STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

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

MSC 161134
Formal Complaint No. 101

DECISION AND RECOMMENDATION FOR DISCIPLINE

At a session of the Michigan Judicial Tenure Commission, Detroit, Michigan, on September 23, 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. Kahlilia Y. Davis ("Respondent"), who at all material times was a judge of the 36th District Court in the City of Detroit, State of Michigan. 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.

The Commission concludes that Respondent is unfit to serve as a judge. The Commission is guided and indeed constrained to follow two overarching and well-settled principles of Michigan law regarding judicial discipline: (1) the purpose of this proceeding and the Commission's recommendation for discipline to the Supreme Court is not to punish but to *maintain the integrity of the judicial process* (*see 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)); and (2) "[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); *see also In re Brennan*, 504 Mich 80, 85 n11; 929 NW2d 290 (2019) (the Michigan Supreme Court "'has consistently imposed the most severe sanction by removing judges for testifying falsely under oath.'"), quoting *In re Adams*, 494 Mich 162, 186; 833 NW2d 897 (2013), citing *In re Ryman*, 394 Mich 637, 642-643; 232 NW2d 178 (1975); *In re Loyd*, 424 Mich 514, 516; 384 NW2d 9 (1986); *In re Ferrara*, 458 Mich 350, 372-73; 582 NW2d 817 (1998); *In re Noecker*, 472 Mich 1, 12-13; 691 NW2d 440 (2005); *In re Nettles-Nickerson*, 481 Mich 321, 322; 750 NW2d 560 (2008); *In re Justin*, 490 Mich at 396-397; *In re James*, 492 Mich 553, 568-570; 821 NW2d 144 (2012).

In the Commission's view, maintaining the integrity of the judicial process requires that Respondent be removed. As set forth in this Decision and Recommendation, Respondent's multiple and distinct acts of pervasive on-the-bench misconduct comprising the first five counts of the seven-count Second Amended Formal Complaint ("SAFC") are each egregious in their own right. Respondent incorrectly and incompetently applied contempt law, abusing her power and, in the process, ordering thousands of dollars to be unjustly paid and jailing another who was later released

by the Chief Judge of the 36th District Court after spending a night in jail and ultimately acquitted. (Count I.) Respondent developed the personal opinion that a particular process server (Myran Bell) was untrustworthy, so, in prejudice of the actual administration of justice, Respondent formulated a process of *dismissing or adjourning each and every case* brought before her in which Mr. Bell was the process server irrespective of the merits of the plaintiffs' cases, *even after* Chief Judge Blount *ordered* Respondent to stop, at which time Respondent began using thinly veiled pretexts to continue her obstinance. (Count II.) Respondent's routine tardiness, missed days of work, and poor job performance resulted in the State Court Administrative Office (SCAO) stepping in with assistance from 36th District Court Chief Judge Blount and others to address the issues and make a performance plan for Respondent's improvement, but Respondent defensively refused participation and instead attacked those assigned to help her with discourteous and unprofessional written threats and barbs, including biblical quotes insinuating that her colleagues and the administrators should or would go to Hell. (Count III.) Respondent further prejudiced the actual administration of justice by intentionally disabling the video equipment in her courtroom because she did not want those aforementioned colleagues or court administrators watching her, even though she had no court reporter, meaning that she knowingly conducted court proceedings with *no* official record and, in most cases, no record at all. (Count IV.) Respondent's incredible "backup" plan was to unofficially record some (but not all) proceedings with *her personal cell phone*, which she improperly published on Facebook Live on at least one occasion. (Count V.)

These first five counts of the SAFC regard Respondent's on-the-bench conduct, but there was more. When Respondent was not prejudicing the actual administration of justice or missing work or incorrectly applying the law or disrespecting her colleagues and administrators or conducting unrecorded proceedings, Respondent tried using her status as a judge while out in the public for improper personal gain, including to illegally park in a handicap loading and unloading zone at her

gym (blocking the driver's side door of a disabled person's car who was legally parked in a handicapped spot), while also displaying a Detroit police "official business" placard (falsely) and showing her judge's badge to the responding officer when the citizen whose car was blocked rightfully complained. (Count VI.)

And if all of this, as alleged and proven through the first six counts of the SAFC, was not bad enough, Respondent repeatedly *lied under oath* about her intentional disabling of her courtroom's video equipment necessary for making official recordings of the proceedings in her courtroom and her motivations for doing so. (Count VII.) Besides these lies, the Commission learned during these proceedings that Respondent submitted a sworn but *false* affidavit of identity in support of her candidacy for reelection as a judge,[1] which resulted in the Secretary of State being prohibited by statute from certifying Respondent's name for inclusion on the general election ballot pursuant to MCL 168.558(4).[2] *See Davis v Sec'y of State*, unpublished per curiam opinion of the Court of Appeals decided Aug 22, 2022 (Docket No 362455) (**Exhibit A**); *see also Davis v Sec'y of State*,

[1] Respondent's false statement in her affidavit of identity (AOI) was not charged as a basis for finding misconduct in any count of the SAFC. Accordingly, the Commission considers Respondent's sworn false statement in the AOI only as a consideration in fashioning its recommendation for discipline, and not for the underlying finding of misconduct. *See In re Moore*, 464 Mich 98, 117 & n16; 626 NW2d 374 (2001); *see also In re Morrow*, 508 Mich 490, 504 n4; 976 NW2d 644 (2022), citing *Moore*. Although Respondent's false statement was not a finding in connection with a disciplinary proceeding, *see id.*, it was a factual finding of both the Court of Claims and Court of Appeals in formal proceedings, and each court noted that Respondent did not contest the falsity of her statement in the AOI. *See* Exs. A, B, *infra*.

[2] Although Respondent will not be on the ballot, she is a judge as of this Decision and Recommendation and she will remain a judge into January 2023. In the event the Supreme Court does not hear this matter until after Respondent is no longer on the bench, the Supreme Court still has jurisdiction to impose the recommended "six-year conditional suspension without pay on respondent effective on the date of th[e] decision" so that, "[s]hould respondent be elected or appointed to judicial office during that time, respondent 'will nevertheless be debarred from exercising the power and prerogatives of the office until at least the expiration of the suspension.'" *In re Konschuh*, 507 Mich 984, 984; 959 NW2d 708 (2021), quoting *In re Probert*, 411 Mich 210, 237; 308 NW2d 773 (1981).

Court of Claims, Case No 22-000072-MB, Opinion & Order dated June 1, 2022 (Gleicher, J) (**Exhibit B**).

While the record causes the Commission to deem Respondent incorrigible and incapable of conforming her behavior to the standards required of a judge, and views the misconduct proven in Counts I through VI taken as a whole worthy of removal for the maintenance of the integrity of the judicial process, the Commission need not grapple with whether any past similar cases have been decided from a proportionality analysis. *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"). This is because removal and a conditional six-year suspension is independently warranted under established precedent due to Respondent's false statements under oath. 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.

Like the Supreme Court's conclusion in *In re Konschuh*, 507 Mich at 985, the Commission here concludes that "[t]he cumulative effect and pervasiveness of respondent's misconduct convinces [the Commission] that respondent should not hold judicial office. Therefore, [the Commission recommends that the Supreme Court remove and] suspend h[er] without pay for a period of six years, with the suspension becoming effective only if respondent regains judicial office during that period."

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. 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.

III. Procedural Background

On March 16, 2020, the Judicial Tenure Commission (the "Commission") filed Formal Complaint (the "Original FC") 101. The Original FC charged Respondent with three counts of misconduct. On March 23, 2022, the Commission filed an amended FC. On April 29, 2022, the Supreme Court appointed Hon. Cynthia Diane Stephens as the master ("Master"). On May 24, 2022, the Commission filed a motion to amend the complaint, along with the proposed SAFC, which the Master granted on June 17, 2022. On June 24, 2022, Respondent filed her answer to the SAFC and stipulations of facts and exhibits.

The SAFC charged Respondent with seven counts of misconduct, alleging that Respondent committed misconduct based on multiple alleged violations of 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 SAFC alleged Respondent committed these violations as a 36th District Court judge. **Count I** charged that Respondent abused her contempt power in two cases: 17- 307300LT (*Detroit Real Estate v Sharon Hayes*) and 17-321869 LT (*Sanders v Nicole Thomas*). **Count II** charged that Respondent failed to conduct required evidentiary hearings and made premature decisions stemming from her conclusion that a process server made false statements in a proof of service and thereafter automatically adjourning or dismissing any case in which the process server had been engaged by the plaintiff. **Count III** charged that Respondent obstructed court administration in failing to comply with orders of Chief Judge Nancy Blount and

administrators of the 36th District Court having authority over Respondent. **Count IV** charged that Respondent intentionally disabled video equipment and failed to make an official record for her cases while in courtroom 340. **Count V** charged that Respondent improperly recorded and published court proceedings using her personal cellular phone. **Count VI** charged that Respondent used her status as a judge to improperly park in a handicap loading and unloading zone while displaying a Detroit police placard without basis and showing her judge badge to the responding officer. **Count VII** charged, among other things, that Respondent made intentional misrepresentations under oath regarding her intentional disabling of the video equipment in courtroom 340.

Public hearings were conducted in person on July 7, 8, 11, 13, and 15, 2022 (collectively, the "Hearing"). Twelve witnesses testified. Disciplinary counsel's 134 exhibits (DC Exhibits, cited as "DC Ex") and Respondent's eight exhibits were admitted by stipulation. Closing arguments were conducted by Zoom on July 19, 2022.

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

On August 1, 2022, the Master issued a report containing her findings of fact and conclusions of law (the "Master's Report," cited as "MR"). The Master concluded that disciplinary counsel established by a preponderance of the evidence that Respondent, while in office as a judge, committed some but not all of the misconduct alleged under Counts I through VI of the SAFC, and that disciplinary counsel had not met its burden to establish the misconduct alleged in Count VII of the SAFC. Although Respondent's brief in response to the Master's Report was not entirely clear on this point, Respondent's counsel confirmed at the September 12, 2022 hearing on the parties' briefs as to the Master's Report that Respondent does not object to any of the Master's findings in any substantive or material way.

As to **Count I**, the Master found that Respondent committed misconduct in only one of the two cases pending before her in which disciplinary counsel charged that Respondent abused her

contempt power. As to case 17-307300LT (*Detroit Real Estate v Sharon Hayes*), where the Master found Respondent committed no misconduct, Respondent held Joanne Eck (plaintiff's representative) in contempt of court for premature postings on tenants' doors regarding evictions that had not yet been ordered. (MR 4.) Respondent levied a sanction of $3,000 without stating the facts supporting the amount of the sanction and explicitly stated that the sanction was for punitive damages to be paid to the defendant, and ordered court costs of $500. Both sums were to be paid immediately, on the spot, at threat of incarceration. (*Id.*) The Master acknowledged that, even though she found Respondent's factual finding of contempt was proper, Respondent's contempt order was legally "erroneous" because Respondent levied an extra judicial sanction as punitive damages which is not authorized by court rule or statute, and there was not any factual or legal justification for the levy of monetary compensatory damages for defendant, as required by law. (MR 7.) But the Master found that disciplinary counsel did not meet its burden to establish the charged misconduct because "[t]his level of error, however, does not rise to judicial misconduct particularly from a very new judicial officer." The Master concluded that Respondent's legally erroneous contempt order requiring payment of $3,500 did not "arise from persistent lack of knowledge, misconduct in office, or other violations of applicable judicial standards of conduct." (*Id.*)

As to case 17-321869 LT (*Sanders v Nicole Thomas*), where the Master found Respondent committed misconduct for abusing her contempt power, Respondent threatened plaintiffs with incarceration as an apparent means of controlling the courtroom when one of them asked questions and requested an adjournment, and Respondent jailed court officer Jerry Johnson on a finding of contempt for alleged lying under oath regarding his personal service on defendant. (MR 5, 8.) Defendant was permitted to call her work supervisor, who was never placed under oath, who stated that defendant was at work at the time Mr. Johnson said he personally served defendant elsewhere. (*Id.*) On this basis alone, Respondent held Mr. Johnson in contempt for lying and submitting a false

proof of service. (*Id*.) Respondent jailed Mr. Johnson even though Respondent relied on facts outside of her personal knowledge (i.e., the statements of defendant's work supervisor) and provided no due process to Mr. Johnson, such as the ability to retain counsel or give any meaningful allocution. (*Id*. p 8.) Chief Judge Blount released Mr. Johnson the following day, who was later acquitted of the contempt charge. (*Id*.)

On the basis of these findings, the Master concluded that disciplinary counsel carried its burden to establish with respect to case 17-321869 LT (*Sanders v Nicole Thomas*) that Respondent violated MCR 9.104(1), MCR 9.202(B), MCJC 3(A)(1), MCJC 3(A)(3), and MCJC 3(A)(12) for failing to be patient, dignified, and courteous to litigants, lawyers, and other persons; for a severe attitude toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, all of which tended to prevent the proper presentation of the cause and the ascertainment of truth; by engaging in conduct prejudicial to the administration of justice; and for failure to be faithful to the law, failure to maintain professional competence in the law.

As to **Count II**, the Master found that Mr. Myran Bell, court officer assigned to the 36th District Court, was the signatory on a proof of service alleging that he personally placed a summons and complaint addressed to Ms. Kadeji Harris on the entry door to 430 Frederick in the city of Detroit. (MR 9.) The proof of service was false and Mr. Bell was not credible. (MR 10.) As a result of this instance, Respondent determined to "grant any motion for dismissal regarding Myr[a]n Bell," and Respondent placed a sign on the podium of the courtroom where Respondent presided stating that no one should use Mr. Bell as a process server in her courtroom. (*Id*.) Beginning September 20, 2017, Respondent presided over many cases where Mr. Bell was the process server and either dismissed them or adjourned them. (*Id*.) For example, in cases 17-321677 and 17-312686 where Mr. Bell was the court officer, Respondent posed the Hobson's choice to the self-represented litigants to either obtain service through another process server or have the case dismissed. (*Id*.) In both cases

Respondent expressly stated that the reason she deemed service invalid was because it was made by Mr. Bell. (*Id*.)

On September 25, 2017, Chief Judge Blount entered an order which forbade dismissal of cases solely due to Mr. Bell being the court officer who made service of process. (MR 11.) Respondent starting coming up with pretexts and incorrect applications of court rules to find ways to continue to dismiss or adjourn cases involving Mr. Bell despite Chief Judge Blount's order. (*Id*.) In refusing to follow Chief Judge Blount's order, Respondent stated in one matter in particular: "So no, I don't care what the chief judge or anybody else at this court says. This is my courtroom. And if you have a problem, anybody can take it to the JTC . . . ." (MR 12.) Respondent defied Chief Judge Blount's order and did not reinstate the cases she dismissed or adjourned due to Mr. Bell's involvement. (*Id*.)

On the basis of these findings, the Master concluded that disciplinary counsel carried its burden to establish that Respondent violated MCR 9.104(1)-(2) and MCR 9.202(B), MCJC 2(A)-(B), MCJC 3(A)(1) & (4), MCJC3(A)(14),[3] and the Michigan Constitution Article 6, Section 30(2) by engaging in conduct prejudicial to the administrator justice; by exposing the legal profession and the courts to obloquy, contempt, censure, or reproach; by failing to be faithful to the law, failing to maintain professional competence in the law, and for persistent incompetence in the performance of judicial duties; for being irresponsible and improper and eroding public confidence in the judiciary; for corroding confidence in the integrity and impartiality of the judiciary; by engaging in misconduct

[3] The SAFC mistakenly referred to Canon 3(A)(13), and the Master's report appears to have carried over that mistake by referencing Canon 3(A)(13), whereas the substance of the misconduct found is under Canon (A)(14), as disciplinary counsel corrected during the proceedings. The Commission understands the intention of the Master to have been to find a violation of Canon 3(A)(14), and, in any event, the Commission finds that this was Respondent's violation.

in office and persistent failure to perform judicial duties; for failing to treat persons fairly and courteously; and for initiating, permitting, or considering ex parte communications.[4] (MR 14-15.)

As to **Count III**, the Master found that Respondent was removed from adjudicative responsibilities on October 20, 2017 by order of Chief Judge Blount in consultation with SCAO. (MR 16.) Prior to October 20, 2017, Respondent, as noted above relative to Count II, failed to follow directives of Chief Judge Blount regarding dismissals and adjournments of cases where Mr. Bell was the court officer. (*Id*.) The October 20, 2017 order required Respondent to attend work daily and later required reporting her arrival and departure times. (*See id*.) Respondent was not willing. She sent an email on November 1, 2017 expressing her disagreement and opinion that such action was unfair and unnecessary. (*Id*.) She sent another email asking for a list of other judges who had this requirement. (*Id*.) Respondent sent several emails to Chief Judge Blount, Regional Court Administrator retired Judge Paruk and Ms. Moore (36th District Court Administrator), beginning November 2, 2017, containing Biblical passages. (*Id*.) Chief Judge Blount and retired Judge Paruk found these emails to be threatening and baffling. (*Id*.)

Retired Judge Paruk presented a performance improvement plan (PIP) to Respondent and her counsel. (*Id*.) She and her counsel disagreed with some of the asserted facts in the plan and declined to sign it, but eventually agreed to it. (*Id*.) On December 1, 2017, retired Judge Paruk sent a letter putting the plan into effect as of December 4, 2017. (*Id*.) Key aspects of the PIP included prompt email correspondence by Respondent using court email, timely arrival at work and reporting

[4] As disciplinary counsel noted in its objections to the Master's Report, the Master's finding that Respondent initiated, permitted, or considered ex parte communications appears to have been an unintended error, as the Master did not find misconduct as to the allegations of the SAFC involving the alleged ex parte communication, and no ex parte communication was alleged or involved with the facts and circumstances under which the Master found misconduct. Accordingly, in adopting the Master's findings of fact and conclusions of law regarding Count II, the Commission does not find or conclude that Respondent engaged in any ex parte communication.

obligations, arranging for coverage of her docket when she was absent from that docket, notifying the court of any absence necessitated by illness using the court email, and undertaking training. (*Id.*)

Respondent often failed to comply with the PIP and routinely told retired Judge Paruk and others to "find someone else to harass" in several emails. (MR 17.) Respondent was scheduled to adjudicate the felony arraignment docket on December 26-28, 2018. (*Id.*) She did not work on December 26, 2018, or December 28, 2018. (*Id.*) Respondent had requested leave for December 26, 2018 through January 4, 2019. (*Id.*) Chief Judge Blount denied leave for December 26, 2018 unless Respondent could find coverage. (*Id.*) Respondent worked on December 27 but was absent on December 28, and did not report back to work until January 18 with a physician's note. (*Id.*) She did not find coverage for December 26 or December 28, 2018. (*Id.*)

The Master therefore found that Respondent's failure to adhere to the court policy of finding coverage for her docket on the December 2018 days she requested leave was intentional. (MR 18.) Respondent's arrival and departure times from court were irregular and contrary to the PIP, and her responses to correspondence were often tardy and from her personal email account, also contrary to the PIP. Her attendance after January 2019 was irregular with the court having to contact her mother to garner her presence for auxiliary judge duty several times. (*Id.*) Thus, Respondent failed to diligently discharge administrative responsibilities and facilitate the performance of the administrative responsibilities of other judges and court officials. (*Id.*)

But on the specific issue of the content of Respondent's email communications to Chief Judge Blount, retired Judge Paruk, and other administrators, including Respondent's quotations of "Biblical passages" and telling them to "find someone else to harass," the Master found disciplinary counsel failed to establish misconduct because the "writings did not include direct threats," they were internal, and they represented "differences of opinion between court systems professional[s]." (*Id.*) The Master chalked these communications up to "high conflict relationships." (*Id.*)

On the basis of these findings, the Master concluded that disciplinary counsel carried its burden to establish that Respondent violated MCR 9.202(B)(2) and MCJC 3(B)(1), for failing diligently to discharge administrative responsibilities and facilitate the performance of the administrative responsibilities of other judges and court officials. (*Id*.)

As to **Count IV**, the Master noted that Respondent admitted the underlying fact for this claim: that she did not make an official record for her cases while in courtroom 340. (MR 19.) With the exception of February 27, 2019, Respondent did not use the video equipment in Courtroom 340. (*Id*.) Respondent was aware that an official record was required. (*Id*.) At times when not recording using the official video equipment, Respondent "made the decision to begin recording on her cell phone." (*Id*.) She did not ask for training. (*Id*.) She did not contact SCAO. (*Id*.) Judge Mullins discovered the lack of video-taping in courtroom 340. (*Id*.) Besides the video of February 27, 2019, a court reporter was provided to Respondent on February 20, 2019. (*Id*.)

The Master concluded that Respondent's failure to make an official record of proceedings was without legal excuse. (MR 21.) On the basis of this finding, the Master concluded that disciplinary counsel carried its burden to establish that Respondent violated MCR 9.104(1)-(2), MCR 9.202(B), MCJC Canon 2(A)-(B), MCJC 3(B)(1), and MRPC 8.4(c) for failing diligently to discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court official; by engaging in conduct prejudicial to the administration of justice; by exposing the legal profession and the courts to obloquy, contempt, censure, or reproach; by persistent incompetence in the performance of judicial duties; by being irresponsible and improper; and by failing to promote public confidence in the integrity of the judiciary.

But, as to the remainder of Count IV, the Master found that disciplinary counsel failed to establish that Respondent "disabled the video-graphic equipment." (MR 20.) The Master found that

witnesses "Ms. Drew and Ms. Smith were credible in their testimony they saw the respondent move and unplug cords." (*Id.*) But the Master believed they must have had "a severely limited visage," which therefore does "not preponderant that the video equipment was disabled." (*Id.*) The Master believed it was more likely that Respondent "unplugged the monitor cords" than that she was "unplugging multiple cords from the video equipment." (MR 20-21.)

As to **Count V**, the Master noted that Respondent admitted she recorded numerous proceedings with her personal cell phone. (MR 23.) On this basis, the Master concluded that disciplinary counsel carried its burden to establish that Respondent improperly recorded courtroom proceedings in violation of Canon3(A)(11). (*Id.*)

As to the remainder of Count V, the Master found that disciplinary counsel "did not prove publishing." (*Id.*) Despite the testimony of Shannon Walker that she uncovered a broadcast on Facebook and the Master's determination that Ms. Walker "earnestly recounted," the Master was not persuaded by Ms. Walker's "memory tested by three years of time." (*Id.*) The Master considered Ms. Walker to be the sole witness on the issue. (*Id.*)

As to **Count VI**, the Master summed up Respondent's conduct alleged in the SAFC as: Knowingly parking in an illegal manner; Misusing a Detroit Police Department "On Official Business" placard to avoid getting a parking ticket; Although not asked to, presenting her badge and identification to avoid being given a parking ticket; Threatening the complainant; Engaging in undignified or discourteous conduct before the court, especially when walking out during the preceding that she requested; and Making misleading statements to Judge Krot during her testimony at the hearing. (MR 24.)

The Master found that Respondent improperly parked her vehicle in a handicap loading and unloading zone in front of an LA Fitness. (*Id.*) Respondent displayed a police placard in her vehicle being neither officer to whom the placed was issued nor on any governmental business. (*Id.*)

Respondent displayed her judicial badge without a direct request from Officer Gyani, the Detroit Police Department officer who responded to the LA Fitness based upon a citizen complaint. (*Id*.) Respondent did not pay her parking fine in a timely manner. (MR 25.)

On the basis of these findings, the Master concluded that disciplinary counsel carried its burden to establish that Respondent violated MCR 9.104(1)-(3), MCR 9.202(B), and Canon 1 by engaging in conduct prejudicial to the proper administration of justice; by exposing the legal profession or the courts to obloquy, contempt, censure, or reproach; by engaging in conduct that is contrary to justice, ethics, honesty, or good morals; and for failing personally to observe high standards of conduct so the integrity and independence of the judiciary may be preserved. (MR 27.)

As to the remainder of Count VI, the Master found that disciplinary counsel did not establish that Respondent made vulgar and threatening statements to Ms. Starkey or that Respondent made any false statements at the formal hearing on her parking ticket or failed to accord that tribunal with respect. (MR 25, 27.)

As to **Count VII**, the Master concluded that disciplinary counsel failed to establish any misrepresentations by Respondent. (MR 29.) The misrepresentations alleged in the SAFC were: (1) Respondent said she had not had any training with respect to the manner in which she held Mr. Johnson in contempt as set forth in Count I; (2) Respondent testified under oath at a deposition on March 16, 2020 that she was living at 430 Frederick in Detroit on April 6, 2018, and that she had lived at that address for a year and two months before her auto accident of April 6, 2018, meaning since February 2017; (3) Respondent also testified that she lived alone at the Frederick address; (4) as stated under Count VI, Respondent has repeatedly maintained that she was not illegally parked because she loaded and unloaded her walker in a loading and unloading zone; and (5) Respondent has repeatedly denied disconnecting the video recording equipment in courtroom 340. The Master set forth her reasoning for concluding that disciplinary counsel did not establish any

misrepresentations at pages 28 to 29 of the Master's Report. Important for purposes of this Decision and Recommendation, the Master's reasoning for finding no misrepresentation as to Respondent's denying that she disabled the video equipment in courtroom 340 was that the Master had already concluded under Count IV that disciplinary counsel had failed to establish that Respondent disabled the video equipment. (MR 29.)

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 through VI. Disciplinary counsel objected on the basis that, while the evidence supports the Master's findings of misconduct, the evidence also clearly refuted the Master's findings that a great deal of other misconduct alleged in those counts was not established. As to Count VII, disciplinary counsel objected to the Master's conclusion that the preponderance of the evidence did not establish that Respondent made misrepresentations.

Respondent filed a "Brief in Support and Opposition of Report of Master." Respondent agreed with the portions of the Master's Report finding that the evidence did not establish some of the misconduct alleged in Counts I through IV and did not establish any misconduct under Count VII of the SAFC. Respondent conceded, as her counsel later again confirmed at the September 12, 2022 oral argument, that Respondent does not dispute the Master's findings of misconduct in Counts I through VI. The parties timely responded to each other's objections.

On September 12, 2022, the Commission held an in-person public hearing on the parties' objections to the Master's Report pursuant to MCR 9.241 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 at 527; *In re Seitz*, 441 Mich at

624; *In re Haley*, 476 Mich at 195. The standard of proof applicable in judicial disciplinary matters is the preponderance of the evidence standard. *In re Ferrara*, 458 Mich at 360 (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).

In *Ferrara*, 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

With respect only to the Master's findings of misconduct in Counts I through VI of the SAFC, the Commission unanimously accepts and adopts the Master's findings of fact and conclusions of law. Respondent, by counsel, stated her agreement with these findings in her brief responding to the Master's Report and at the September 12, 2022 hearing on the parties' objections to the Master's Report. Accordingly, because the Master's findings are set forth above and Respondent does not contest them, they will not be addressed further here until analyzing the *Brown* factors and appropriate discipline.

Beyond the Master's findings, the Commission concludes that Respondent committed additional misconduct not found by the Master. As set forth in more detail below, the Commission unanimously concludes that:

1. As to Count I, disciplinary counsel established that Respondent committed misconduct with her unsupported contempt finding and legally erroneous contempt order requiring Ms. Eck to pay more than $3,000 in punitive damages to defendant;

2. As to Count III, disciplinary counsel established that Respondent committed misconduct with her discourteous, threatening, and unprofessional email correspondence to Chief Judge Blount, retired Judge Paruk, and others.

3. As to Count IV, disciplinary counsel established that Respondent committed misconduct by intentionally disabling the video equipment in courtroom 340;

4. As to Count V, disciplinary counsel established that Respondent committed misconduct by publishing court proceedings to Facebook Live;

5. As to Count VI, the Commission observes that Respondent's improper act of displaying a police placard in her vehicle while illegally parking despite not being the officer to whom the placard was issued nor on any governmental business deserves heightened scrutiny and supports a more severe sanction for the dishonest nature of the misconduct;

6. As to Count VII, disciplinary counsel established that Respondent made multiple misrepresentations in sworn statements to the Commission and at the Hearing when she repeatedly denied having disabled the video equipment in courtroom 340, which is no trivial matter in light of Respondent's purpose in doing so and the prejudice to the actual administration of justice caused by having no official record of such proceedings.

Finally, the Commission concludes that Respondent's false statement on her Affidavit of Identity causing the Secretary of State to be required by law to preclude her from being on the ballot

and improper display of the Detroit police placard are additional instances of misrepresentation that support the recommendation for discipline. As to the AOI, the misrepresentation was under oath and related to her official status as a judge, i.e., seeking to retain the position of judge in an election.

A. Count I: Abuse of Contempt of Court Powers.

As to Count I, the Master concluded that Respondent did not abuse her contempt powers and did not commit misconduct in case 307300LT, *Detroit Real Estate v Sharon Hayes*. (MR 7-8.) As set forth above, the Master found and Respondent does not dispute that Ms. Eck, as the representative for plaintiff, was held in civil contempt for prematurely posting an eviction notice and ordered to pay more than $3,000 of an unlawful punitive damages award to the defendant.

At the show cause hearing, Ms. Eck acknowledged that she understood Respondent took issue with the timing of the notice posted on defendant's residence because that notice should only have been placed after the order was signed. (DC Ex 8, p 4.) Respondent interjected: "[S]o what you did is you committed fraud. . . that is ridiculous. It's disgusting and I believe it's a business practice of yours and it's going to stop today. You are going to pay this woman $3,000 in punitive for your fraud. It was intentional. It was purposeful. You wanted to subvert the law and you're going to pay a $500 fine to this court." (DC Ex 8, p 4-5.) Respondent told Ms. Eck to sit down "until those checks are written." (DC Ex 8, p 5.) When Ms. Eck did not immediately begin writing a check, Respondent said to her: "I don't see you writing a check. . . . I told your lawyer to have you bring a checkbook with you. Where is it?" (DC Ex 8, p 5.) Respondent assured Ms. Eck that she was "going to stay here" until the payment was made or else she was "going to jail today." (DC Ex 8, p 6.) Respondent continued, "Well Ms. Eck, . . . you're going to get a check somehow to these people today. And you can sit here all day long . . . until my docket is done and then you'll go to lock-up. And then you'll spend seven days in Wayne County Jail. So figure it out. That's disgusting." (DC Ex 8, p 6.)

Although the law did not permit Respondent to assess punitive damages in this case, Respondent entered an order that plaintiff pay $3,000 in punitive damages to defendant for a "fraudulent posting" on her door, and a $500 fine to the court. (DC Ex 9.) Notwithstanding this evidence and her conclusion that the award was legally unfounded, the Master concluded that Respondent had not violated any ethical responsibilities in her treatment of Ms. Eck. (MR pp 7-8.) The Commission disagrees with the Master and concludes that disciplinary counsel met its burden to show by a preponderance of the evidence – under undisputed facts – that Respondent committed misconduct by mistreating Ms. Eck and abusing her contempt power.

The Master's conclusion that Respondent did not prejudge contempt, and had a valid basis to find contempt, rested solely on one finding of fact: that plaintiff's attorney "admitted" that she had previously counseled Ms. Eck to cease the practice of prematurely posting eviction notices. (MR 2, 7.) The Master's theory was that if counsel had advised Ms. Eck not to post the notice prematurely prior to Ms. Eck posting the notice on defendant's door, that was evidence of contempt. But the record shows that counsel's actual statement at the eviction hearing was not that she had *previously* advised Ms. Eck regarding such practice, but that she was *going to advise* her to cease posting eviction notices prior to the court actually signing the writ. (DC Ex 6 at p 12.) This distinction is critical. There has to be *some* basis on which to find contempt. There was no order that was violated. There was nothing in the record to demonstrate that Ms. Eck knowingly or intentionally violated the law. This correction of the record demands the conclusion that Respondent improperly prejudged the facts and had no lawful basis to begin contempt proceedings, let alone in the aggressive manner in which she addressed and threatened Ms. Eck.

The Master was correct, and Respondent does not dispute, that, even if there was contempt, Respondent had no authority to impose punitive damages. The Commission disagrees that Respondent's admitted, found and proven improper damages award was excusable due to her being a

"new" judge. Whether or not Ms. Eck committed contempt, she was entitled to due process, but Respondent failed to give Ms. Eck any of the process she was due. Further, the gravity of a contempt order and the financial and potential additional consequences that go with it require that any judge – new or seasoned – exercise the utmost caution and care when proceeding. Respondent displayed the total opposite attitude and approach. She had more than sufficient resources at her disposal, including but not limited to the MJI Bench Books, colleagues and others, and could have taken a recess to research the matter, particularly in light of the stakes. Indeed, Chief Judge Blount testified that, in addition to the Bench Book, Respondent could have consulted with the court's "judicial assistant about the appropriate path to take. . . . She could have consulted with her presiding judge, Judge Millender. She could have asked Judge Jefferson. She could have asked any number of people for assistance." (Hearing Tr 7/7/22 pp 49/19-50/1.) Respondent availed herself of none of these opportunities. The Commission concludes that Respondent's now-admitted errors with respect to Ms. Eck's contempt rose to the level of misconduct and are not excusable. Further, the Commission concludes that Respondent's treatment of Ms. Eck, as detailed in the record quotations set forth above, was uncalled for and constituted misconduct.

Thus, the Commission concludes that Respondent's treatment of Mr. Eck, unfounded and prejudged finding of contempt without due process, and legally impermissible punitive damages award violated Canon 3(A)(1) by failing to be faithful to the law and failing to maintain professional competence in the law; Canons 3(A)(3) and 3(A)(14), for failing to be patient, dignified, respectful and courteous; and Canon 3(A)(12), for having a severe attitude toward a witness tending to prevent the proper ascertainment of truth, and for making premature judgments.

B. Count II: Court Officer/Process Server Myran Bell.

As to Count II, the Master concluded, and Respondent does not dispute, that disciplinary counsel established Respondent's misconduct with respect to her handling of the Myran Bell

situation and Respondent's flouting of Chief Judge Blount's order in that regard. (MR 14.) Over 22 cases were proven to have been affected by this pattern of misconduct by Respondent. (*Id*.) Thus, as stated above, the Commission adopts the Master's findings of fact and conclusions of law with respect to Count II.

C. Count III: Obstruction of Court Administration.

As the Master found, Respondent sent several emails to Chief Judge Blount, Regional Court Administrator retired Judge Paul Paruk and Ms. Moore (36th District Court Administrator) beginning November 2, 2017, containing Biblical passages. (MR. 16.) Chief Judge Blount and Judge Paruk found them to be threatening and baffling. (*Id*.) Respondent included the phrase "find someone else to harass" in several emails written to Judge Paruk, expressing her opinion that she was being treated disparately. (MR 17.) On November 6, 2017, Respondent began sending a daily Bible verse that was both disrespectful and vaguely threatening. For example, the November 6 email by which Respondent informed administration she had arrived at court pursuant to the PIP stated:

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

(DC Ex 45.) Respondent's November 8, 2017 email stated: "But the cowardly, the unbelieving, the vile, the murderers, the sexually immoral, those who practice magic arts, the idolaters, and all liars – they will be consigned to the fiery lake of burning sulfur. This is the second death. Revelation 21:8." (DC Ex 47.) Respondent sent a total of 12 such emails throughout that November. (DC Exs 45-54, 56.) At the end of November 2017, Judge Paruk met with Respondent and her attorney about the PIP, and specifically asked Respondent to cease sending the Biblical emails. Immediately after the meeting, and in direct defiance of Judge Paruk, Respondent sent yet another Biblical email, beginning: "You brood of vipers, how can you who are evil say anything good?" (Hearing Tr 7/8/22,

pp 130/8-13, 131/1-12; DC Ex 59.) The Master's Report referenced only "Biblical passages" without addressing this content or its obvious intent and meaning or Respondent's defiance or the threatening nature of the messages.

On January 28, Respondent sent Judge Paruk an email, the first three paragraphs of which end with: "Please find someone else to harass." The final paragraph reads:

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

(DC Ex 71.) The Master's Report referenced "high conflict" relationships as a justification for this disrespect and unprofessionalism.

The Commission concludes that Respondent intended her communications to show disrespect and discourtesy, and she succeeded. Chief Judge Blount and Judge Paruk testified that they received and understood the Biblical emails to be somewhat threatening, that they wished negative consequences and harm to people, and they were "disrespectful," "contemptuous," "frustrating," and "disappointing." (Hearing Tr 7/7/22, p 61/12-13; Hearing Tr 7/8/22, p 129/9-10; Hearing Tr 7/8/22, pp 129/24-25, 130/1-8.) The Commission concludes that Chief Judge Blount's and Judge Paruk's interpretations of the emails were fair, reasonable, and exactly what Respondent intended.

Thus, in addition to the misconduct the Master found as to Count III, the Commission concludes that Respondent's email correspondence discussed above was established without dispute and constitutes misconduct by Respondent's persistent failure to treat her Chief Judge and her Regional Administrator with dignity, courtesy and respect, in violation of MCR 9.202(B) (persistent failure to treat persons fairly and courteously) and Canons 3(A)(3) and 3(A)(14).

D. Count IV: Knowingly Conducting Proceedings Without An Official Record.

The Master found that disciplinary counsel failed to prove its allegations that Respondent disabled the equipment of her courtroom needed to make the official record. (MR 19-20.) The Commission disagrees. The record, including multiple pieces of relevant evidence not addressed by the Master, establishes that Respondent intentionally disabled the video equipment in courtroom 304.

Respondent returned to the bench from one of her medical leaves on January 22, 2019. When she returned she was assigned to the business license docket in a courtroom that had video recording equipment in lieu of a court reporter. As set forth above under Count III, Respondent did not take kindly to this new assignment or the PIP. (*See* DC Ex 71 ("I went ahead and adjudicated the Business License docket to which I have been assigned. I sincerely wish that you, Judge Nancy Blount, and Kelli Moore would find someone else to harass.").) Count IV alleges that Respondent knowingly failed to ensure that proceedings over which she presided in January and February 2019 were recorded, including that Respondent deliberately disabled the video equipment in courtroom 340. Respondent does not dispute that she failed to make such official records of proceedings, but denied disabling the video equipment.

The court's I.T. staff came to Respondent's courtroom on January 22 – the first day Respondent presided over the business license docket – to ensure that her video equipment was set up properly. (Hearing Tr 7/8/22, p 205/4-6.) After the I.T. staff worked in Respondent's court but before she began to hear cases, two court employees – Dionne Drew and Morgan Hairston – both saw Respondent disconnect her courtroom's video recording equipment. (Hearing Tr 7/8/22, pp 204/15-17, 219/16-20, 240/17-22, 242/10-13, 255/5-8 & 14-15, 257/9-17.) The Master found that the witnesses on this issue "were credible in their testimony they saw the respondent move and unplug cords," (MR 20), but the Master unilaterally thought that these witnesses must have had a "severely

limited visage" and therefore may have only seen Respondent pull "cords" but not necessarily the cords to the video equipment. (*Id*.) Thus, the Master's finding was based upon believing Respondent's denials and thinking that otherwise credible witnesses testifying contrary to Respondent may have been mistaken as to what they saw. The Commission respectfully disagrees with the Master based upon the record evidence taken as a whole.

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

Ms. Drew never saw anyone reconnect the recording equipment. She knew it was not being used thereafter, because it was never set back up. She explained that when the equipment was functional there was either a green light or a red light. The green light reflected that the equipment was operating and the red light indicated that it was on standby. She did not see any of the lights on during the weeks after Respondent unplugged the equipment. (Hearing Tr 7/8/22, pp 207/9-208/1.) The Master incorrectly applied this evidence, noting instead that the red light was "on," which the Master used as support for her conclusion that Respondent did not unplug or disable the equipment. (MR 19, 21.) The testimony of the "credible" witnesses was *not* that the light for the video

equipment was red, but rather that the light was totally *off*, which supports the witnesses' testimony that Respondent unplugged the video equipment.

Morgan Hairston worked as a court officer at the 36th District Court from October 2018 through March 2019. She was assigned to Respondent's courtroom at the beginning of 2019. (Hearing Tr 7/8/22, p 238/2-7 & 14-23.) On January 22, 2019, Ms. Hairston saw Respondent "pulling the cords off . . . messing around with them." (Hearing Tr 7/8/22, p 240/19-22) Ms. Hairston was standing in front of her desk, which was next to the clerk's desk or area, (Hearing Tr 7/8/22, p 241/12-16), and she could see what Respondent was doing. (Hearing Tr 7/8/22, pp 257/3-6, 258/12-17.) She saw that Respondent "did get down and was messing with the cords or disconnecting them." (Hearing Tr 7/8/22, p 242/12-13.) Respondent threw the cords to the side and "left [the cords] there. She just disconnected them." (Hearing Tr 7/8/22, p 259/8-9.)

In 2019 now-Judge Elisabeth Mullins (currently a judge for the 28th District Court) was Assistant Corporation Counsel for the City of Detroit Law Department. (Hearing Tr 7/13/22, p 323/11-15.) Shannon Walker is, and was in 2019, a Supervising Assistant Corporation Counsel with the City of Detroit Law Department. (Hearing Tr 7/8/22, p 266/25-267/2.) Judge Mullins handled business license cases for the Law Department and appeared often before Respondent in that capacity in January and February 2019. (Hearing Tr 7/13/22, p 323/16-22, 324/12-18.) She became suspicious that hearings before Respondent were not being recorded when she noticed that the recording light was not lit on the court's recording devices on the attorney tables. (Hearing Tr 7/13/22, p 325/6-10.) Judge Mullins reported this to her supervisor, Ms. Walker. They initially took a wait-and-see approach. (Hearing Tr 7/13/22, p 325/16-22.) Again, the witness testimony at the Hearing was that the lights were not lit, not that they were red.

Judge Mullins appeared before Respondent on *City of Detroit v Mark Hanna Smith* on January 24, 2019. Judge Mullins wanted to appeal Respondent's ruling, but was unable to do so

because there was no record of the proceeding. (Hearing Tr 7/13/22, p 330/16-18; DC Ex 115.) Judge Mullins reported the absence of a recording to Ms. Walker. (Hearing Tr 7/8/22, p 267/14-18.) Ms. Walker then went to Respondent's courtroom and informed her that she had learned that proceedings before Respondent were not being recorded. Respondent told her, "Yeah, I unhooked that shit," and waved her arm toward what Ms. Walker recalled as the jury box. Ms. Walker saw "some sort of black electronic equipment sitting there." When she asked Respondent why she had done that, Respondent replied, "I told them I wanted a court reporter. They didn't train me on how to use this, and so I unhooked it." (Hearing Tr 7/8/22, p 268/14-24.) The Master did not address this testimony, including Respondent's *admission* to Ms. Walker that Respondent disabled the video equipment. (*See* MR 20.)

Judge Mullins appeared in another case before Respondent, *City of Detroit v Ali Jaber*, on February 13, 2019. Once again, the proceeding was not recorded, and Judge Mullins again informed Ms. Walker. When Ms. Walker called Respondent and told her she understood that Respondent was still not recording proceedings, Respondent said, "Yeah. They won't give me a court reporter." Ms. Walker said she would have to report this to the Chief Judge or court administration. Respondent's answer was, "Do what you have to do. Maybe they'll give me a court reporter." (Hearing Tr 7/8/22, pp 269/9-25-270/4.)

Respondent denied disabling the equipment and maintained that she had not been trained how to use it. (Hearing Tr 7/15/22, p 406/2-5, 458/7-9.) The Master found and Respondent does not dispute that Respondent's failure to make an official record of the business license proceedings was without legal excuse and was misconduct. (MR 20-21.) But, notwithstanding the overwhelming evidence summarized above, the Master found that the evidence did not establish that Respondent deliberately disabled the recording equipment, and deliberately chose not to use it. (MR 20-21.)

Based on its de novo review of the record, the Commission concludes that the evidence did establish that Respondent deliberately disabled the recording equipment.

As set forth above, two court employees saw Respondent disconnect the equipment in January 2019. Respondent explained to one of those employees that she was disconnecting the equipment to ensure that the court, which she did not trust (as more than corroborated in the other findings of misconduct, *see, e.g.*, Count III), would not record her. Now-Judge Mullins, who appeared before Respondent in January and February 2019, observed that the lights for the microphone were not on – not green, not red, but dark – indicating that the equipment was not functioning. When Respondent was twice confronted with her failure to record by Ms. Walker, in her capacity as supervising assistant corporation counsel with the Detroit Law Department, Respondent admitted both times that she had unhooked the equipment, and said she had done so because the court would not give her a reporter.

The Master did not address much of this evidence, such as the testimony of then-corporation attorneys Mullins and Walker, and she misconstrued the evidence of the video equipment being "off" as showing a "red" light. The Master found credible both Ms. Drew's and Ms. Hairston's observations that Respondent unplugged cords, but dismissed these observations on the Master's own belief that witnesses must have had a "severely limited visage." (MR 20.) The Master had to depart from the record to reach that conclusion. Yet nothing in the record gives legitimate cause to suggest that Ms. Drew and Ms. Hairston were mistaken about their credible testimony of their recollections or that they were in disadvantaged positions. In fact, Ms. Drew made clear that she was standing, not seated. (Hearing Tr 7/8/22, p 219/21-25.) Ms. Hairston testified that she could see Respondent. (Hearing Tr 7/8/22, p 258/12-17.) Moreover, the witnesses' observations are corroborated by Respondent's admissions to Ms. Drew and Ms. Walker that she deliberately unplugged the equipment as well as Respondent's ongoing feud with the administration and her

discontentment with her new docket assignment, lack of a court reporter, and improvement plan requirements. Finally, there has never been any evidence proffered as to any alternative explanation as to how the video equipment in courtroom 340 became disabled immediately upon Respondent being assigned to that courtroom in January 2019 after I.T. staff came to Respondent's courtroom on January 22 – the first day she presided over the business license docket – to ensure that her video equipment was set up properly. (Hearing Tr 7/8/22, p 205/4-6.)

For all of these reasons, the Master was correct to find that Respondent's failure to record proceedings was misconduct, but the Commission further concludes that Respondent deliberately disabled and chose not to use the video equipment. Thus, the Commission concludes based upon its de novo review of the record that disciplinary counsel established by a preponderance of the evidence that Respondent intentionally disconnected the video recording equipment in her courtroom in January 2019 and continued to hold proceedings knowing that they were not being recorded. This was an independent act of misconduct which violated the same standards as the Master found under Count IV for failing to make the official record, including violations of MCR 9.104(1)-(2), MCR 9.202(B), MCJC Canon 2(A)-(B), MCJC 3(B)(1), and MRPC 8.4(c).

E. Count V: Unauthorized Recording And Publication of Court Proceedings.

Count V is closely related to Count IV. As set forth above, Respondent did not make official records of proceedings in her courtroom using the courtroom video equipment. But she did at times use her personal cellphone to instead record proceedings on her personal device. Thus, as to Count V, the Master found (and Respondent concedes) that Respondent recorded numerous proceedings on her personal device. (MR 23.) This was itself misconduct. (*Id.*) But the Master concluded that disciplinary counsel had not established that Respondent also improperly *published* the court proceedings. The Commission disagrees.

Ms. Walker testified that she had been Facebook friends with Respondent "for a while" as of 2019. (Hearing Tr 7/8/22, p 270/17-22.) Ms. Walker testified that in early 2019, on more than one occasion, she viewed courtroom proceedings on Facebook that showed Respondent presiding. She testified that she only saw Respondent's face, but heard Judge Mullins's voice. This accurately describes the recordings that are in DC Exhibit 117. Ms. Walker heard the voice of her then-employee, now-Judge Mullins, and realized that Respondent was publicizing actual courtroom proceedings. (Hearing Tr 7/8/22, pp 270/23-271/9.)

The Master considered Ms. Walker to be the only witness on the issues, but rejected Ms. Walker's testimony, stating that "while no doubt [Ms. Walker] earnestly recounted," the Master did not trust Ms. Walker's memory three years after the fact. (MR 23.) The Commission disagrees. The testimony was that Ms. Walker contemporaneously told Judge Mullins about the publication, not simply that Ms. Walker was recalling a three-year-old event. (Hearing Tr 7/8/22, p 271/20-23) (Ms Walker testifying that she told Judge Mullings, "I just heard your voice. I think she's putting your proceedings on Facebook Live.").) Ms. Walker did not waver, Respondent's counsel did not challenge the testimony, and nothing about the testimony is implausible, particularly considering that there is no dispute that Respondent recorded proceedings with her personal cell phone, which is then just a button-click away from publishing live to Facebook. To be clear, the mere act of recording with a cell phone does not necessarily make it more likely than not that the person doing the recording also published to Facebook Live or any other media platform. But, taken together with the uncontroverted testimony of Ms. Walker and her "earnest" recounting of what happened, the Commission concludes that disciplinary counsel met its burden to establish publishing, which was an additional violation of Canon 3(A)(11).

F. Count VI: Handicapped Parking Space Violation.

Count VI of the SAFC regards Respondent's illegal parking at LA fitness and the court proceeding that followed. (MR 24.) Respondent displayed a police placard in her vehicle despite not being the officer to whom the placard was issued nor on any governmental business. (*Id*.) The Detroit Police Department placard in her driver's window read: "On Official Business," and "This vehicle shall not be cited or impounded under penalty of law." (DC Exs 118, 119.) Respondent later displayed her judicial badge without a direct request from Officer Gyani, the Detroit Police Department officer who responded to the LA Fitness based upon a citizen complaint. (MR 24.) "Generally speaking, [the Michigan Supreme Court has] imposed greater discipline for conduct involving exploitation of judicial office for personal gain." *In re Morrow*, 496 Mich 291, 303 & n20; 854 NW2d 89 (2014) (citing, among other cases, *In re Justin*, 490 Mich 394, and noting that "the respondent judge 'fixed' traffic tickets for himself, his wife, and his staff").

This improper parking was the extent of misconduct found by the Master, as the Master concluded that disciplinary counsel did not prove that Respondent was vulgar or threatening on the scene of the parking incident or that she made any false statements or acted inappropriately at the subsequent legal proceeding regarding the parking citation. (MR 25.) Respondent failed, however, to pay the parking ticket. (*Id*.)

The Commission adopts the Master's findings of fact and conclusions of law in Count VI. The Commission separately addresses Count VI to make an observation. The Commission believes that Respondent's display of a Detroit police placard when parking illegally deserves more attention for its dishonesty and inappropriateness. Respondent is not a member of the Detroit police force. The Master found and Respondent does not dispute that Respondent "displayed a police placard in her vehicle despite not being the officer to whom the placard was issued nor on any governmental business." (MR 24.) To the extent this could be considered impersonating a police officer, it would

be a crime. The Commission does not suggest that Respondent committed this crime. But the point remains that Respondent's conduct was serious and knowingly dishonest and she had no justification for it. Respondent's display of the police placard was tantamount to a misrepresentation. She attempted to use not only her judge status – but also the authority of the Detroit police department that she does not personally possess – for her own personal gain unrelated to any official function. She was not at LA Fitness in relation to any of her duties as a judge, and certainly not as a police officer, which she is not. As set forth below regarding its recommendation for discipline, the Commission considers this fact to be an aggravating factor warranting a more serious sanction and supportive of the Commission's recommendation for removal and a six-year conditional suspension.

G. Count VI: Misrepresentations.

Respondent does not like when litigants lie to her. That is what she told counsel for Ms. Eck when holding Ms. Eck in contempt, as discussed above as to Count I. Respondent told Ms. Eck's counsel: "I don't like misrepresentation. I don't like it at all." "I don't like lies. I don't like people lying on this Court." (DC Ex 6, p 12.) The Supreme Court does not like when judges lie. As set forth above, "[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 at 424; *see also In re Brennan*, 504 Mich at 85 n11 (the Michigan Supreme Court "'has consistently imposed the most severe sanction by removing judges for testifying falsely under oath.'"), quoting *In re Adams*, 494 Mich at 186, citing *In re Ryman*, 394 Mich at 642-643; *In re Loyd*, 424 Mich at 516; *In re Ferrara*, 458 Mich at 372-73; *In re Noecker*, 472 Mich at 12-13; *In re Nettles-Nickerson*, 481 Mich at 322; *In re James*, 492 Mich at 568-570.

As discussed, the Master found that disciplinary counsel failed to establish any of the alleged several misrepresentations by Respondent. Although the Commission is troubled by the allegations and the record arguably supports them, the Commission also concludes that, with one exception, the

Master was correct because the evidence is not sufficiently direct or immune from interpretation to categorically conclude that Respondent lied and that, therefore, the corresponding discipline would be warranted. But the Commission departs from the Master as to a particular misrepresentation by Respondent. The Commission concludes that the record establishes that disciplinary counsel established by a preponderance of the evidence that Respondent lied when she repeatedly denied having intentionally disabled the video equipment in courtroom 340.

As set forth above, the Commission concludes with respect to Count IV that Respondent intentionally disabled the video equipment of courtroom 340. Respondent repeatedly falsely denied having done so. Her sworn denials that she disconnected the video recording equipment were included in her answers to requests for comments (DC Exs 130A, answer 14a), in her answer to the second amended complaint (Answer, ¶ 170), and at the Hearing. (Hearing Tr 7/15/22, p 458/7-9.) She also falsely asserted that she did not cause the video recording equipment not to be used to make an official record of court proceedings. (DC Ex 130A, answers 16b, 17b, 18, 19, 20b, 21b, 22b.)

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

The SAFC further alleged that Respondent falsely claimed she never told Ms. Drew words to the effect that, beginning on January 22, 2019 she was not going to use the video equipment. (SAFC ¶246; DC Exs 130A, answer 26; 131A, answer 6.) This statement was refuted by Ms. Drew, who

testified that Respondent entered the courtroom, was a little upset, set her belongings on the bench, got on the floor, and started taking loose the video equipment. As she did this, Respondent said, "They're not recording me. I don't trust them." (Hearing Tr 7/8/22, p 204/12-19.) Taken in the context of Respondent's actions, it is clear that respondent informed Ms. Drew she was not going to use the video equipment and why.

As discussed above, the Master believed that the testimony of the courtroom personnel was credible, but nevertheless questioned their vantage point and the precise "cords" they saw being unplugged. Further, the Master thought that Judge Mullins said the video light was "red," which would indicate that the video equipment was plugged in and operational just not recording, but the actual testimony was that the video equipment was not recording, consistent with it being unplugged. The Master rejected Ms. Walker's testimony solely on an inconsequential statement and disagreement about whether courtroom 340 has a jury box.

Further, the Master's belief that the evidence was not sufficient to show that Respondent unplugged the video the equipment does not address the allegation that Respondent intentionally caused there to be no official record of proceedings using the video equipment, which Respondent also falsely denied. Again, Ms. Walker testified that Respondent admitted, "Yeah, I unhooked that shit," after I.T. staff had ensured the video equipment was operational, and Respondent's reasoning was, "I told them I wanted a court reporter. They didn't train me on how to use this, and so I unhooked it." (Hearing Tr 7/8/22, p 268/14-24.) The video recording equipment is extraordinarily easy to use – it's the press of a button. (Hearing Tr 7/7/22, pp 75/25-76/18.) Respondent's false statement that the sole reason for the lack of video recording in courtroom 340 and therefore not creating an official record of the proceedings is because she went weeks without knowing how to press the video "on" button and admittedly never sought assistance, but blames it all on lack of "training," is not plausible. Her intentional disabling of the video equipment was supported by

credible witness testimony and is consistent with her unhappiness with and rebellion against the Chief Judge and administrators.

Respondent's misrepresentations in this regard violated MCR 9.202(B) and MCR 9.230(B)(2), by making intentional misrepresentations or misleading statements to the Judicial Tenure Commission; MCJC Canon 2(A), by being irresponsible or improper; MCJC Canon 2(B), by failing to promote public confidence in the integrity of the judiciary; MRPC 8.4(b), by engaging in conduct involving dishonesty, deceit, or misrepresentation that reflects adversely on respondent's honesty, trustworthiness, or fitness as a lawyer; 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.

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), MCR 9.202(B) 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) and failing personally to observe high standards of conduct so the integrity and independence of the judiciary may be preserved contrary to Canon 1;

d. failure to be patient, dignified, and courteous to litigants, lawyers, and other persons, contrary to MCR 9.202(B)(2) and MCJC 3(A)(3);

e. severe attitude toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, all of which tended to prevent the proper presentation of the cause and the ascertainment of truth, contrary to MCR 9.202(B)(2) and MCJC 3(A)(12)

f. failure to be faithful to the law and failure to maintain professional competence in the law with persistent incompetence in the performance of judicial duties, contrary to MCR 9.202(B)(1)(a), MCR 9.202(B)(2), MCJC

2(A) and MCJC 3(A)(1);

g. being irresponsible and improper and eroding public confidence in the judiciary, contrary to MCR 9.202(B)(2) and MCJC 2(A),

h. corroding confidence in the integrity and impartiality of the judiciary, contrary to MCR 9.202(B)(2) and MCJC 2(B)

i. engaging in misconduct in office and persistent failure to perform judicial duties, contrary to Michigan Constitution Article 6, Section 30(2);

j. initiating, permitting, or considering ex parte communications, contrary to MCR 9.202(B)(2) and MCJC 3(A)(4)

k. failing to diligently discharge administrative responsibilities and facilitate the performance of the administrative responsibilities of other judges and court officials, contrary to MCR 9.202(B)(2) and MCJC 3(B)(1); and

l. recording courtroom proceedings in violation of Canon3(A)(11).

m. making intentional misrepresentations or misleading statements to the Judicial Tenure Commission, contrary to MCR 9.202(B) and MCR 9.230(B)(2).

VIII. Disciplinary Analysis

The Commission unanimously concludes that disciplinary counsel has established by a preponderance of the evidence that Respondent committed the misconduct found by the Master with respect to the various aspects and components of Counts I through VI discussed above and in the Master's Report. The Commission unanimously further concludes that Respondent committed the additional misconduct not found by the Master set forth above, including with respect to the improper contempt order as to Ms. Eck in Count I, the improper and threatening email correspondence in Count III, the improper and intentional disabling of courtroom video equipment in Count IV, the improper publishing of court proceedings in Count V, and the intentionally false denials of disabling the courtroom video equipment as alleged in Count VII.

Based on its finding of misconduct, the Commission unanimously recommends Respondent be removed and be conditionally suspended for six years. 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 part of deliberate pattern and practice over at least two years. Respondent abused her contempt powers and grossly prejudiced dozens of cases based upon her feelings about the trustworthiness of court officer Myran Bell, even after Chief Judge Blount intervened and issued an order for Respondent to stop. Respondent knew she was not making official records of her cases, prejudicing dozens more cases. Respondent rebelled against the PIP and failed to follow its procedures with respect to communication, attendance and training. Respondent knew she was illegally parked at LA Fitness, used improper credentials to do so, disputed the ticket, and failed to pay it. None of these instances were isolated or accidental. And these of course were multiple distinct areas of misconduct, each of which constituted its own pattern and practice of misconduct.

Respondent's pattern and disregard for the law under both her contempt power and the orders of Chief Judge Blount and the PIP plan were many, pervasive and persistent. Thus, the first *Brown* factor weighs heavily in favor of a more serious sanction. *See, eg, In re McCree*, 495 Mich 51, 77; 845 NW2d 458 (2014) (detailing respondent's patterns of diverse misconduct and stating, "we agree with the JTC that '[t]his factor weighs in favor of a more serious sanction.'").

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

All of Respondent's misconduct occurred while she was a judge. The misconduct in Count I (abuse of contempt power), Count II (Myran Bell); Counts IV and V (improper unofficial recordings

of court proceedings) indisputably occurred while Respondent was directly on the bench presiding over cases. Further, Respondent's misconduct in flouting the orders and directives of Chief Judge Blount and court administrators (Count III) is also on-the-bench conduct, as 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 at 181-82; *Brennan*, 504 Mich at 111.

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 that regard, even Respondent's improper parking (Count VI) could be considered on-the-bench conduct. Respondent tried to use her position as a judge, including displaying her badge, to perpetuate or get away with the illegal parking and then testified in a court proceeding about the circumstances of her illegal parking, after which she failed to pay the ticket. *See In re Adams*, 494 Mich at 182 (where the respondent had attempted to leverage her position as a Wayne County Circuit Court judge to obtain special treatment in her divorce case). Thus, the second *Brown* factor weighs heavily in favor of a more serious sanction, with our without the illegal parking constituting "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.*

Factors three and four are related and shall be treated together. *See In re Adams*, 494 Mich at 182 (considering factors three and four together and determining that they both supported a harsher sanction). As to factor number three, Respondent's misconduct was extraordinarily prejudicial to the actual administration of justice. Dozens of her cases were directly and adversely affected by her

misconduct. She dismissed and adjourned cases where Myran Bell was the process servicer, with no indication that these cases were ever reinstated. She failed to make official records of her cases, virtually negating appellate review rights. This factor clearly and heavily weighs in favor of a severe sanction.

Further, "acting in disregard of the law and the established limits of the judicial role to pursue a perceived notion of the higher good, as respondent did in this case, is not 'good faith.'" *In re Gorcyca*, 500 Mich 588, 617 (2017), quoting *Morrow*, 496 Mich at 300. Particularly with respect to Count II, Respondent elevated her personal opinions about Mr. Bell above the law and the rights of the litigants appearing in her court, even after Chief Judge Blount ordered her to stop. She also elevated her demand for a court reporter over the need to have an official record of her cases. (Count IV.) "Crucial to [the Supreme Court's] determination that the respondent had committed misconduct rather than legal error was the fact that he had *willfully* failed to follow the law even after the applicable law was brought to his attention." *Gorcyca*, 500 Mich at 617 (emphasis in original), citing *Morrow*, 496 Mich at 305. "Good faith, in this legal context, is defined as 'a state of mind consisting in (1) honesty in belief or purpose, or (2) faithfulness to one's duty or obligation." *Gorcyca*, 500 Mich at 617 (cleaned up) (citing Black's Law Dictionary (10th ed)), "A decision to willfully ignore the law is the antithesis of a decision made in 'good faith.'" *Gorcyca*, 500 Mich at 617. "That is, a legal decision that is not made in 'good faith' reasonably implies that a judge has knowledge of the law but refuses to acknowledge his or her duty or obligation to apply that law." *Id.* "This refusal cannot be considered faithful to the law." *Id.* "Stated in terms of MCR 9.20[2](B), a 'willful failure to observe the law' is not merely 'incident' to a complaint of judicial misconduct but is in fact judicial misconduct because it cannot be characterized as a decision made in "good faith." *Id.* Accordingly, a "willful failure to observe the law" directly implicates the Commission's duty "to prevent potential prejudice to future litigants and the judiciary in general." *Id.* at 617-618.

Factor number three weighs heavily in favor of a harsher sanction. Relatedly, factor number four, too, weighs heavily in favor of a harsher sanction, as the vast majority of Respondent's misconduct indeed implicated the actual administration of justice and its appearance of impropriety.

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

None of Respondent's misconduct was spontaneous; it was all premeditated and deliberate. Even where misconduct may start as "spontaneous," a judge's decision to continue the misconduct thereafter is a deliberate choice. *See In re Adams*, 494 Mich at 182-183. Respondent misapplied the law and *jailed* Mr. Johnson with no due process even after having presided over prior contempt proceedings (in which Respondent also made legal errors, including an improper damages award of more than $3,000). Respondent's persistent dismissal and adjournments of cases involving Mr. Bell, failure to make official records of proceedings in her court, failure to comply with the Chief Judge's orders and the court administrator's PIP, and continuous improper recording of proceedings on her personal device were all deliberate and none were spontaneous. She also parked illegally with the intention to do so and used a Detroit police placard and her judge's badge to try to avoid the consequences. Finally, Respondent lied to the Commission and the Master under oath about her intentional disabling of the video equipment of her courtroom and her motivations for doing so.

Thus, as in *Adams*, 494 Mich at 182-183, 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 directly undermined the ability of the justice system to discover the truth of what occurred in cases pending before her and to reach the most just result in those cases. In fact, many

cases involving Myran Bell were not adjudicated at all due to Respondent's misconduct of automatically dismissing or adjourning them, which is perhaps the most clear and direct example of undermining the ability of the justice system to discover the truth of what occurred in a legal proceeding. Likewise, Respondent's failure to make official records of proceedings means that most if not all of those cases are insulated from any meaningful review, which Judge Mullins experienced firsthand. Thus, this factor weighs in favor of a more serious 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 and a conditional six year suspension.

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 at 424. 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 at 642-643; *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 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"); *In re Konschuh*, 507 Mich at 985.

As noted above, Respondent lied to the Commission's investigators in responding to its investigation, gave false answers to the SAFC, and she gave false testimony to the Master at the Hearing regarding her intentional disabling of the video equipment of courtroom 340, which resulted, as she knew, in no official record of the proceedings and the inability to preserve appeals. In addition to these false statements, Respondent provided a false Affidavit of Identity in seeking to be reelected as judge, which she did not dispute but nevertheless tried to stay on the ballot through unsuccessful appeals to the Court of Claims and Court of Appeals (Exs A, B), and falsely portrayed herself as being on official Detroit police business at LA Fitness allowing her to illegally park.

Respondent is not repentant. In *In re Adams*, 494 Mich at 181, 183, the Court reasoned that a sanction may be less severe when a respondent acknowledges misconduct and is truthful throughout the disciplinary proceeding, but "where a respondent is not repentant, but engages in deceitful behavior during the course of a Judicial Tenure Commission disciplinary investigation, the sanction must be measurably greater." While the Commission recommended in that case 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 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, although Respondent had no defense to and therefore did not contest the misconduct that the Master found, Respondent has shown no actual remorse for such admitted misconduct, and she has continued to deny and to minimize her misconduct with respect to intentionally disabling the video equipment and failing to make official records of her cases 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. In response to the Master's Report, disciplinary counsel noted at that time that a search of the internet revealed articles about Respondent's inappropriate conduct on the following news sources: Fox2Detroit.com; ClickonDetroit.com; the Detroit Free Press; the Detroit News; WXYZ.com; ABAjournal.com; Deadlinedetroit.com; and APnews.com. The news stories cover several years, from February 2017 in

a Fox 2 story titled "The Case of the No Show Judge" to March 2022 stories regarding the amended complaint.

(3) Years of judicial experience.

This factor focuses on whether a judge's relevant experience is an aggravating or mitigating factor. The Master credited Respondent for being a "new," inexperienced judge in Count I. The Commission has a different view. Anyone as new and inexperienced as Respondent could be expected to have a heighted sense of humility, awareness, and respect for those senior to her. Respondent displayed the opposite. She never asked for help or assistance, which might have avoided the erroneous contempt orders under Count I, and she met her senior judges and administrators with disdain when they were charged with trying to help her to improve (*see* Count III). Further, Respondent was a criminal defense attorney for many years prior to becoming a judge, so her experience as an attorney does not support the deference the Master afforded her as a "new" judge.

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. *See Brown*, 461 Mich at 1292 ("[t]he most fundamental premise of the rule of law is that equivalent misconduct should be treated equivalently."). Based on the facts, the Commission concludes removal from office and a conditional six year suspension is an appropriate and proportional sanction for Respondent's misconduct, and is

reasonably equivalent to removal and conditional six year suspension that has occurred previously in equivalent cases.

The preponderance of evidence establishes that Respondent committed misconduct as alleged under Counts I through VII of the SAFC. That misconduct included knowingly false statements to the Commission and the Master and in a sworn affidavit seeking reelection. The misconduct occurred while Respondent was a judge, much of which was on-the-bench to the extreme prejudice of the actual administration of justice and the quest for the truth in the proceedings over which she presided. Citizens of Michigan suffered at the hands of Respondent in myriad respects – having their actions dismissed if they used Mr. Bell as a process server, being fined thousands of dollars and jailed on bogus contempt orders only after being publicly ridiculed and humiliated, and even out in public when Respondent blocked Ms. Starkey's car door by illegally parking. 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. *See In re Ferrara*, 458 Mich at 372 (The primary concern in determining an appropriate sanction is to "restore and maintain the dignity and impartiality of the judiciary and protect the public.").

Further, lying is so corrosive to the judiciary that only removal from office is proportionate to the misconduct. The precedent of the Michigan Supreme Court discussed above establishes that judges who lie under oath and seek to manipulate proceedings in their self-interested favor 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"). Further, there should be "greater discipline for conduct involving exploitation of judicial office for personal gain." *In re Morrow*, 496

Mich at 303 & n20. The "cumulative effect and pervasiveness of respondent's misconduct convinces [the Commission] that respondent should not hold judicial office. Therefore, [the Commission recommends that the Supreme Court remove and] suspend h[er] without pay for a period of six years, with the suspension becoming effective only if respondent regains judicial office during that period." *See In re Konschuh*, 507 Mich at 985.

IX. Conclusion and Recommendation

On the basis of her judicial misconduct, and in consideration of all the *Brown* factors and additional factors considered by the Supreme Court, the Commission unanimously recommends that Respondent be removed from office and thereafter suspended for six years without pay.

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
THOMAS J. RYAN, ESQ.

EXHIBIT A

Court of Appeals, State of Michigan

ORDER

Kahlilia Yvette Davis v Secretary of State

Docket No. 362455

Kirsten Frank Kelly
Presiding Judge

Michael J. Kelly

Michael J. Riordan
Judges

The motion for immediate consideration is GRANTED.

The complaint for mandamus and declaratory relief is DENIED. Plaintiffs seek a writ of mandamus compelling defendants to certify plaintiff Kahlilia Yvette Davis's name as an incumbent candidate for 36th District Court Judge on the November general election ballot. However, plaintiffs do not dispute that Davis executed an affidavit of identity (AOI) containing a false statement. Because of that, MCL 168.558(4) prohibits defendants from certifying Davis's name for inclusion on the general election ballot.

While the complaint is likely barred by the doctrine of res judicata, see *Garrett v Washington*, 314 Mich App 436, 441; 886 NW2d 762 (2016), we reject plaintiffs' construction of MCL 168.467a and MCL 168.558(4). Reading the statutes *in pari materia*, see *International Business Machines Corp v Dep't of Treasury*, 496 Mich 642, 651-653; 852 NW2d 865 (2014), the language of MCL 168.467a relied on by plaintiffs does not create a separate duty to certify a candidate's name for inclusion on a general election ballot that would override the clear language of MCL 168.558(4) under the circumstances presented here. MCL 168.467a states that, in the event that the total number of candidates seeking the office of District Court Judge does not exceed twice the number of open seats for that office, "the secretary of state shall certify to the county board of election commissioners the name of those candidates for district court judge whose petitions or affidavits of candidacy have been properly filed . . . ." Plaintiffs contend that, as Davis did properly file an affidavit of candidacy, and the number of total candidates for the office of 36th District Court Judge was below the threshold were a primary election would be held, the Secretary of State has a clear legal duty, pursuant to MCL 168.467a, to certify Davis's name to the county board of election commissioners. We disagree. The relevant language of MCL 168.467a simply creates a mechanism for certification of candidates to appear on the general election ballot in the event that, because of the number of total candidates seeking the office of District Court Judge, no primary election is to be held. This sentence of MCL 168.467a does not conflict with or override the clear language of MCL 168.558(4), which directs that "[a]n officer *shall not* certify to the board of election commissioners . . . the name of a candidate who executes an affidavit of identity that contains a false statement with regard to any information or statement required under this section." Rather, properly understood, an incumbent candidate who files the required affidavit of candidacy, see MCL 168.457c, *and* who files a proper AOI, see MCL 168.558, is entitled to appear on the primary ballot, or if no primary election is to be held under MCL 168.467a, on the general election ballot. This Court has held that MCL 168.558 applies to both primary and general elections. *Moore v Genesee Co*, 337 Mich App 723, 728-729; 976 NW2d 921 (2021).

As such, Davis, who executed an AOI that contained a false statement, cannot appear on either ballot. MCL 168.558(4); *Moore*, 337 Mich App at 728-729.

We further reject the contention that the Secretary of State is not an "officer" under MCL 168.558, meaning that only MCL 168.467a directs how the Secretary of State must proceed. MCL 168.558(1) provides that, "When filing a[n] . . . affidavit of candidacy for a federal, county, state, city, township, village, metropolitan district, or school district office in any election, a candidate shall file *with the officer with whom the . . . affidavit is filed* 2 copies of an affidavit of identity." (Emphasis added.) MCL 168.467c directs that incumbent candidates for the office of District Court Judge are to file "with the secretary of state an affidavit of candidacy . . . ." Clearly, then, when it comes to the office of District Court Judge, the "officer" who is discussed in MCL 168.558 is the Secretary of State, as that is the officer with whom the affidavit of candidacy (and AOI) must be filed. MCL 168.467c. Further, MCL 168.21 explains that the Secretary of State is "the chief election *officer* of the state . . . ." (Emphasis added.) Accordingly, and contrary to plaintiffs' argument, the Secretary of State—the "officer" referred to by MCL 168.558—cannot certify Davis's name to appear on the general election ballot because plaintiff executed an AOI containing a false statement. MCL 168.558(4).

A writ of mandamus is a remedy that exists to enforce one's right to have an official perform a clear legal duty. *Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016). The clear legal duty in this case was, as the Bureau of Elections concluded, to refuse to certify Davis's name to appear on either the primary or general election ballot. MCL 168.558(4). Plaintiffs are not entitled to the writ sought. The count for declaratory relief is likewise without merit, as the declaration plaintiffs seek is not compatible with the statutory framework.

In light of this Court's disposition of the complaint, the motion for summary disposition is DENIED AS MOOT.

The motion for immediate consideration of the motion for leave to file an amicus brief is GRANTED. The motion for leave to file an amicus brief is DENIED.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

August 22, 2022
Date

Chief Clerk

EXHIBIT B

STATE OF MICHIGAN

COURT OF CLAIMS

KAHLILIA Y. DAVIS,

Plaintiff,

v

DEPARTMENT OF STATE, SECRETARY OF STATE, and JONATHAN BRATER, Director of the Michigan Bureau of Elections,

Defendants.
_____/

OPINION AND ORDER

Case No. 22-000072-MB

Hon. Elizabeth L. Gleicher

Pending before this Court in this election matter are plaintiff's petition for writ of mandamus and emergency ex parte motion for an order to show cause and for entry of declaratory judgment. Also pending at this time is defendants' motion for summary disposition filed pursuant to MCR 2.116(C)(8). Because plaintiff cannot establish a clear legal duty on the part of defendants to accept an amended affidavit of identity, defendants' motion for summary disposition is GRANTED and the petition for writ of mandamus is DISMISSED with prejudice.

I. BACKGROUND

Plaintiff is an incumbent judge of the 36th District Court who seeks to run for reelection. Plaintiff was first elected in November 2016. In August 2017, plaintiff received a "Notice of Late Filing Fee" for a July 2017 quarterly campaign finance statement informing her that she was required to pay an amount in relation to the late filing. Defendant followed up in September 2017 and identified, according to the complaint, "several outstanding campaign finance related items"

for which late fees were owed. Plaintiff alleges that she believed she had resolved the problem in 2018 and that she did not receive any other notifications regarding the July 2017 quarterly statement until June of 2021. Plaintiff contends that she sought clarification at that time, but she never received a response to her request.[1] As a result, she "assumed Defendants had realized it [sic] made a mistake and was no longer seeking payment of the fine" that was allegedly owed in relation to the July 2017 quarterly statement.

On January 25, 2022, plaintiff filed an affidavit of identity, see MCL 168.558, with defendants because she sought reelection. Plaintiff now acknowledges that this affidavit of identity (AOI) was invalid because she checked multiple boxes indicating on which ballot—primary or general election—she wished to appear as a candidate, when only one box was supposed to be checked. In addition, and more significant for purposes of this case, the AOI included a signed and notarized statement from plaintiff that, "as of the date of the affidavit, all statements, reports, late filing fees, and fines required of the candidate or any candidate committee organized to support the candidate's election under the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to 169.282, have been filed or paid . . . ." Plaintiff now admits, however, that she owed fees related to the July 2017 quarterly statement at the time, making her AOI inaccurate. Plaintiff contends that she learned after she submitted her AOI that defendants were still seeking payment of a fee related to the July 2017 quarterly statement.

[1] The email attached to the complaint shows that the message was sent to a member of plaintiff's own committee staff, as well as an individual with a Department of State email address. While not pertinent to the Court's analysis, defendants have represented that the individual no longer worked at the Department of State when plaintiff sent the email for clarification.

Plaintiff withdrew her candidacy and her AOI on February 7, 2022. She also paid the outstanding fee at that time. After paying the fee, plaintiff filed a second AOI in which she corrected the above-noted check-box error. In addition, she also resolved, in her estimation, the outstanding fee issue and attestation related thereto.

On May 17, 2022, defendant Direct of Elections Jonathan Brater sent a letter to plaintiff and informed her that she had been disqualified from the upcoming August 2, 2022 primary election. The letter declared that defendant Department of State was required to disqualify plaintiff from the ballot because, despite what was in plaintiff's January 25, 2022 AOI, she owed a late fee related to her July 2017 quarterly statement. The letter further stated that the AOI could not be cured by withdrawing the original document and resubmitting an updated AOI.

II. ANALYSIS

Plaintiff argues that she has a clear legal right to have her name included on the upcoming primary ballot and that she is entitled to mandamus relief. She argues that her January 25, 2022 AOI was facially invalid because she checked too many boxes and that the AOI was of no effect as a result. Stated otherwise, she argues that it should have never been considered—beyond the purported facial defect—in the first instance. She also argues that defendants' guidance, offered by way of an "Election Officials Manual" declares that a candidate can submit a new AOI to correct problems or issues. In the alternative, she argues that she is entitled to the issuance of declaratory relief.

The Court has discretion to issue declaratory relief to "declare the rights and other legal relations" of parties in a "case of actual controversy." MCR 2.605(A). See also *PT Today, Inc v Comm of Office of Fin & Ins Servs*, 270 Mich App 110, 126-127; 715 NW2d 398 (2006). The

primary relief plaintiff requests in this case, however, is mandamus relief. To be demonstrate entitlement to the extraordinary remedy of mandamus, plaintiff must show:

> (1) [she] has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result. [*Rental Props Owners Ass'n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 518; 866 NW2d 817 (2014).]

The Court agrees with defendants that plaintiff cannot show a clear legal duty on the part of defendants to accept the amended AOI. Nor will the declaratory relief sought by plaintiff issue. Defendants were required to reject the January 25, 2022 AOI because it contained an inaccurate statement, and plaintiff has not directed the Court to any authority indicating that defendant was required to accept the amended AOI when the original AOI contained a false statement.

A candidate for elected office in this state must strictly adhere to the requirements contained within the state's election statutes, including those provisions of the law applying to affidavits of identity. *Moore v Genesee Co*, __ Mich App __, __; __ NW2d __ (2021) (Docket No. 355291), slip op at 3.[2] Here, MCL 168.558(4) required plaintiff to provide a signed and notarized statement that, as of the date of the filing of the AOI, "all statements, reports, late filing fees, and fines required of the candidate or any candidate committee organized to support the candidate's election under the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to 169.282, have been filed or paid . . . ." MCL 168.558(4) prohibits the certification to the Board of

[2] Plaintiff incorrectly identifies *Moore* as an unpublished decision. In addition, plaintiff's attempt to distinguish *Moore* is unavailing. Plaintiff correctly argues that the case held that an election official had no clear legal duty to accept an amended AOI after the filing deadline. Contrary to plaintiff's suggestion, however, the case made no mention of a right to file an amended AOI before the expiration of the filing deadline.

Election Commissioners "the name of a candidate who fails to comply with this section, or the name of a candidate who executes an affidavit of identity that contains a false statement with regard to any information or statement required under this section." Thus, a candidate's lack of compliance with MCL 168.558(4) requires defendants to refrain from certifying the candidate. *Moore*, __ Mich App at __, slip op at 3.

Returning to this case, there can be no dispute that plaintiff's January 25, 2022 AOI failed to comply with MCL 168.558(4). As a result, plaintiff had no right to appear on the ballot and defendants had a clear duty to exclude her. The more pressing question becomes whether defendants had a clear legal duty to accept plaintiff's amended AOI. Plaintiff has not provided such authority to the Court, however. To that end, she has not supplied the Court with any compelling authority for the notion that defendants had to accept the amended AOI after the first AOI was found to be defective for containing a false statement. At best, she has pointed to nonbinding guidance indicating that she could submit an amended AOI—and perhaps amendment could be permitted for some issues, such as those that do not involve false statements. However, this is not the same as binding authority declaring that defendants had any sort of duty or obligation to accept the amended AOI. Informal guidance suggesting that a candidate may attempt to remedy a problem does not impose on defendants a clear legal duty to accept a subsequent filing from the candidate, particularly when MCL 168.558(4) plainly required defendant to decline to certify plaintiff's candidacy in light of the false statement made in the AOI.

Likewise, the Court is not convinced by plaintiff's suggestion that the use of the word "an" in MCL 168.558(4) regarding AOIs meant that the Legislature implicitly allowed for a candidate to file multiple AOIs. Instead, the Court finds compelling the language in the last sentence of MCL 168.558(4), which unambiguously declares that an election official "shall not certify . . . the

name of a candidate who executes an affidavit of identity that contains a false statement with regard to any information or statement required under this section." Plaintiff executed an AOI with a false statement, meaning that the only clear legal duty that can be parsed from the statute is a duty to *not* certify plaintiff's candidacy.

Plaintiff's emergency motion seeks to avoid any issues with the statement required by the AOI by arguing that the January 25, 2022 AOI was invalid on its face and that it should never have been considered because of the checkbox issue noted above. However, even accepting this as true, plaintiff still does not explain why this gives rise to a clear legal duty on the part of defendants to accept a second AOI. Nor has she explained why this defect would permit defendants to overlook the clear statutory duty under MCL 168.558(4) to decline to certify plaintiff because of the AOI's omission regarding campaign-finance-related fines. Stated otherwise, plaintiff has presented no reason why the presence of the check-box error required defendant to stop reviewing the AOI and to ignore all other issues that were present in the AOI.

Plaintiff's claim for declaratory relief will be dismissed as well. Plaintiff seeks a declaration that she is entitled to an order declaring that defendants must include her on the August 2, 2022 primary ballot. This is essentially a declaration that she is entitled to mandamus relief. And because her position is without merit in any event, declaratory relief will not issue in her favor.

III. CONCLUSION

IT IS HEREBY ORDERED that defendants' motion for summary disposition is GRANTED under MCR 2.116(C)(8) and that the petition for writ of mandamus is DISMISSED with prejudice.

IT IS HEREBY FURTHER ORDERED that plaintiff's emergency motion is DENIED.

June 1, 2022

Elizabeth L. Gleicher
Judge, Court of Claims