tracy.”  
(Transcript, Volume IX, pp 1796-1797)

101. Judge Green has been candid and honest at all times. The statements that she has made, and the testimony that she has provided in these related matters, are accurate and above contradiction by any credible source.

### **CONCLUSION**

102. With regard to the burden of proof in Michigan Judicial Tenure Commission cases, MCR 9.233(A) states, in pertinent part, that: “Disciplinary counsel shall present the evidence in support of the charges set forth in the complaint and *at all times* shall have the burden of proving *the allegations* by a preponderance of the evidence.” (Emphasis added). Disciplinary Counsel have not met their burden in this case.

103. As to Count I and Count II, there is no evidence in the record proving the foundational elements of child abuse and actual knowledge of child abuse. Disciplinary Counsel have not proved by a preponderance of the evidence the who, what, when, why, how, and where supporting the statements made by Gary, Jr. and Russell. So, too, Disciplinary Counsel have not proved by a preponderance of the evidence the who, what, when, why, how, and where supporting the claim that Judge Green had actual knowledge of child abuse.

104. As to Count I, there is no evidence in the record proving by a preponderance of the evidence that a “pinkish” handprint on the cheek of a child is child abuse, a “pinkish” handprint on a cheek is actually a bruise, and the application of makeup on such a handprint amounts to covering up child abuse.

105. As to Count II, there is no evidence in the record proving by a preponderance of the evidence that Judge Green made false statements about her knowledge of child abuse because she denied that she applied makeup to any bruise but admitted that she applied makeup to a “pinkish” handprint. Likewise, there is no evidence in the record proving by a preponderance of the evidence that succinctly answering a question asked and not providing more information than requested, when the question is clearly understood, amounts to a false statement.

106. As to Count III, there is no evidence in the record proving by a preponderance of the evidence that later development of uncertainty concerning a prior answer to a question, after the passage of time and obtaining additional information, converts the earlier answer to a knowingly false statement *nunc pro tunc*.

107. Judge Green respectfully requests that the Honorable Master conclude that Disciplinary Counsel have not met their required burden of proof as Count I, Count II, and Count II of the Amended Complaint.

Respectfully submitted,

PLUNKETT COONEY

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Dated: January 23, 2022

### **PROOF OF SERVICE**

The undersigned certifies that on the 23<sup>rd</sup> day of January 2022, a copy of the foregoing document and this Proof of Service were served upon Hon. Betty R. Widgeon, Appointed Master, Lynn Helland, and Lora Weingarden via electronic mail. I declare under the penalty of perjury that the foregoing statement is true to the best of my information, knowledge, and belief.

/s/ Michael P. Ashcraft, Jr.  
Michael P. Ashcraft, Jr. (P46154)

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