STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST

Hon. Demetria Brue
Thirty-Sixth District Court
Detroit, MI **FC 105**
_____/

DISCIPLINARY COUNSEL'S FINDINGS OF FACT
AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. Respondent, Hon. Demetria Brue ("Judge Brue"), has been a licensed lawyer and a member of the State Bar of Michigan since 1988. [**Trial Tr.**, Vol. 5, p. 1112]

2. Judge Brue has served as a judge of the Thirty-Sixth District Court, County of Wayne, State of Michigan since 2012. [**Trial Tr.**, Vol. 5, p. 1113]

3. Judge Brue attended a judicial conference on Mackinac Island in August 2019. [**Trial Tr.**, Vol. 5, pp. 1117-1118]

4. On August 20, 2019, Judge Brue rented bicycles from the Mackinac Island Bike Shop for herself and a colleague, Judge Debra Nance. [**Trial Tr.**, Vol. 5, pp. 1126-1127]

5. Judge Brue provided her credit card to the staff of the bicycle rental shop before she was provided with bicycles for herself and Judge Nance. [**Trial Tr.**, Vol. 5. p. 1126; **Trial Tr.**, Vol. 7, pp. 1416-1418]

6. The credit card that Judge Brue provided at the time that she checked out the two bikes identified her as "Ms. Demetria A. Brue." [**Trial Tr.**, Vol. 7, p. 1375; **Ex. 17**, Credit card]

7. Judge Brue said, "A" is not her middle initial and none of her other credit cards identified a middle initial or included the title "Ms." prior to her name. [**Trial Tr.**, Vol. 7, pp. 1419-1420]

8. An employee of the bike shop provided Judge Brue with a ticket (interchangeably referred to during the proceedings as a "receipt") when she rented the bikes. [**Trial Tr.**, Vol. 7, p. 1418]

9. Judge Brue claims that she did not look at that ticket when it was provided to her. [**Trial Tr.**, Vol. 7, p. 1418]

10. The ticket identified Judge Brue as "Ms. Demetria A." based on how the information from the swipe of the credit card populated the fields of the bike shop's software system. [**Trial Tr.**, Vol. 2, pp. 300, 308]

11. The phone number of the bike shop was printed at the top of the ticket. [**Trial Tr.**, Vol. 4, p. 814]

12. Every employee of the bike shop was required to learn the contents of a "script", and the "script" was to be recited to every customer who rented a bicycle from the shop. The script provided a brief explanation of the bicycle's features and required that the shop employee make sure that the bike was in the proper gear for ease of riding before it was released to the customer. A portion of the script provided that "[w]hile you are riding, If you have any problems call the phone # on the top of the

receipt." The employees were instructed to "**CIRCLE THE PHONE NUMBER!"** on the ticket. [**Trial Tr.**, Vol. 2, pp. 273-274, 292-296; **Trial Tr.**, Vol. 4, pp. 811-812, 848-849, 930; **Ex. B**, Script]

13. The bike shop rented the bikes by the hour. Judge Brue and Judge Nance began their ride at 5:56 p.m. **[Trial Tr.**, Vol. 4, pp. 928-929]

14. Judge Brue testified that Judge Nance called her on her cell phone during their bike ride to inform her about mechanical problems Judge Nance was allegedly having with her bicycle. However, the cell phone bill produced by Judge Brue shows that the only call that she received from Judge Nance that day was at 5:09 p.m., 47 minutes before the judges started their ride. [**Trial Tr.**, Vol. 5, pp. 1130; **Trial Tr.**, Vol. 7, pp. 1427; **Ex. I**, Cell phone bill]

15. If a customer called with a problem during their ride, an employee of the bike shop would typically walk the customer through instructions to rectify the problem over the phone. If they were unable to solve the problem, an employee would bring a new bicycle to the customer and would deduct the time that the customer was stranded from the price of the ride. [**Trial Tr.**, Vol. 2, pp. 268-269]

16. More than 99% of the time, issues between the bike shop and its customers were resolved amicably. [**Trial Tr.**, Vol. 2, p. 270]

17. In deciding whether to offer a discount or determining how to resolve a customer dispute, Ira Green, the owner of Mackinac Island Bike Shop, has never taken into account the race, religion, or sex of a customer. [**Trial Tr.**, Vol. 2, p. 270; **Trial Tr.**, Vol. 3, p. 551]

18. Green was more likely to provide an accommodation when someone called the shop during their ride than when they waited until the end of their ride to report a problem. [**Trial Tr.**, Vol. 4, pp. 811-812]

19. Neither Judge Brue nor Judge Nance called the shop to report a problem during their ride to indicate that Judge Brue was having a problem with her bike. [**Trial Tr.**, Vol. 2, p. 291; **Trial Tr.**, Vol. 7, pp. 1428]

20. Judge Brue and Judge Nance returned their bicycles to the shop at about 6:55 p.m., 59 minutes after they started their ride. [**Trial Tr.**, Vol. 2, p. 274; **Ex. HH**, Videos, "Initial drive up and test ride," 18:55]

21. When they returned their bicycles to the shop, Judge Brue and Judge Nance told the bike shop staff that Judge Nance had a problem operating her bicycle and did not want to pay full price for the rentals. [**Trial Tr.**, Vol. 4, pp. 818, 930-934; **Trial Tr.**, Vol. 5, pp. 1135-1136, 1139; **Trial Tr.**, Vol. 7, pp. 1435, 1444]

22. Jared Scott, an employee of the bike shop, test-drove Judge Nance's bicycle and concluded that it was shifting properly and everything was in working order. [**Trial Tr.**, Vol. 4, pp. 816, 818, 877-878, 933; [**Trial Tr.**, Vol. 7, p. 1436]

23. Judge Brue was not satisfied with Scott's conclusion. Scott summoned Green to assist with the customer complaint. He informed Green that the reason that Judge Nance did not believe that the bicycle shifted properly is that she was operating in the "big gear" and did not know how to change the gear ratio. Another employee, Gunnar Libby, also spoke to Green and supported the conclusion that the bicycle did not have any mechanical problems and whatever problem Judge Nance was having

was best characterized as user error. [**Trial Tr.**, Vol. 2, pp. 276-277, 297; **Trial Tr.**, Vol. 4, pp. 822, 934-936; **Trial Tr.**, Vol. 5, pp. 1138-1139]

24. Green came out to talk to Judge Brue and Judge Nance at about 6:58 p.m. and explained that there was no mechanical problem with the bicycle and that Judge Nance was simply in the wrong gear. [**Trial Tr.**, Vol. 4, p. 936; **Ex. HH**, "Initial drive up and test ride," 18:58:10]

25. Green testified that mechanical error is an issue in less than 1% of bike rides. [**Trial Tr.**, Vol. 2, pp. 261-262]

26. Every bicycle is inspected before it leaves the shop and again when that bicycle is returned to the shop. Even if no issues are reported by a customer, a bike shop employee checks the tires, wheels, brakes, shifting, and cosmetics to make sure the bicycle has not been damaged. [**Trial Tr.**, Vol. 2, pp. 262-263; **Trial Tr.**, Vol. 4, p. 816]

27. If a bicycle does not pass the inspection, it is placed in an area where a certified mechanic will perform any necessary repairs and do a tune up on the bicycle. [**Trial Tr.**, Vol. 2, pp. 263-264]

28. A few minutes after Green came out to talk to the judges, Libby took Judge Nance's bicycle for a test ride and reached the same conclusion as Scott. The bike shop's security video shows Libby explaining the gear issue to Judge Brue and Judge Nance. [**Trial Tr.**, Vol. 2, pp. 298-299; **Trial Tr.**, Vol. 3, pp. 523; **Trial Tr.**, Vol. 4, pp. 931-932, 937; **Trial Tr.**, Vol. 5, pp. 1136-1137; **Trial Tr.**, Vol. 7, p. 1440; **Ex. HH**, "1st part File Hut 2," 19:05:05]

29. Neither Judge Brue nor Judge Nance could recreate the problem that Judge Nance allegedly experienced during her ride once the bicycle was in the proper gear, and the conversation regarding mechanical issues ceased once it was explained that Judge Nance was riding the bicycle in the wrong gear. [**Trial Tr.**, Vol. 2, p. 299; **Trial Tr.**, Vol. 3, pp. 523; **Trial Tr.**, Vol. 7, p. 1441]

30. Despite concluding that Judge Nance's dissatisfaction with her ride stemmed from user error and not a mechanical issue, and even though the judges had ridden for an hour without reporting any problem to the shop, Green still offered the judges a discount on their ride, but the proposed discount was not satisfactory to the judges. [**Trial Tr.,** Vol. 2, p. 311, 433-434; **Trial Tr.**, Vol. 4, p. 936]

31. Green spoke to them for less than a minute before they all walked over to the kiosk so Green could pull up Judge Brue's rental information on the bike shop computer. Green asked Judge Brue for her last name in order to pull up her information on the shop's computer system. A careful review of the video shows that Green first typed in "B-R-E-W" before correctly typing in "B-R-U-E". [**Trial Tr.**, Vol. 2, p. 300; **Trial Tr.**, Vol. 4. p. 939; **Ex. HH**, "1st part File Hut 2," 18:59:29 – 18:59:59]

32. The computer system produced no results when Green typed in either spelling of Judge Brue's last name. [**Trial Tr.**, Vol. 2, pp. 300-301, 304; **Trial Tr.**, Vol. 4. p. 939; **Trial Tr.**, Vol. 5, p. 1155; **Ex. HH**, "1st part File Hut 2," 18:59:29 – 18:59:59]

33. When Green was unable to immediately access Judge Brue's information, he asked whether it was possible that she had used a different credit

card when she checked out the bicycles. Green was not implying that Judge Brue had engaged in any misconduct. Rather, he was merely asking whether Judge Nance may have used her credit card. Since Green did not check Judge Brue in, he had no way of knowing whether it was Judge Brue or Judge Nance who provided the credit card. [**Trial Tr.**, Vol. 2, pp. 301-303; **Trial Tr.**, Vol. 7, pp. 1442-1443]

34. Judge Brue immediately got defensive and asked if Green was suggesting that she was committing credit card fraud. As she got more and more agitated, Judge Brue began raising her voice and speaking in an aggressive tone. [**Trial Tr.**, Vol. 4, pp. 825, 938; **Trial Tr.**, Vol. 5. pp. 982, 991, 1161; **Trial Tr.**, Vol. 7, pp. 1362, 1379, 1386-1387, 1442, 1463-1464, 1472, 1485-1486, 1520-1521; **Trial Tr.**, Vol. 8. p. 1596]

35. Green asked Judge Brue for a copy of the ticket that she was given when she checked out the bikes, and she voluntarily provided it to Green. [**Trial Tr.**, Vol. 2, pp. 301, 304; **Trial Tr.**, Vol. 4. p. 940; **Trial Tr.**, Vol. 5, p. 1155; **Trial Tr.**, Vol. 7, pp. 1448, 1487; **Ex. HH**, "1st part File Hut 2," 19:00:28 - 19:00:32]

36. When Judge Brue provided Green with the ticket, he immediately noticed that it did not include her last name and that it identified her as "Ms. Demetria A." This was a function of how Judge Brue's name appeared on her credit card. By including the "Ms." title, it likely populated "Ms." in the "first name" field and pushed the middle initial "A" into the "last name" field.[1] This is not the first time

[1] The Master refused to allow the introduction of a printout of the ticket from Green's computer system because it was not the actual physical ticket that was presented to Judge Brue on the date of the incident. The ticket was received on the separate record.

that Mackinac Island Bike Shop employees have had an issue finding a customer's name in the computer system as a result of how the customer's name appears on their credit card and the way that swiping the card populates the fields in the bike shop's software system. [**Trial Tr.**, Vol. 2, p. 305; **Trial Tr.**, Vol. 3, pp. 510-511; **Trial Tr.**, Vol. 4. pp. 944-945; **Ex. HH**, "1st part File Hut 2," 19:00:28 -19:00:32]

37. The video clearly shows that, upon receiving the ticket from Judge Brue, Green was able to pull up her information on his computer by 7:01 p.m., less than a minute after Green had been unable to find the information. [**Trial Tr.**, Vol. 2, pp. 305-306; **Ex. HH**, "1st part File Hut 2," 19:00:54]

38. Although the confusion over names was then resolved, Judge Brue continued to blame Green and his employees for the fact that the ticket did not identify her as Demetria Brue, accusing them of typing her information incorrectly. Judge Brue was combative and antagonistic despite the fact that Green never suggested that she did anything wrong. Green spent considerable time trying to explain to her why the fields did not populate properly when the bike shop employee swiped her credit card. [**Trial Tr.**, Vol. 2, pp. 273, 300-301, 306-310, 429-430, 432-433; **Trial Tr.**, Vol. 3, pp. 512-514; **Trial Tr.**, Vol. 4, p. 826, 939, 943; **Trial Tr.**, Vol. 7, pp. 1442, 1463; **Ex. HH**, "1st part File Hut 2," 19:01:00 - 19:08:00]

39. The security video shows multiple instances when Green pointed to the ticket to explain to Judge Brue why he struggled to pull up her information immediately. [**Ex. HH**, "1st part File Hut 2," 19:03:46-19:03:55, 19:04:50-19:05:04]

40. During this discussion, Judge Brue threatened to call the police, presumably because she erroneously inferred that Green was accusing her of credit card fraud. Green never actually made such an accusation and never called the police or threatened to do so. [**Trial Tr.**, Vol. 2, pp. 319-320, 369-370; **Trial Tr.**, Vol. 7, pp. 1486-1487, 1521-1522]

41. Judge Brue's allegation that Green accused her of credit card fraud lacks credibility given that he merely asked her if she had used a different credit card to rent the bikes, within two minutes of arriving at the kiosk and within a minute of Judge Brue providing her rental ticket Green had Judge Brue's rental information pulled up on the computer, and Green explained to Judge Brue the reason the fields in the computer had populated incorrectly and made it hard to find her rental information. Nonetheless, during the Commission investigation, Judge Brue created a false narrative that Green did not actually find her information. Rather, Judge Brue falsely claimed that another employee found her paperwork and Green was upset about that other employee doing so. Judge Brue continued to provide this false narrative at the public hearing. [**Ex. 7**, 9.27.21 Letter to Commission, p. 7 ("[Green] then asked one of his staff members to help him find the paperwork for the bike rentals. He put on a show that he was suspicious of Judge Nance and Judge Brue. It was clear from his demeanor and actions that [Green] was investigating to determine exactly what sort of fraud he could accuse Judge Brue of committing. The problem for [Green] was that his employee found the paperwork for the rental. Once the paper

work was located, [Green] very, very, reluctantly acknowledged she was in fact 'Demetria Brue.'")]

42. In June 2021, the Commission gave Judge Brue the opportunity to review all the video of the Mackinac Island incident provided to the Commission by Green and sent copies of all the video to Judge Brue in July 2021. [**Trial Tr.**, Vol. 7, pp. 1339-1340]

43. The video unequivocally establishes that the narrative that Judge Brue created in her September 27, 2021 letter to the Commission was false. The video shows that none of Green's staff members assisted him in locating Judge Brue's paperwork. [**Ex. HH**, "1st part File Hut 2," 18:58:55 - 19:08:03]

44. At the hearing, during cross-examination, Judge Brue was unable to point to any portion of the video that supported her claim that Green was unable to find the paperwork and a staff member did so. Judge Brue suggested that her prior statements were based on her "best recollection" and not based on a thorough review of the video. [**Trial Tr.**, Vol. 7, pp. 1448-1455]

45. Judge Brue has also taken the position that she would not have made any false statements in her November 2020 response to the Commission's Request for Comments if Commission staff had provided her with all the video at that time. [**Trial Tr.**, Vol. 7, pp. 1343-1344] The fact that Judge Brue persisted in making her false statement even after she had the opportunity to review the video undercuts this claim.

46. On redirect, Judge Brue's counsel suggested that Judge Brue focus on Libby's actions at 19:08:40 of the video. Taking the cue from her counsel, Judge Brue testified that Libby "appears to say something quickly to Mr. Green and he points at the computer screen," and Judge Brue suggested that this was the interaction that she must have been referring to in the September 2021 letter. Judge Brue further testified that "[i]t appeared that Mr. Libby was trying to be helpful to Mr. Green and pointing out that I actually was in the computer system, because Mr. Green was denying that I was there." Judge Brue went so far as to blame disciplinary counsel for not showing her that portion of the video during cross-examination. **[Trial Tr.**, Vol. 8, pp. 1730-1732; **Ex. HH**, "1st part File Hut 2, 19:08:40]

47. Judge Brue's testimony was false. There is absolutely no indication before or after the 19:08:40 mark on the video that Libby said anything to Green that caused him to find Brue's paperwork. As set forth in paragraph 37 above, the video establishes unequivocally that Green had already found her information on the computer system about seven and a half minutes earlier, almost immediately after Judge Brue provided him with her ticket. [**Ex. HH**, "1st part File Hut 2, 19:00:32 - 19:00:54, 19:08:10 - 19:09:07.]

48. Knowing full well that the video did not corroborate what Judge Brue had just testified to, her counsel suggested that there were other portions of the video that would further establish Judge Brue's prior representations, but said he did not "want to waste a lot of time" to "show Mr. Libby's further involvement beyond that point." Contrary to counsel's claim, there is no additional video that supports Judge

Brue's representations. [**Trial Tr.**, Vol. 8, pp. 1731-1732; **Ex. HH**, "1st Part File Hut 2," 19:08:10 – 19:09:07]

49. During the incident on Mackinac Island and throughout the Commission's investigation, Judge Brue accused Green of being a racist and treating her differently than he would have treated a Caucasian customer under the same circumstances. [**Ex. Z**, Response to Request for Comments, p. 6 ("As Judge Brue's encounter with [Green] continued, it became clear to her that she was dealing with a person who was prejudiced against her and Judge Nance because of the color of their skin. That fact became quite obvious."); **Ex. Z**, pp. 8-9 ("We believe that [Green] was enjoying giving the two black women a hard time and talking to them like they were some lower form of humans. … By that time, [Green] appeared downright angry over the fact that he had to deal with two Black women and he showed it."); **Ex. Z**, p. 36, No. 56 ("Judge Brue believes that even judges have the right to stand up to racists such as [Green] …")] Judge Brue concluded that Green was racist within ten minutes of meeting him. [**Trial Tr.**, Vol. 7, pp. 1476-1477] Judge Brue had no good faith basis for these assertions.

50. Without any objective evidence, Judge Brue also alleged that Green "is consistently rude, nasty, and disrespectful to his customers, especially those who complain about his rental equipment, services or his employees." [**Ex. CC**, 3.27.22 Response to 28 Day Letter, p. 9; **Ex. 7**, p. 9]

51. Judge Brue never met Green prior to August 20, 2019, did not see him interacting with any other customers that day, and had no good faith basis to

conclude that Green treated her any differently than he would have treated any other customer in the same situation. [**Trial Tr.**, Vol. 4, pp. 825-826; **Trial Tr.**, Vol. 7, pp. 1410-1411]

52. During the investigation into her interaction with Green, Judge Brue also falsely alleged that "[Green] and his business have gained a terrible reputation through online reviews from private citizens. [Green] is known on the internet as being abusive to his customers who dare to complain about his services." [**Ex. CC**, 3.27.22 Response to 28 Day Letter, p. 9; **Ex. 7**, p. 9]

53. Green has owned businesses on Mackinac Island for about thirty-four years and has operated bike shops on Mackinac Island for over twenty years. [**Trial Tr.**, Vol. 2, pp. 257-258]

54. The Mackinac Island Bike Shop rents out hundreds of bicycles a day during the summer. [**Trial Tr.**, Vol. 2, p. 265]

55. Like any business, the Mackinac Island Bike Shop has many positive and some negative online reviews. There is no evidence that a disproportionate amount of the negative reviews come from any particular racial group. The average online rating for the Mackinac Island Bike Shop is above four stars (out of five) and is as good or better than many other bike shops on the island. [**Trial Tr.**, Vol. 3, pp. 550-551; **Trial Tr.**, Vol. 4, pp. 958-959]

56. Green has dealt with customers of different races, ethnicities and cultures on a daily basis. There is no evidence that Green has ever been accused of being a racist or of treating anyone differently on the basis of their race. Those who

have worked with him, as well as police officers who have witnessed his interactions with customers, all testified that he has a reputation of treating customers kindly, fairly, and with respect, and required the same of his employees. While occasional disputes with customers are inevitable for any business owner, Green typically resolved such disputes in a calm and reasonable way. [**Trial Tr.**, Vol. 2, pp. 265-266; **Trial Tr.**, Vol. 3, pp. 610-611, 676-677; **Trial Tr.**, Vol. 4, pp. 751-752, 810, 812-813, 901-902, 927-929]

57. There is no objective evidence that any of Green's words or actions on August 20, 2019 were racially motivated. When asked if there was any evidence other than her own subjective interpretation to support the conclusion that Green treated her differently on the basis of her race, Judge Brue flippantly responded: "My interpretation is what matters at this point." [**Trial Tr.**, Vol. 2, p. 365; **Trial Tr.**, Vol. 3, p. 608; **Trial Tr.**, Vol. 7, p. 1481]

58. Judge Brue acknowledged that this is not the first time that she has complained about something (a service or a product) and not gotten the results that she wanted after complaining and concluded that the reason she did not get the result that she wanted was because of her race. [**Trial Tr.**, Vol. 7, p. 1415]

59. Throughout the investigation, Judge Brue alleged that Green used the term "free ride" in his conversation with her and Judge Nance. Judge Brue suggested that the phrase has a negative connotation when used with African-Americans. [**Ex. Z**, p. 6 ("He again repeated his words that they were just looking for a free ride. … [Green] used the term 'free ride' several more times."); **Ex. CC**, p. 3 ("During the

verbal dispute between [Green] and the judges he accused them of trying to get 'a free ride.' They were appalled by his accusation. They were not trying to get a free ride. Further, the term 'free ride' has been used historically in relation to African Americans and other ethnic minorities in the United States in a derogatory manner to imply dishonesty, or laziness. The tone of his voice and the way he was treating them, was interpreted by Judge Brue (and Judge Nance) as being racist."); **Ex. CC**, p. 14 ("A critical issue in this case is whether [Green] denigrated Judge Brue and Judge Nance,[2] by among other things, accusing them of trying to get a 'free ride.' Judge Brue and Judge Nance[3] believed that such things were said to denigrate them

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[2] Judge Brue acknowledged that she is not sure if she ever actually spoke to Judge Nance about her perception of the use of the phrase "free ride" and she does not have a recollection as to whether Judge Nance expressed her belief that the term was used in a racially derogatory manner. [**Trial Tr**., Vol. 7, pp. 1460, 1464-1465, 1470] When confronted with the fact that Judge Nance's testimony in FC 106 did not support her allegations, Judge Brue brushed the contradiction aside by claiming that "[s]he has her experience as a human being and a Black woman in America. I have my experience as a human being and a Black woman in America." [**Trial Tr.**, Vol. 7, pp. 1469-1470]

[3] As of writing this document the testimony of Judge Nance is not part of the record in FC 105. The history of this decision is below.

The Master denied disciplinary counsel's Motion to Consolidate the public hearings and their Motion to Coordinate the public hearings. [cite?] As a result, two separate hearings were required for FC 105 and FC 106. Disciplinary counsel included Judge Nance and Judge Brue on their witness lists for both cases.

The hearing for FC 106 was originally scheduled to proceed before the hearing in FC 105. In response to Judge Brue's objection to testifying in FC 106 before her own hearing, the Master ruled that she would not be required to testify in FC 106. When FC 106 was adjourned to June 16, 2025 (after the conclusion of FC 105), Judge Nance objected to testifying in FC 105 for the same reason. [**5.14.21 Pre-Trial Tr.**, pp. 45-46] Disciplinary counsel pointed out that since both respondents objected to consolidation or coordination, one of the two hearings had to go first, but "[y]ou can't complete 105 without Judge Nance's testimony, just like you can't complete 106 without Judge Brue's testimony." [**5.14.21 Pre-Trial Tr.**, pp. 46-47] During the pretrial conference in FC 106, the Master stated that he was "less than satisfied that a person should be compelled to testify in which situation she would be either required to acknowledge that she engaged in perjury or would simply set herself up for an additional charge of obstruction. And that particular reason, especially since it's not clear to me that her testimony gets us any further down the road based upon the conversation, testimony of Mr. Green and whatever assistance he has, I would be very reluctant to say that [Judge Nance] should be brought into 105." [**5.14.21 Pre-Trial Tr.**, pp. 48-49]

because they are African American. … We all know that for years and years racists have accused certain minority groups, including African Americans, of wanting 'free rides' in all aspects of their lives."); **Ex. DD**, 12.21.22 Answer to Complaint, p. 2, ¶9 (Green "accused them of wanting a 'free ride.' [Judge Brue] took offense at the accusation because it was not only untrue and false, but also because that is a term used by racists in past years to imply that African-Americans want something-for-nothing."); **Ex. DD**, pp. 3-4, ¶17 ("[Green] had repeated multiple times that [Judge Brue] and Judge Nance were making up a story about the bike being defective because 'you guys' want to get a 'free ride' because that is what 'you guys do.' … [Judge Brue] recognized Mr. Green's repeated use of the term 'free ride' as the term as one historically used by racists towards African-Americans to accuse them of wanting something for nothing.")]

60. Green probably did not use the phrase "free ride" and, even if he did, he certainly did not use it in a derogatory manner. Green was not even aware of the

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One week later, during the pretrial conference in FC 105, Judge Brue objected to having to testify in FC 106 even though she would have already testified in FC 105. [**5.21.21 Pre-Trial Tr.**, p. 40] Based on both respondents' unwillingness to testify twice and the Master's apparent refusal to order that they testify twice, disciplinary counsel worked out a stipulation whereby neither respondent would have to testify twice, and all prior sworn statements and other statements made in any pleadings or responses to the Commission by each respondent would be admissible in the other respondent's hearing. Judge Brue's testimony in FC 105 would also be admissible in FC 106, but since FC 105 was ordered to be completed by June 13, 2025 and the hearing in FC 106 was not set to commence until June 16, 2025, the stipulation did not require Judge Nance's FC 106 testimony to be admissible in FC 105. However, because FC 105 did not conclude on June 13, 2025 as originally ordered, both hearings ended on the same day. Nonetheless, the Master still refused to allow the admission of Judge Nance's FC 106 testimony in FC 105.

Disciplinary counsel believe there was no legal basis for the Master to refuse to permit disciplinary counsel to call Judge Nance as a witness in Judge Brue's case. Given the importance of that testimony, disciplinary counsel intend to request that the Commission reopen the record in FC 105 to allow for Judge Nance's testimony to be added or to allow for Judge Nance to testify in FC 105.

phrase "free ride" having a negative connotation with respect to minorities. [**Trial Tr.**, Vol. 2, pp. 312, 438; **Trial Tr.**, Vol. 4, pp. 931]

61. Judge Brue does not recall Scott using the term "free ride." [**Trial Tr.**, Vol. 7, p. 1445] Scott *may have* used the phrase, but if he did it was used in a completely innocuous way because he believed that the bicycle worked fine and did not think Judge Brue was entitled to get either ride for free. Scott was 21 years old at the time of the incident and was also unaware of any racial connotation to the phrase "free ride." [**Trial Tr.**, Vol. 4, pp. 820-822, 863-864, 875; **Trial Tr.**, Vol. 5. p. 1025]

62. Neither Judge Brue nor Judge Nance ever told Green or Scott that they were offended by the alleged use of the phrase "free ride." [**Trial Tr.**, Vol. 2, p. 312; **Trial Tr.**, Vol. 4, p. 875]

63. The phrase "free ride" is not inherently race-related, nor is it always used in a racial context. It simply means that someone is benefiting from something without putting in effort, work, or payment or not contributing one's fair share. In the context of two customers not wanting to pay for a bike ride, there is no suggested racial connotation.

64. Judge Brue's March 2022 answer to the 28-day letter asserted that Green used the phrase "you guys" in conjunction with the phrase "free ride." Prior to providing her answer to the 28-Day Letter, Judge Brue never claimed that Green used the phrase "you guys" in conjunction with the phrase "free ride." In fact, her November 10, 2020 response to the Commission's request for comments mentioned

the term "free ride" fourteen times but never once referenced the phrase "you guys." [**Ex. Z**] Judge Brue likely added that allegation to her answer to the 28-day letter to make it appear as though there was a derogatory connotation to the otherwise innocuous phrase. This is simply another example of Judge Brue weaving a false narrative of Green being racist in order to justify her own misconduct. Judge Brue suggests that "you guys" was a veiled reference to "African-Americans," when it is simply a colloquial way of referring to a group of people. Judge Brue acknowledged that she has used the term "you guys" to refer to a group of friends or a group of colleagues. If the phrase "you guys" was used at all, it likely meant nothing more than "you and your colleague." [**Trial Tr.**, Vol. 7, pp. 1461-1462]

65. During the nearly eighteen minutes that Green spoke to Judge Brue and Judge Nance, there was never an agreement regarding the appropriate amount that the judges should pay for the bike rides. [**Ex. HH**, "1st Part File Hut 2," 18:58:10 – 19:16:10; **Trial Tr.**, Vol. 2, pp. 433-434]

66. Judge Brue claimed repeatedly during the Commission's investigation that she offered to pay full price for the rides, but Green would not accept payment. [**Trial Tr.**, Vol. 5, p. 1139; **Ex. 7**, p. 7 ("[Green] refused the offer of a cash payment."); **Ex. CC**, p. 20, No. 10 ("Both Judge Brue and Judge Nance pulled out cash to pay the rental price and [Green] would not accept payment."); **Ex. CC**, p. 21, No. 11 ("Judge Brue tried to pay for the rental by credit card and/or cash but [Green] would not accept either form of payment. Judge Nance also pulled out cash to pay the rental fee."); **Ex**. **CC**, p. 21, No. 12 ("The inability to come to an agreement resulted from the

fact that [Green] refused to accept payment."); **Ex. CC**, pp. 36-37, No. 28c ("Both Judge Brue and Judge Nance tried to pay [Green]. The video tapes shows them with credit cards/cash in their hands while they were speaking to [Green] prior to any police officer arriving. Further, Judge Brue did not ask for a discount as it was Judge Nance's bike that was defective. Judge Brue offered to pay [Green] the entire amount he requested without discount. Judge Brue offered payment by credit card, or cash both of which were rejected by [Green].")]

67. Judge Brue's testimony regarding payment was internally contradictory. [**Trial Tr.**, Vol. 5, pp. 1162-1164] It was also refuted by every other witness, including Green, Libby, Officer Hardy and Trooper Bergsma. Judge Brue never offered to pay Green the full amount owed for the two bicycle rentals. [**Trial Tr.**, Vol. 2, pp. 310, 394; **Trial Tr.**, Vol. 3, pp. 517, 609, 632, 663; **Trial Tr.**, Vol. 4, pp. 902, 945, 955] Moreover, it does not make sense that Green would choose to create a public spectacle outside of his business, where other customers could see and hear the interaction, if Judge Brue actually offered to pay the full amount. If she offered to pay the full amount, there would have been no reason for Green to allegedly tell her repeatedly that she was not going to get a "free ride." Further, as discussed in detail below, if Judge Brue had told any of the officers that she wanted to pay the full amount, there would have been no need for Trooper Bergsma to convince Green not to charge Judge Brue for the rides and provide her with a receipt showing that he was discounting the amount of the rides to ZERO.

68. At about 7:08 p.m., ten minutes after Judge Brue and Green began talking, Judge Brue reached over the cash register and forcibly attempted to take the rental ticket (which Judge Brue had voluntarily handed to him several minutes earlier) out of Green's hand. [**Trial Tr.**, Vol. 2, pp. 312-313; **Trial Tr.**, Vol. 4, pp. 826, 941; **Ex. HH**, "1st Part File Hut 2," 19:08:03 - 19:08:08]

69. As she lunged toward him, Green instinctively turned his body away from her. [**Trial Tr.**, Vol. 2, p. 314; **Trial Tr.**, Vol. 4. p. 941; **Ex. HH**, "1st Part File Hut 2," 19:08:03 - 19:08:08]

70. A portion of the ticket ripped when Judge Brue grabbed for it, leaving a corner of the ticket in her hand and the rest of the ticket in Green's hand. [**Trial Tr.**, Vol. 2, p. 314; **Trial Tr.**, Vol. 4. p. 941; **Trial Tr.**, Vol. 7, p. 1499; **Ex. HH**, "1st Part File Hut 2," 19:08:03 - 19:08:08]

71. Judge Brue claims that Green scratched her hand. That claim lacks credibility. Judge Brue was the aggressor, not Green, who attempted to avoid any physical contact with Judge Brue by turning his body away from her. The video shows no indication that Judge Brue was injured in any way after grabbing for the receipt. Judge Brue did not even look at her hand to examine the alleged scratch after she ripped the ticket. [**Trial Tr.**, Vol. 3, p. 596; **Ex. HH**, "1st Part File Hut 2," 19:08:03 – 19:22:22]

72. When confronted with these facts at the hearing, Judge Brue claimed that the videos have been "altered and modified." [**Trial Tr.**, Vol. 7, pp. 1508-1510] There is no evidence that any video was altered or modified.

73. Throughout the investigation and at the public hearing, Judge Brue maintained that Green taunted her with the ticket, refused to return it to her, and then threw it in the garbage, thereby depriving her of the information contained on that ticket. [**Trial Tr.**, Vol. 5, pp. 1166-1171; **Trial Tr.**, Vol. 7, pp. 1484-1485, 1487-1488; **Ex. Z**, p. 9 ("What was clear is that he was acting like a child and taunting her with the receipt."); **Ex. CC**, p. 3 ("The rental receipt was in her possession and she took it out of her pocket/purse for [Green] to see. When she did so, he took the receipt, held it up in a teasing/taunting manner and refused to return it to her."); **Ex. CC**, pp. 22-23, No. 14 ("[Green] taunted Judge Brue with the receipt."); **Ex. DD**, p. 4, ¶18 ("[Green] even went so far as to taunt her with it by holding it up in the air and then throwing it in his garbage can, as [Judge Brue] was trying to reach for it.")]

74. Green did not "taunt" Judge Brue with the ticket. Rather, at various points, Green pointed out something on the ticket to Judge Brue and Judge Nance. [**Trial Tr.**, Vol. 2, pp. 312-313; **Trial Tr.**, Vol. 4, pp. 828, 940; **Ex. HH**, "1st part File Hut 2," 19:01:00 - 19:08:00]

75. There is no evidence to corroborate Judge Brue's claim that Green refused to give the ticket back to her before she grabbed for it at about 7:08 p.m. [**Trial Tr.**, Vol. 2, pp. 312-313, 315; **Trial Tr.**, Vol. 3, pp. 524, 531; **Trial Tr.**, Vol. 4, p. 828, 941]

76. After Judge Brue ripped the ticket, Green threw it away. Judge Brue contends that he did this because he did not want her to have the ticket back. To the contrary, Green only threw out the original ticket because Judge Brue had ripped it

and it became wrinkled when Judge Brue grabbed for it. [**Trial Tr.**, Vol. 2, p. 315; **Trial Tr.**, Vol. 3, p. 553; **Trial Tr.**, Vol. 7, p. 1499; **Ex. HH**, "1st Part File Hut 2," 19:08:03 - 19:08:08]

77. One reason Judge Brue's claims that Green "refused" to return the ticket to her and that he threw it away to keep it from her lacks credibility is that less than a minute after throwing out the original ticket, Green printed another copy of it and immediately provided it to Judge Brue. The new ticket contained all the same information as the original ticket, plus additional information like the precise time the bicycles were returned and the amount owed for the rides. [**Trial Tr.**, Vol. 2, pp. 315-318; **Trial Tr.**, Vol. 3, pp. 553-554; **Trial Tr.**, Vol. 4, pp. 943-944; **Trial Tr.**, Vol. 7, pp. 1499-1503; **Ex. HH**, "1st part File Hut 2," 19:08:52 – 19:09:02]

78. At the public hearing Judge Brue was unable to provide any explanation why Green immediately printed out a new ticket for her if his purpose in throwing out the original ticket was to deprive her of that information, other than to say that "[a]s it relates to the two receipts, my head was in another zone when it came to that second receipt." [**Trial Tr.**, Vol. 7, pp. 1499-1503, 1535-1536]

79. Judge Brue suggested that she was justified in using force to retrieve the ticket from Green because it was her property. [**Trial Tr.**, Vol. 7, pp. 1348-1349, 1533] The evidence shows that Judge Brue accused Green of assaulting her immediately after she grabbed for the receipt, then told two police officers on separate occasions that Green had assaulted her. [**Trial Tr**., Vol. 2, pp. 314, 316, 327, 363; **Trial Tr.**, Vol. 3, pp. 541, 546, 630; **Trial Tr.**, Vol. 4, pp. 947-949] Judge Brue's claim

that she was justified in using force to take the ticket is inconsistent with her claims on August 20, 2019, that *Green* had assaulted *her*.

80. Judge Brue testified that the original ticket was so important to her that she had to use force to retrieve it from Green. [**Trial Tr.**, Vol. 7, pp. 1534-1536.] Her claim lacks credibility. The original ticket showed only that Judge Brue had rented two bikes. It did not show that she paid for the rides (which she did not). The ticket would not have "protected" Judge Brue in the event that Green subsequently made a false allegation about the transaction. For example, if Green subsequently reported that Brue stole the bicycles, that ticket would not have shown that she returned the bikes. If Green subsequently reported that Judge Brue left without paying for the rides, the ticket would not show that she did pay.

81. Judge Brue clearly did not care about the ticket because shortly after she tried to grab the original from Green, she voluntarily handed the duplicate ticket to Libby, walked away, and never asked for it back. Judge Brue claims that she ended up getting distracted and completely forgot about the ticket. [**Trial Tr.**, Vol. 7, pp. 1504-1505; **Ex. HH**, "2nd part File Hut 2," 19:25:39 – 19:26:32] That does not explain her casual willingness to give the ticket to Libby and suggests that the ticket was not as important to her as she claims.

82. Immediately after grabbing for the ticket, Judge Brue falsely accused Green of assaulting and battering her. She claimed to be in fear for her life and said she wanted to call the police. She said a Caucasian male had just assaulted an African-American judge and acted with violence toward her. She also accused Green

of being racist and treating her and Judge Nance unfairly because they were black. [**Trial Tr.**, Vol. 2, pp. 314, 321-322, 365; **Trial Tr.**, Vol. 4, pp. 824-825, 827-828, 941, 984, 987; **Trial Tr.**, Vol. 5, p. 1145; **Trial Tr.**, Vol. 8, p. 1604]

83. Green does not remember every word spoken by Judge Brue six years prior to his testimony at the public hearing. However, he documented the statements made by Judge Brue on the night of the incident and provided those statements to the Mackinac Island Police Department. The note prepared by Green at that time documents the following statements made by Judge Brue after she grabbed for the ticket:

- You struck me.
- You are a Caucasian man and struck a sitting African-American female judge. You know what I could do to you.
- I'm shaking that this could happen on Mackinac Island.
- I'm scared for my life.

[**Trial Tr.**, Vol. 2, pp. 322-323, 325-326; **Trial Tr.**, Vol. 3, p. 672; **Trial Tr.**, Vol. 4, p. 828; **Ex. C**, Green's Notes]

84. During the week following the incident, Green continued to document his recollection of the events by preparing a letter that he ultimately sent to the Commission on August 27, 2019, a week after the incident. The letter documented the following statements by Judge Brue: "You assaulted me. You struck and battered me. Do you know what's going to happen to you, a Caucasian man that's found guilty of striking an African American female judge? You're finished. You attacked me, and

I'm in fear for my life." [**Trial Tr.**, Vol. 2, pp. 327-328; **Ex. A**, 8.27.19 Letter to Commission]

85. Judge Brue refused to acknowledge any specific words that she used but admitted that she told Green that he scratched her and that was an assault or could be considered an assault. [**Trial Tr.**, Vol. 7, p. 1538; **Trial Tr.**, Vol. 8, p. 1598]

86. There is no evidence that any of Green's actions during the altercation could in any way constitute an assault or could, in good faith, be perceived as an assault. Nor is there any indication that Green had ever acted violently with a customer in the past. [**Trial Tr.**, Vol. 2, pp. 365-366; **Trial Tr.**, Vol. 4, p. 828; **Ex. HH**, "1st Part File Hut 2," 18:58:00 - 19:16:00]

87. Green never threatened Brue or engaged in any action that could have possibly put her in fear for her life. [**Trial Tr.**, Vol. 2, p. 366; **Ex. HH**, "1st Part File Hut 2," 18:58:00 - 19:16:00]

88. In support of her false claim of assault, Judge Brue testified at the public hearing that Green made a fist during the "struggle" for the receipt. The video completely refutes that testimony. There was no "struggle" for the ticket. Judge Brue grabbed for it. And while Green closed his hand for a split second as he turned his body away from Judge Brue, he did not do so in any sort of threatening manner. [**Trial Tr.**, Vol. 7, p. 1520; **Ex. HH**, "1st Part File Hut 2," 19:08:03 - 19:08:07]

89. Throughout the investigation and during the public hearing, Judge Brue denied telling Green or any other employee of the bike shop that she was a judge. [**Trial Tr.**, Vol. 5, p. 1164; **Trial Tr.**, Vol. 7, p. 1524; **Ex. Z**, p. 7 ("At no time did Judge

Brue ever mention the fact to [Green] that they were judges."); **Ex. Z**, p. 25, No. 31; **Ex. CC**, p. 19, No. 8; **Ex. CC**, p. 21, No. 12; **Ex. CC**, p. 28, No. 15; **Ex. DD**, ¶14 ("[Judge Brue] does not recall identifying herself or Judge Nance as a judge."); **Ex. DD**, ¶40 ("[Judge Brue] never told the white employees that she and Judge Nance were judges."); **Ex. DD**, ¶44]

90. During the argument, Judge Brue and Judge Nance identified Judge Brue as a judge. [**Trial Tr.**, Vol. 2, pp. 308, 320; **Trial Tr.**, Vol. 4, pp. 823, 942] The only plausible reason for that statement would have been to intimidate Green.

91. Green attempted to defuse the situation and even shook hands with Judge Nance. Despite his efforts, he was unable to resolve the issue with Judge Brue. [**Trial Tr.**, Vol. 2, pp. 367-368; **Ex. HH**, "1st Part File Hut 2," 19:10:04-19:10:07]

92. At 7:16 p.m., about twenty minutes after Judge Brue and Judge Nance returned to the bike shop, Officer Kenneth Hardy arrived at the shop. [**Trial Tr.**, Vol. 2, p. 364; **Ex. HH**, "1st Part File Hut 2," 19:16:00]

93. The security video establishes that Judge Nance waved Officer Hardy over to where both judges were standing. Officer Hardy responded by joining Judge Brue and Judge Nance. He did not walk past Judge Brue or Judge Nance and certainly did not make a beeline to Green. Rather, Officer Hardy positioned himself so that he could easily communicate with both Judge Brue and Judge Nance. [**Trial Tr.**, Vol. 3, p. 646; **Trial Tr.**, Vol. 8, pp. 1604, 1631; **HH**, "1st part File Hut 2," 19:15:54 – 19:16:04]

94. Immediately upon his arrival, Judge Brue and Judge Nance spoke with Officer Hardy for more than ten minutes. Green was not present for most of this discussion and only occasionally was a brief part of it. [**Ex. HH**, "1st Part File Hut 2," 19:16:00-19:22:22; **Ex. HH**, "2nd Part File Hut 2," 19:22:22-19:26:10]

95. Contrary to these facts, Judge Brue repeatedly stated in response to the Commission's request for comments that Officer Hardy ignored her and Judge Nance and refused to speak to them. [**Ex. Z**, p. 10 ("As Judge Brue approached the foot patrol officer, he walked past her and she said words to the effect, 'may I speak to you?' The officer made a beeline directly to [Green] and asked him what had transpired."); **Ex. Z**, p. 30, RFC #44 ("[Brue] walked towards [Officer Hardy] to speak to him about what had just occurred with [Green], herself, and Judge Nance. The officer walked past Judge Brue and asked [Green] what had taken place. The officer refused to speak to Judge Brue. He acted in a manner very rude and condescending towards Judge Brue and Judge Nance.")] Judge Brue's statements that Officer Hardy ignored her and Judge Brue were completely false.

96. Judge Brue submitted her response to the Commission's request for comments about three and a half months after Judge Nance provided a sworn statement to the Commission. [**Ex. R**, Sworn statement; **Ex. Z**]

97. Judge Nance's sworn statement to the Commission contained nearly identical and equally false claims that Officer Hardy refused to speak with her and Judge Brue and instead interacted only with Green.[4]

98. Judge Brue acknowledged that she spoke to Judge Nance at or around the time Judge Nance gave her sworn statement and at or around the time that Judge Brue responded to the Commission's request for comments. [**Trial Tr.**, Vol. 8, pp. 1618, 1620]

99. Judge Brue claimed that she and Judge Nance did not specifically discuss the questions that Judge Nance had been asked during the investigation and/or the answers she provided, and that she never saw the transcript of Judge Nance's sworn statement. [**Trial Tr.**, Vol. 8, p. 1619-1620; **Ex. Z**, p. 39, RFC No. 62]

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[4] *See e.g.* **Ex. R**, p. 23 ("When the police officer arrived, [Judge Brue] approached him. I was walking behind her. She started to explain that the vendor wouldn't give her a receipt, and he walked right past her as if she hadn't said anything …"); **Ex. R**, p. 26 ("I saw him totally pass her by, not even stop and ask her what happened.); **Ex. R**, p. 29 ("when the police officer came, he blew past her, would not listen to anything she had to say."); p. 34 ("I think the word 'assault' from that officer [Hardy] came from, I would guess, [Green], because I don't recall that [Judge Brue] ever got a chance to say anything to the first officer [Hardy]."); **Ex. R**, p. 36 ("The only time, again, [Judge Brue] spoke to the police was to the second officer. The first officer [Hardy] didn't give us the time of day until he came out and determined that [Judge Brue] was the one who committed the assault."); **Ex. R**, p. 57 ("The police come. He [Officer Hardy] won't talk to her."); **Ex. R**, p. 61 ("his [Hardy's] information or his point of view came completely from the vendor. He never interviewed her about the incident. The only person, again, who spoke with [Judge Brue] about the incident was the second officer …"); **Ex. R**, p. 63 ("[T]his guy [Officer Hardy] was never told that we were judges. He didn't speak to us long enough to give us the time of day."); **Ex. R**, p. 66 ("[Judge Brue] started to say we've had a problem getting a receipt, and [Officer Hardy] just walked past her and went to the vendor to find out what the problem was. He didn't give her any opportunity to explain in any even remote detail what the issue was."); **Ex. R**, p. 82 ("[W]e felt that [Officer Hardy] was biased and wasn't going to give us a fair shake from the moment he walked up and went straight to … the vendor. He's not going to hear us. He's not going to look at this. He's not going to be fair to us."); **Ex. R**, p. 87 ("there was the first officer [Hardy] who asks to see the video, who just brushed by …")]

100. Judge Brue's claim lacks credibility in that her and Judge Nance's answers were virtually identical with regard to their communications with Officer Hardy. Both sets of answers were objectively false in the same way. In addition, both sets of answers supported the same false narrative that Officer Hardy treated them in a discriminatory manner because of their race, a claim that Judge Brue continued to advance at the hearing. [**Trial Tr.**, Vol. 7, p. 1481]

101. Judge Brue defends her false answer with the claim that if she had been provided with all the security video at the time she was required to answer the request for comments, she would not have "forgotten" that she talked to Officer Hardy for ten minutes and would not have provided false answers to the Commission to that effect. [**Trial Tr.**, Vol. 8, pp. 1620-1621]

102. Judge Brue's interaction with Green was an emotionally significant event that remained significant in her memory. It is not plausible that Judge Brue not only forgot that Officer Hardy spoke with her and Judge Nance at length upon first arriving, but she accidentally and falsely remembered instead that he actively disregarded her and Judge Nance, and that his disregard was motivated by racism.

103. It is likely true that Judge Brue would not have made her false statements about her interaction with Officer Hardy had she seen video of that interaction before answering the request for comments. However, that is because the video would have revealed the falsity of what Judge Brue claimed, rather than because the video would have rehabilitated an honest but defective memory.

104. At the public hearing, Judge Brue mischaracterized her response to the Commission's request for comments. Judge Brue testified that when she claimed that Officer Hardy made a beeline toward Green after she approached him, she was not referring to the time when Officer Hardy *arrived* at the bike shop but to the part of the interaction when Officer Hardy followed Green back to the bike shop to review the video. [**Trial Tr.**, Vol. 8, pp. 1633, 1636]

105. Judge Brue's post hoc characterization of her initial answer makes no sense as she did not "approach" Officer Hardy at that point – she had been speaking to him for ten minutes. Moreover, the phrase "making a beeline" toward someone generally does not mean to "follow" someone—it means to approach someone quickly or directly. Further, in context, Judge Brue used the phrase "made a beeline" to communicate that Officer Hardy ignored her, which was definitively not the case when Officer Hardy followed Green after having spoken with Judge Brue and Judge Nance for more than ten minutes. There is no reasonable interpretation of Judge Brue's response to the request for comments that is consistent with her claim at the public hearing about the phrase "made a beeline."

106. Green was in the vicinity when Officer Hardy arrived, but there is no evidence that he spoke with Officer Hardy at that time. Indeed, within ten seconds of Officer Hardy's arrival, Green stepped back as Judge Brue and Judge Nance talked with Officer Hardy. [**Trial Tr.**, Vol. 2, p. 372; **Ex. HH**, "1st part File Hut 2," 19:16:10 – 19:16:15]

107. There is no evidence that Officer Hardy did not give Judge Brue an opportunity to share her side of the story. In fact, she and Judge Nance did virtually all of the talking during the ten-minute conversation. Officer Hardy remained in the same spot and did not divert his attention from Judge Brue and Judge Nance. [**Ex. HH**, "1st Part File Hut 2," 19:16:00-19:22:22; **Ex. HH**, "2nd Part File Hut 2," 19:22:22-19:26:10]

108. During the ten-minute conversation with Officer Hardy, Judge Brue repeated her false claim that Green grabbed the ticket out of her hand and assaulted her. In fact, Judge Brue told Officer Hardy that she intended to press charges against Green for assault. She also accused Green of treating her in a racist manner. [**Trial Tr.**, Vol. 2, pp. 328, 376; **Trial Tr.**, Vol. 3, pp. 536, 546, 649, 651-652, 680; **Trial Tr.**, Vol. 4, pp. 948-949]

109. Judge Brue informed Officer Hardy that she and Judge Nance were judges. Officer Hardy specifically recalled Judge Brue referring to herself as "a sitting African American female judge from Detroit." There was no plausible reason for Judge Brue to make this statement to Officer Hardy unless she was trying to use the prestige of her office to make herself appear more credible to him or to pressure him to accept her version of the events. [**Trial Tr.**, Vol. 3, pp. 647-649; **Trial Tr.**, Vol. 4. pp. 900, 947]

110. Throughout the Commission investigation, and at the public hearing, Judge Brue denied telling Officer Hardy that she and Judge Nance were judges. [**Trial Tr.**, Vol. 7, pp. 1525, 1527; **Trial Tr.**, Vol. 8, pp. 1744-1745; **Ex. Z**, p. 7 ("The

truth is that neither Judge Brue nor Judge Nance ever told [Green] or the first officer that they were judges. That fact was not disclosed until much later after a police supervisor was called to the scene.")]

111. Judge Brue's claim that she did not tell Officer Hardy that she and Judge Nance were judges lacks credibility. Not only did Officer Hardy testify that Judge Brue told him that, but he also wrote the name of the court where Judge Nance served in the notepad that he used during his conversation with Judge Brue and included that information in his police report. The security video establishes that the information that Officer Hardy wrote in his notepad came directly from Judge Brue. It is highly unlikely that Judge Brue would tell Officer Hardy that Judge Nance was a judge but withhold that same information about herself. [**Ex. D**, Police report; **Ex. E**, Hardy's note; **Ex. HH**, "2nd part File Hut 2," 19:22:22 – 19:24:14]

112. At the hearing, Judge Brue falsely testified that she did not tell Officer Hardy that Green assaulted her or that *he* took the ticket from *her* hand. Rather, she claimed that she "primarily wanted Officer Hardy to just effectuate a resolution by which [she] could pay and get a receipt and get out of there as fast as [she] could … " [**Trial Tr.**, Vol. 8, pp. 1604-1606, 1616][5]

[5] The Master refused to consider the transcripts prepared by the lipreading experts engaged by disciplinary counsel that provide the precise language used by Judge Brue. Those transcripts are in the separate record. Judge Brue admitted that her lawyers also spoke with a lipreader regarding the incident. [**Trial Tr.**, Vol. 7, p. 1540] If the Master had allowed disciplinary counsel to introduce any of the testimony from their own lipreading experts or the transcript prepared by the lipreader engaged by Judge Brue's counsel, it would have become patently obvious that their transcripts were reliable, considering that four different lipreaders all *independently* agreed that certain words and phrases were spoken by Judge Brue – and that they were essentially the same words and phrases that were testified to by disciplinary counsel's witnesses but denied by Judge Brue.

113. Judge Brue's claims make no sense in conjunction with her continuing testimony that Green assaulted her. There is no legitimate reason Judge Brue would accuse Green of assaulting her, but when Officer Hardy arrived, would only tell him about the dispute over payment for the bike ride. Nor does it make sense that Officer Hardy would have spent ten minutes talking to Judge Brue and Judge Nance if there was no report of an assault. It was not Officer Hardy's role to determine whether Judge Nance's bicycle worked properly or whether Judge Brue should be required to pay the full amount for the bike rides.

114. After Officer Hardy had spoken to Judge Brue and Judge Nance for more than ten minutes, Green asked Officer Hardy to come into his shop to review the security video that captured the interaction. He did that to prove to Officer Hardy that he had not assaulted Judge Brue. [**Trial Tr.**, Vol. 2, pp. 377-379; **Trial Tr.**, Vol. 3, pp. 653-654; **Ex. HH**, "1st part File Hut 2," 19:26:05-19:26:15]

115. There was no reason for Officer Hardy to watch the video if he was not trying to determine whether Green had assaulted Judge Brue. Judge Brue did not explain why Officer Hardy would have cared about the video of her speaking with Green if she had not accused Green of the assault in the first place. Nor could Judge Brue logically explain why she would have claimed in her response to the Commission's Request for Comments that she intended to call the police if she did not intend to report an assault. [**Trial Tr.**, Vol. 8, pp. 1622-1623; **Ex. Z**, p. 30, No. 44.]

116. During the Commission's investigation and at the public hearing, Judge Brue falsely claimed that Green and Officer Hardy had a close relationship. [**Trial Tr.**, Vol. 7, p. 1385; **Trial Tr.**, Vol. 8, pp. 1607-1608, 1611-1615; **Ex. CC**, pp. 37-38, No. 30 ("In the video [Green] can be seen standing close to PO Hardy while talking to him and touching him (PO Hardy) twice on the arm. Such close interaction led Judge Brue to believe they were acquainted with each other. Police generally do not allow strangers in their personal space. We don't believe PO Hardy would have ever let Judge Brue, or Judge Nance (two black females) touch him."); **Ex. DD**, ¶21 ("[S]hortly after … Hardy … arrived, Mr. Green appeared to be friends with PO Hardy. Security video shows Mr. Green touching PO Hardy on two occasions, which appeared to [Judge Brue] as an indication that PO Hardy and Mr. Green were acquainted friends or previously acquainted with each other.")]

117. There is no evidence that Officer Hardy and Green were anything more than acquaintances. [**Trial Tr.**, Vol. 2, p. 370; **Trial Tr.**, Vol. 3, p. 642]

118. The video does not establish any "close interaction" between Green and Officer Hardy. In fact, Judge Brue and Judge Nance are standing significantly closer to Officer Hardy than Green is throughout virtually the entire interaction. [**Ex. HH**, "1st part File Hut 2," 19:16:00 – 19:22:22; **Ex. HH**, "2nd part File Hut 2," 19:22:22 -, 19:26:05]

119. Green does nothing more than tap Officer Hardy on the arm on two occasions to get his attention, something that any person might do even to an acquaintance. [**Ex. HH**, "2nd part File Hut 2," 19:23:50, 19:26:05]

120. Judge Brue's claim that Officer Hardy would never have let an African-American woman touch him was an attempt to portray a false picture of Officer Hardy treating her differently on the basis of race. But during the course of the interaction, Judge Brue took a pen directly from Officer Hardy's hand. Officer Hardy did not try to stop her or otherwise react. [**Trial Tr.**, Vol. 8, pp. 1614; **Ex. HH**, "2nd part File Hut 2," 19:24:36] This was a much more personal contact than Green's taps on Officer Hardy's arm.

121. After Judge Brue was provided with the entire video of her interaction with Officer Hardy, she changed her story to suggest that Officer Hardy spoke with her and Judge Nance but was dismissive of her allegations. Judge Brue blamed her false statements that Officer Hardy would not speak to her and Judge Nance on the fact that she had not been provided with all the available video before answering the Commission's request for comments. [**Ex. CC**, p. 34, No. 24 ("While the tapes do show that PO Hardy did speak to Judge Brue, it was very obvious that he was questioning her credibility and at the same time had accepted what [Green] had to say regarding the dispute. It also appeared that he discounted, or failed to accept what Judge Brue had to say because [Green] was insisting that he wanted to show PO Hardy the security tape. Judge Brue did not recall her initial contact with PO Hardy at the time she answered the request for investigation, because she was wrongfully deprived access to the additional video footage until long after she filed her answer to the request for investigation. That additional video footage could have greatly refreshed her memory regarding the incident.")]

122. The video does not establish that Officer Hardy was questioning Judge Brue's credibility. It does not capture Officer Hardy's face and nothing in the video suggests that Officer Hardy was other than attentive to Judge Brue and Judge Nance. [**Trial Tr.**, Vol. 8, pp. 1650-1651]

123. Judge Brue did not simply forget that she spoke to Officer Hardy. Rather, throughout the Commission's investigation, Judge Brue and Judge Nance both went out of their way to create a false narrative that Officer Hardy never spoke to them. They did so by repeatedly injecting this claim even though they were not directly responding to any of the Commission's questions. For example, the first reference cited in paragraph 95 above is part of a background section included in Judge Brue's response. The second reference from Judge Brue's response to Request for Comment No. 44 was not responsive to the question, which asked Judge Brue whether she called the police and to provide the name of the first officer to arrive on the scene. [**Trial Tr.**, Vol. 8, pp. 1635-1636]

124. Similarly, Judge Nance stated on thirteen separate occasions that Officer Hardy would not speak to her and Judge Brue. The vast majority of those references were not even remotely responsive to a direct question from the Commission. The following are examples from Judge Nance's sworn statement that demonstrate how she crafted a false narrative:

- The reference on page 6 of Judge Nance's sworn statement was in response to the question "[h]ow long were [Officer Hardy and Green] alone together" when they went to watch the video. Judge Nance's answer to that question contained thirty-five lines of text including the false extraneous information that Officer Hardy would not stop and ask her and Judge Brue what happened.

- The reference on page 29 of Judge Nance's sworn statement was in response to the question "[d]id [Green] say [Judge Brue] used a fraudulent credit card?" Judge Nance's answer to that question contained twenty-four lines of text, including the false extraneous information that Officer Hardy blew past her and would not listen to anything she had to say.

- The reference on page 57 of Judge Nance's sworn statement was in response to the question on page 53: "how do you feel about being questioned [by the JTC] about your friend's behavior?" Judge Nance's answer to that question contained one hundred twenty-one lines of text, including the false extraneous information that Officer Hardy would not talk to Judge Brue.

- The reference on page 61 of Judge Nance's sworn statement was in response to the question whether there was anything in Officer Hardy's police report that was incorrect. Judge Nance's answer to that question contained fifty-three lines of text, including the false extraneous information that Officer Hardy never interviewed Judge Brue about the incident.

- The reference on page 63 of Judge Nance's sworn statement was in response to the question whether Judge Brue told Officer Hardy that Green used racial slurs. Judge Nance volunteered the false extraneous information that Officer Hardy did not speak to her and Judge Brue long enough to give them the time of day.

- The reference on page 66 of the sworn statement was in response to the question "Who called the police?" Judge Nance volunteered the false extraneous information that Hardy walked past Judge Brue and went directly to Green to find out what the problem was.

- The reference on page 73 of the sworn statement was in response to the question whether Judge Nance was concerned that Green would edit the video and whether she communicated that concern. Judge Nance's answer to that question contained forty-eight lines of text and included the false, extraneous information that Officer Hardy walked away and was talking to Green again.

- The reference on page 82 of the sworn statement was in response to the question whether the police report documented the items from the note that Green provided Officer Hardy about the statements made by Judge Brue. Judge Nance's answer to that question consisted of seventy-nine lines of text and included the false, extraneous information that Officer Hardy was biased and was not going to hear from her or Judge Brue.

[**Ex. R**, pp. 6, 29, 57, 61, 63, 66, 73, 82.]

125. It is not credible that Judge Brue and Judge Nance both decided to provide the Commission with the same objectively false information about Officer Hardy without directly or indirectly discussing their answers with one another, considering that the questions presented by the Commission were not aimed at determining how Officer Hardy treated them. The Commission had no reason to suspect that there was any issue involving Officer Hardy's treatment of Judge Brue and Judge Nance until they injected that alleged mistreatment into the investigation.

126. Judge Brue testified that she had no choice but to answer the questions set forth by the Commission even if she could not recall the information necessary to answer a particular question. [**Trial Tr.**, Vol. 7, p. 1392]

127. Judge Brue's claim is false. If she honestly could not recall whether she had a conversation with Officer Hardy, she could have stated that in her answer. As a judge, she was well aware that she had the option of indicating that she could not recall certain details about her interactions on August 20, 2019. Instead, she affirmatively represented, on multiple occasions and without prompting, that Officer Hardy would not speak to her.

128. Indeed, Judge Brue objected to several questions in the Commission's supplemental Request for Comments and refused to answer them. *See* ¶ 200 below. Judge Brue could not have done this if she honestly believed that she was constrained to answer questions even when she could not remember the answer.

129. Judge Brue's revised narrative that Officer Hardy was dismissive of her allegations from the start was just as insincere as her claim that he never spoke to her at all. There is no evidence that Officer Hardy was impatient, inattentive or dismissive of her and Judge Nance's complaints. [**Trial Tr.**, Vol. 2, p. 376; **Trial Tr.**, Vol. 3, pp. 600-601, 646; **Trial Tr.**, Vol. 4, p. 947]

130. If Officer Hardy had not taken the allegations seriously, he would not have spent ten minutes talking to Judge Brue and Judge Nance and listening to their side of the story. There was no need for Officer Hardy to review the video if he had already disregarded Judge Brue's assault charges. [**Trial Tr.**, Vol. 8, pp. 1651-1652]

131. As Officer Hardy and Green walked back to the bike shop to review the video, Judge Brue and Judge Nance followed them, stood at the door, and demanded to come in to watch the video. [**Trial Tr.**, Vol. 2, p. 380; **Trial Tr.**, Vol. 4, p. 835; **Ex. HH**, "2nd part File Hut 2," 19:26:10 – 19:26:21]

132. Green informed Officer Hardy that he did not want Judge Brue and Judge Nance inside his bike shop. [**Trial Tr.**, Vol. 2, p. 381; **Trial Tr.**, Vol. 3, p. 655; **Trial Tr.**, Vol. 4, pp. 835, 950]

133. Officer Hardy told Judge Brue and Judge Nance that they could not come inside the bike shop because it was private property and, if they did so, they would be trespassing. Officer Hardy was correct, in that trespassing only requires a finding that a person entered or remained on someone else's land or premises after being forbidden to do so, either orally or in writing by the owner, agent, or other

authorized person. *See* MCL 750.552. [**Trial Tr.**, Vol. 2, pp. 381, 386; **Trial Tr.**, Vol. 3, p. 655; **Trial Tr.**, Vol. 4, pp. 895, 950; **Trial Tr.**, Vol. 8, pp. 1651-1652, 1655-1656]

134. In response to the judges' request to watch the video, Officer Hardy told Judge Brue that she could obtain a copy of the video from the police department through a FOIA request. [**Trial Tr.**, Vol. 3, pp. 654-655]

135. Officer Hardy was justified in refusing to allow Judge Brue and Judge Nance to view the video with him and Green. Officers typically do not interview an accuser and an alleged wrongdoer together. The area where Green and Officer Hardy reviewed the video was private property. Tensions were high between Judge Brue and Green at that point and Judge Brue had already accused Green of assaulting her. **[Trial Tr.**, Vol. 8, pp. 1656-1657]

136. Judge Brue and Judge Nance persisted in attempting to come inside the bike shop even after being told by Officer Hardy that they could not come into the shop to review the video. Judge Brue and Judge Nance banged on the door and suggested that Green was going to tamper with the video. Officer Hardy assured Judge Brue that the video would not be tampered with. [**Trial Tr.**, Vol. 2, pp. 381-382; **Trial Tr.**, Vol. 3, pp. 654, 656; **Trial Tr.**, Vol. 4, pp. 893-895, 950; **Trial Tr.**, Vol. 8, p. 1655]

137. The only portion of the video that Officer Hardy watched was about 30 seconds before and 30 seconds after the alleged assault. [**Trial Tr.**, Vol. 2, p. 384; **Ex. HH**, "ch10_20190820190742," 19:07:40 - 19:08:49] That is because his sole purpose in reviewing the video was to assess Judge Brue's claim that Green had assaulted her.

138. Michigan State Police Trooper Bergsma arrived on the scene as the judges were attempting to enter the bike shop. Officer Hardy asked Trooper Bergsma to remain outside with Judge Brue and Judge Nance to ensure that they did not enter.

139. Judge Brue told Trooper Bergsma that she does not trust video evidence in her courtroom because she has seen altered video before. [**Trial Tr.**, Vol. 3, pp. 589-590, 593-594]

140. It strains credulity to believe that Green would tamper with the video in front of a police officer or that Officer Hardy would assist Green in altering the video. [**Trial Tr.**, Vol. 3, pp. 597-598]

141. There is no evidence that Green, Officer Hardy or anyone else ever tampered with the video. [**Trial Tr.**, Vol. 2, pp. 382-383; **Trial Tr.**, Vol. 3, pp. 658, 660; **Trial Tr.**, Vol. 4, pp. 741, 897, 950]

142. Judge Brue erroneously believed that Trooper Bergsma was Officer Hardy's supervisor. [**Trial Tr.**, Vol. 7, pp. 1383-1384; **Ex. Z**, p. 11 ("But for the fact that Judge Nance called for a police supervisor the judges may have been arrested on some false, made up charges, or worse yet, harmed in some way."); **Ex. Z**, pp. 31-32, No. 46 ("Things got somewhat worse with the first officer after the police supervisor arrived. … The first officer was seething over the fact that a supervisor had been called to the scene. He was angry. He glared at Judge Nance and Judge Brue. He appeared even more angry when the police supervisor attempted to defuse the situation. It appeared that he did not want to see the matter amicably resolved. When

he came out of the building after viewing the video his first words to Judge Brue were to the effect, 'it looks like you assaulted him' …"); **Ex**. **DD**, ¶23 ("[Judge Brue] and her African-American colleague had become so concerned over the manner in which they were being treated by the police as well as by Mr. Green, that Judge Nance called the police department and asked that a police officer be sent to the scene. … [Bergsma] appeared a bit older than PO Hardy, more mature and appeared to take charge of the situation. He did not appear to be acting as an advocate for Mr. Green.")]

143. As noted in the cites in the preceding paragraph, Judge Brue claimed that Trooper Bergsma's arrival on the scene made Officer Hardy angry. Contrary to Judge Brue's claims, Officer Hardy was not upset about Trooper Bergsma arriving on the scene. In fact, Officer Hardy actually requested Trooper Bergsma's assistance at the scene. [**Trial Tr.**, Vol. 3, pp. 588, 601-602, 656, 663]

144. At one point during the public hearing, Judge Brue admitted that Officer Hardy and Trooper Bergsma got along fine. She could not explain the inconsistency between her prior statements and her trial testimony. Later in the public hearing, Judge Brue reverted to her prior statements by stating that Officer Hardy "was upset because Trooper Bergsma was resolving the matter, and perhaps he felt he had been upstaged." Judge Brue's claims that Officer Hardy did not wish to see the matter amicably resolved are not credible. [**Trial Tr.**, Vol. 8, pp. 1681-1683, 1685] Trooper Bergsma observed that Officer Hardy was not upset about Trooper Bergsma's involvement in the investigation. [**Trial Tr.**, Vol. 3, pp. 601]

145. While Trooper Bergsma waited with Judge Brue and Judge Nance, Judge Brue falsely told Trooper Bergsma that Green had grabbed the ticket out of her hand and scratched her hand. During the Commission investigation Judge Brue falsely denied making these statements to Trooper Bergsma. [**Trial Tr.**, Vol. 3, pp. 591-592, 595-596; **Ex. CC**, p. 39, No. 34 ("Judge Brue does not recall telling Trooper Bergsma that [Green] grabbed her receipt out of her hand. Judge Brue recalls telling Trooper Bergsma that she tried to grab/recover her receipt back from [Green] who refused to return her property to her.")]

146. Judge Brue told Trooper Bergsma that Green had assaulted her and that she wanted to press charges against Green for assault and battery. Judge Brue falsely testified that she never reported an assault to Trooper Bergsma. [**Trial Tr.**, Vol. 3, pp. 595-596; **Trial Tr.**, Vol. 8, p. 1677]

147. Judge Brue alleged that Officer Hardy treated her and Judge Nance differently on the basis of their race. [**Trial Tr.**, Vol. 7, p. 1481.] Judge Brue's claim is belied by the evidence.

148. Officer Hardy does not have a reputation of treating people differently because of their race. According to Trooper Bergsma, Officer Hardy is attentive to people, is understanding, treats them respectfully, and understands that his role as a police officer on Mackinac Island is to listen to people and to take their information and conduct proper investigations. There is no evidence that Officer Hardy has ever had any complaints filed against him with the Mackinac Island Police Department. If Green or Officer Hardy treated people differently on the basis of their race, Trooper

Bergsma would have heard about it because "everyone knows everyone else's business" on the island. [**Trial Tr.**, Vol. 3, pp. 612-613; **Trial Tr.**, Vol. 4, pp. 736, 902]

149. Throughout the investigation, Judge Brue and Judge Nance falsely alleged that Officer Hardy told them to "wait by the curb" while he and Green watched the video and that this directive itself established that Officer Hardy was racist. Both Judge Brue and Judge Nance claimed during the investigation that the particular phrase "wait by the curb" is imbued with negative connotations when applied to African-Americans. Judge Brue repeated these claims during the public hearing.[6] [**Trial Tr.**, Vol. 8, p. 1663; **Ex. R**, p. 28 ("[T]he two of us discussed the feeling that we were treated like two runaway slaves, that we were being treated like maybe we had escaped from – on Mackinac Island the only black people work in the dining

room and in the kitchen. That's no secret. That maybe they thought that we were escapees from the Grand Hotel."); **Ex. Z**, pp. 10-11 ("However, what Judge Brue does recall is that the officer told them that the front cement area outside of the bike shop was also private property and that they had to 'go wait by the curb' while he viewed the video. That statement was not only insulting, it was also scary.[7] 'Go wait by the curb' was an inappropriate manner for any officer of the law to address two middle

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[6] Contrary to Judge Brue's allegations and her own earlier allegations, Judge Nance testified during the public hearing on FC 106 that she did *not* believe that "stand at the curb" was a racist statement. Rather, it was a directive routinely given by police officers when they want someone to wait for them. As set forth in footnote 3 above, disciplinary counsel intend to ask that the Commission reopen the record in FC 105 to allow Judge Nance's testimony from FC 106 to be added or to allow Judge Nance to testify in FC 105.

[7] Nothing in Judge Brue's demeanor at any time during the interaction on Mackinac Island demonstrated that she was in any way fearful.

aged women who were attempting to air their concerns to him."); **Ex. DD**, ¶53 ("PO Hardy specifically told [Judge Brue] and Judge Nance to "go wait by the curb" which is what they did. Both [Judge Brue] and Judge Nance took that as a racially motivated statement. They then went and waited by the curb which is shown on the security video. Both [Judge Brue] and Judge Nance interpreted PO Hardy's comments as being racist and they were alarmed.")]

150. The evidence does not show that Officer Hardy told Judge Brue and Judge Nance to stand by the curb. It is possible but not certain that in telling them to cease their repeated efforts to enter Green's shop, Officer Hardy told them to wait on the sidewalk. [**Trial Tr.**, Vol. 2, pp. 385-386; **Trial Tr.**, Vol. 3, pp. 590, 657; **Trial Tr.**, Vol. 4, pp. 834, 836-837, 896, 903, 951] If Officer Hardy did tell them to wait on the sidewalk, that must be understood in the context that the sidewalk was immediately adjacent to the bike shop property, so was the *only* place the judges could wait that was outside the bike shop.

151. There is no evidence that Judge Brue and Judge Nance ever stood at the curb. Rather, while Green, Officer Hardy and Officer Smyth (another Mackinac Island Police Officer) reviewed the security video, Judge Brue and Judge Nance waited together with Trooper Bergsma primarily or entirely on the sidewalk near the bike shop, and not the curb or the street. Judge Brue and Judge Nance were on the sidewalk when Trooper Bergsma arrived and he stood with them on the sidewalk until Officer Hardy completed his review of the video. At one point during this wait, Scott saw Judge Brue and Judge Nance standing in the "seating area," which was

Green's property and was not near the curb. [**Trial Tr.**, Vol. 2, p. 387; **Trial Tr.**, Vol. 3, pp. 588-590, 660; **Trial Tr.**, Vol. 4, pp. 832, 836-837, 841-842, 896, 951]

152. Judge Brue did not complain to Trooper Bergsma that Officer Hardy demanded that she and Judge Nance "stand at the curb" or words to that effect. [**Trial Tr.**, Vol. 3, p. 591; **Trial Tr.**, Vol. 8, p. 1676]

153. Based on the layout of the area where the bike shop was located, there is no material difference whether Officer Hardy told them to stand on the sidewalk, stand at the curb or simply to not stand on Green's property. According to Trooper Bergsma, the distance from Green's property line to the curb is only about six feet. [**Trial Tr.**, Vol. 2, p. 386; **Trial Tr.**, Vol. 3, p. 628]

154. The video does not show that Judge Brue and Judge Nance were ever standing any closer to the curb than about 3-6 feet and nobody other than Judge Brue testified that they ever saw the judges standing any closer to the curb. [**Trial Tr.**, Vol. 2, pp. 387, 391; **Trial Tr.**, Vol. 4, pp. 842-843; **Ex. HH**, "officers meet in front of shop," 19:46:03-19:55:31]

155. The preponderance of evidence shows that Judge Brue, like Judge Nance before her, fabricated the story about Officer Hardy demanding that she and Judge Nance stand at the curb and did so to buttress their false claim that Officer Hardy was racist and biased against them. However, in the unlikely event that Officer Hardy actually directed them to stand at the curb, there is still no evidence that he intended any racist connotation.

156. Judge Brue claims that Green intentionally deleted video showing her and Judge Nance standing at the curb. According to Judge Brue, they would have been standing at the curb at some point between 7:26 p.m., when Officer Hardy and Green walked to the bike shop to review the video, and 7:46 p.m., when they emerged from the bike shop. There is no evidence to support this claim, and the available evidence contradicts it.

157. It is accurate that Green did not preserve any video from the period between 7:26 and 7:46 p.m.

158. There was never video that captured Officer Hardy entering the bike shop to review the video with Green, or the efforts by Judge Brue and Judge Nance to enter the shop, because there were no security cameras that covered that area. [**Trial Tr.**, Vol. 2, pp. 391, 399] In other words, a portion of the video that Judge Brue claims was not preserved did not even exist.

159. Green preserved all the video from the time Judge Brue and Judge Nance returned to the bike shop (about 6:55 p.m.) and the time Green and Officer Hardy walked back to the bike shop to review the video (about 7:26 p.m.) There is no evidence that any video from that period was altered in any way. Nonetheless, Judge Brue continues to suggest that "the video has been altered" without providing a shred of evidence to support that theory.

160. Judge Brue testified, at the urging of the Master, that she "believes that there is something different [about the video], but [she] can't put a finger on anything

in the 27 minutes that would show [her] what's been changed or how it's been changed." [**Trial Tr.**, Vol. 2, pp. 401-402; **Trial Tr.**, Vol. 7, pp. 1512, 1515-1519]

161. Following Officer Hardy's review of the video, Green provided him with a flash drive containing a one minute nine second video of the alleged assault, a very short subsection of that video, and one longer and completely unrelated video that he inadvertently placed on the flash drive. [**Ex. HH**, "ch10_20190820190742," 19:07:40 - 19:08:49]

162. In the days following the incident, Green retained for his own records all security video of his interactions with Judge Brue and Officer Hardy's interactions with Judge Brue. [**Trial Tr.**, Vol. 2, pp. 278-284]

163. Green preserved all video that reasonably appeared to be relevant to Judge Brue's claim that he had assaulted her. Green's primary purpose for preserving the video was to ensure that he could not be falsely accused of wrongdoing.

164. At the time Green decided what video to preserve, he was unaware of any issues regarding Judge Brue's interactions with the police officers and he had no reason to preserve that video, which was not related to Judge Brue's allegations against him. Green had no reason to be aware that there would be any relevance to where Judge Brue and Judge Nance were standing while him and Officer Hardy reviewed the video. [**Trial Tr.**, Vol. 2, pp. 399-401]

165. By the time Judge Nance and Judge Brue made allegations that Officer Hardy had instructed them to wait by the curb, any video of the time between 7:26

and 7:46 was no longer accessible because Green's security video is typically overwritten after 30 or 60 days. [**Trial Tr.**, Vol. 2, pp. 399-401]

166. When Green was contacted by Commission staff about one year after the incident, he provided all video still in his possession. To the extent there was ever additional footage, it had already been overwritten. [**Trial Tr.**, Vol. 3, pp. 284-287]

167. The video entitled "1st Part File Hut 2" is an accurate depiction of the events that took place in front of the kiosk from 6:55 p.m. to 7:22 p.m. and the video entitled "2nd Part File Hut 2" is an accurate depiction of the events that took place in front of the kiosk from 7:22 p.m. to 7:26 p.m. [**Ex. HH**, "1st part File Hut 2"; **Ex. HH**, "2nd part File Hut 2"]

168. When Officer Hardy went inside the bike shop, he told Judge Brue and Judge Nance that he planned to come talk to them again after he was done reviewing the video. Even though the video clearly absolved Green from any of Judge Brue's false allegations of assault, Officer Hardy spoke to Judge Brue and Judge Nance for at least another 15-20 minutes after he reviewed the video.[8] [**Trial Tr.**, Vol. 3, p. 663]

169. Throughout the investigation, Judge Brue misled the Commission about whether Officer Hardy spoke to her again after reviewing the video. Judge Brue doubled down on this false statement at the hearing. [**Trial Tr.**, Vol. 8, p. 1680; **Ex. Z**, pp. 31-32, No. 46 ("To the best of her recollection she did not have an opportunity to address the first officer again. In fact, when Judge Brue asked when she was going

[8] The video captured approximately ten minutes of the post-review conversation between the officers and the judges, but the conversation was still in progress when the video stopped. [**Ex. HH**, "officers meet in front of shop," 19:46:03 – 19:55:31]

to be allowed to speak to the first officer, he informed her that he would not need to speak to her because the video would show him the information he needed to know, or words to that effect."); **Ex. CC**, p. 32, No. 22 ("we believe Judge Brue's recollection of the events centered on PO Hardy's refusal to talk to her after [Green] told him about the video tape. … PO Hardy refused to speak to Judge Brue and further indicated that he didn't need to talk to her because there was a security tape of the incident."); **Ex. CC**, p. 36, No. 28b ("when Judge Brue asked PO Hardy if she could talk to him privately and explain her side of the incident, PO Hardy told her that he did not need to talk to her because the video would show him everything he needed to see, or words to that effect.")]

170. Judge Brue's testimony does not make sense because by the time she made several of the statements identified in paragraph 169, Judge Brue had already reviewed video displaying her second conversation with Officer Hardy.

171. Officer Hardy and Officer Smyth emerged from the bike shop at about 7:46 p.m. and approached the area where Trooper Bergsma was standing with Judge Brue and Judge Nance. [**Ex. HH**, "officers meet in front of shop," 19:46:03 – 19:46:09]

172. When Officer Hardy returned from watching the video of the incident, he told Judge Brue words to the effect of "it looks like you did the assault." In other words, he concluded that Green did not assault Judge Brue and if anyone committed an assault, it was Judge Brue, not Green. Officer Hardy told Judge Brue that the video showed that she ripped the receipt out of Green's hand, not vice versa. Officer Hardy physically reenacted multiple times how Judge Brue reached across the

counter to grab the receipt from Green.[**Trial Tr.**, Vol. 3, pp. 603-605, 657-658, 660-661, 669, 688-692; **Trial Tr.**, Vol. 4, pp. 897-898, 952-953; **Trial Tr.**, Vol. 8, pp. 1685-1686] There was no reason for Officer Hardy to demonstrate this to Judge Brue if Judge Brue had not claimed that Green assaulted her. [**Ex. HH**, "officers meet in front of shop," 19:46:08 – 19:46:10]

173. Officer Smyth agreed that the video showed that Green did not assault Judge Brue. [**Trial Tr.**, Vol. 4, p. 897]

174. Upon hearing Officer Hardy's interpretation of the video, Judge Brue told the officers words to the effect that the paper was "her property." Officer Hardy responded that it was not her property until Green gave it back to her. [**Trial Tr.**, Vol. 4, pp. 898, 903]

175. There is conflicting testimony as to whether Judge Brue eventually admitted to Officer Hardy that Green had not assaulted her, and that she had reached across the counter and attempted to take the paper from Green. [**Trial Tr.**, Vol. 3, pp. 661-662, 682; **Trial Tr.**, Vol. 4, pp. 898, 955]

176. In the face of indisputable video evidence that Green did not assault her, Judge Brue contends that she never made any such admission to the officers and still believes that Green assaulted her. [**Trial Tr.**, Vol. 8, p. 1686; **Ex. Z**, p. 33, No. 46 ("At no point did Judge Brue ever tell any police officer at the scene that she had told him something that was not truthful."); **Ex. DD**, ¶34 ("[Judge Brue] has no recollection of making these comments [admitting to Hardy that Green had not assaulted her and that she reached over the counter and attempted to take the paper from Green] …")]

177. If Judge Brue truly believed that Green had assaulted her, she would have asked Trooper Bergsma, who she believed was Officer Hardy's supervisor, to review the video and make an independent determination. Judge Brue made no such request. [**Trial Tr.**, Vol. 8, pp. 1678-1679]

178. Judge Brue was familiar with the definition of assault under Michigan law and previously presided over criminal assault cases. [**Trial Tr.**, Vol.7, pp. 1404-1405; **Trial Tr.**, Vol. 8, pp. 1598-1601]

179. Judge Brue cannot still have a good faith belief that Green assaulted her. [**Trial Tr.**, Vol. 3, pp. 635-637; **Trial Tr.**, Vol. 8, pp. 1598-1601; **Ex. HH**, "1st part File Hut 2," 19:08:03 - 19:08:07]

180. Trooper Bergsma negotiated a settlement whereby Judge Brue and Judge Nance did not pay for their bicycle rentals, Green provided Judge Brue a receipt showing that she did not owe any money, Judge Brue and Green agreed not to press charges against one another, and Judge Brue and Judge Nance would not patronize Green's business or enter onto his property. [**Trial Tr.**, Vol. 2, pp. 394-395; **Trial Tr.**, Vol. 3, pp. 607-609, 663-664; **Trial Tr.**, Vol. 4, p. 902; **Trial Tr.**, Vol. 8, p. 1686]

181. Two witnesses approached Green after the incident and provided their names for Green to give to the police because they were concerned that Green was being unfairly accused of something he did not do. [**Trial Tr.**, Vol. 2, pp. 396-397; **Trial Tr.**, Vol. 5. p. 988]

182. Following the incident, Mackinac Island Chief of Police Horn told Green that if he did not have video to support his side of the story, he could have been arrested based on Judge Brue's claim that he assaulted her. [**Trial Tr.**, Vol. 2, pp. 397-399]

183. Green filed a request for investigation with the Commission on August 27, 2019. Green asserted that Judge Brue should be investigated because she made false accusations against him that were heard by his staff, customers, people across the street, and all the police officers on the scene. Green was concerned that, as a judge who holds substantial power over others, Judge Brue should be held accountable for her misconduct. [**Trial Tr.**, Vol. 3, pp. 547-548]

184. Judge Brue never considered the impact it might have had on Green's life if he had been arrested for assaulting a judge or the impact that her accusations of racism might have had on his business. Rather, Judge Brue only laments that some of her colleagues have shunned her and she no longer has a professional relationship with Judge Nance. [**Trial Tr.**, Vol. 8, pp. 1695-1696]

185. In addition to accusing Green and Officer Hardy of treating her differently on the basis of race, Judge Brue has made the same unfounded accusations against the Commission. [**Trial Tr.**, Vol. 7, p. 1482; **Ex. 33**, p. 14 ("Judge Brue and Judge Nance are black. Green and his two employees who were present when the August 20, 2019 incident occurred are white. All three of the police officers who arrived on the scene on August 20, 2019 were white. This lines up as a situation where five white individuals told a version of the events that support what Green told

[the Commission]. … This investigation was one-sided. It appears that anything Judge Brue has told [the Commission] has been rejected and I genuinely ask—why has this been done."); **Ex. BB**, Response to Supplemental RFC, pp. 2-3 ("[Commission staff] appears to be on a fishing expedition to find some argument to present to your Commission as to why the word of [Green], his two employees, and the police officers (all six of whom are white males) should be taken over the word of two middle aged, African American female judges[9] … It has become clear that [Commission or Commission staff] have taken the word of [Green] and the white police officers over the word of two African American judges. We do not know why this is the case. However, we do have our suspicions.")]

186. Judge Brue responded to the Commission's September 9, 2020 request for comments on November 10, 2020. Judge Brue's signature attested to the veracity of her response. [**Ex. S**, p. 40]

187. Judge Brue acknowledged that, as a judge, she has advised witnesses to only testify to things that they remember and not to speculate if they don't know the answer to a question. [**Trial Tr.**, Vol. 7, p. 1408]

188. The background section of Judge Brue's answer to the Commission's request for comments asserted that she did not tell Green that she and Judge Nance

[9] At the public hearing, Judge Brue acknowledged that there is no reason why a factfinder should automatically accept or assume that an African-American witness is any more or less credible than a Caucasian witness. [**Trial Tr.**, Vol. 8, p. 1589]

were judges on August 20, 2019. Her answer to Request for Comment No. 31 made the same misrepresentation. [**Ex. S**, pp. 7, 25]

189. The background section of Judge Brue's answer to the Commission's request for comments denied that she told Officer Hardy that both she and Judge Nance were judges. [**Ex. S**, p. 7]

190. Judge Brue's answer to Request for Comment No. 15 stated that she only told the "police supervisor" [Trooper Bergsma] that she and Judge Nance were judges. [**Ex. S**, p. 19, No. 15]

191. Judge Brue's answer to Request for Comment No. 43 denied that she made the following statements or words to their effect to Green on August 20, 2019:

- You attacked me.
- I am in fear for my life.
- Do you know what is now going to happen to you, a Caucasian man that's found guilty of striking an African American female judge?

[**Ex. S**, p. 30, No. 43]

192. Judge Brue's answer to Request for Comment No. 44 stated that Officer Hardy refused to speak with her. [**Ex. S**, p. 30, No. 44]

193. Judge Brue's answer to Request for Comment No. 46 stated about Officer Hardy: "He would not listen to Judge Brue or Judge Nance." [**Ex. S**, p. 32, No. 46]

194. Judge Brue's answer to Request for Comment No. 46 stated that when it appeared that Officer Hardy would not speak with her, she asked Officer Hardy words to the effect of when she would be allowed to address him, and in response, he

said words to the effect that he would not have to speak with her because the video would show him the information he needed to know. [**Ex. S**, p. 32, No. 46]

195. Judge Brue's answer to Request for Comment No. 46 stated that she believed it was Green who told Officer Hardy that she was claiming to have been assaulted. [**Ex. S**, p. 32, No. 46]

196. The background section and Judge Brue's answer to Request for Comment Nos. 37, 45, 50, and 51 stated repeatedly that Officer Hardy told both her and Judge Nance to "go wait by the curb" and that they both waited by the curb. [**Ex. S**, pp. 10-11, 27, 31, 34, Nos. 37,45, 50, 51]

197. Judge Brue's answer to Request for Comment No. 46 stated that she did not tell any police officers at the scene something that was not truthful. Judge Brue's answer to Request for Comment No. 55 denied that she changed her description of what happened. [**Ex. S**, pp. 33, 35, Nos. 46, 55]

198. On about October 25, 2021, the Commission sent Judge Brue supplemental questions. [**Ex. AA**, Supplemental Request for Comments]

199. Supplemental Request for Comment Nos. 4 – 8 related to Judge Brue's communications with Judge Nance and/or her counsel regarding the Commission investigation after she submitted her responses to the Commission's initial Request for Comments. [**Ex. AA**, Nos. 4-8]

200. On about November 12, 2021, Judge Brue objected to Supplemental RFC Nos. 4-8 on the basis that they were similar to questions she had previously answered and were offensive to Judge Brue. Judge Brue made it clear that she would "only

respond to [the requests] further if [Commission staff] inform[ed] [Judge Brue and her counsel] of a legitimate basis for such questions." [**Ex. BB**, pp. 2-3]

201. The Supplemental RFCs could not have been duplicative of questions to which Judge Brue previously responded because they clearly related to the time period after Judge Brue responded to the Commission's original request for comments. [**Ex. AA**, Nos. 4-8.]

202. Judge Brue provided no authority for her demands or her refusal to answer. [**Ex. BB**]

203. At the public hearing, Judge Brue testified that she objected to the supplemental questions because they impugned her integrity and that of Judge Nance and Judge Nance's counsel. [**Trial Tr.**, Vol. 8, pp. 1690, 1692]

204. Judge Brue further testified that she never spoke to Judge Nance's counsel about the incident and she never would have considered doing that. Judge Brue did not explain why she could not have provided that answer in response to the Supplemental Request for Comments rather than refusing to answer a legitimate question. [**Trial Tr.**, Vol. 7, p. 1352]

205. The Master would not allow disciplinary counsel to ask follow-up questions regarding Judge Brue's objections to the Supplemental Request for Comments, such as why she believed those questions were unreasonable, particularly in light of prior questions asked by the Commission and questions asked by disciplinary counsel at the public hearing to which no objections were raised. [**Trial Tr.**, Vol. 8, pp. 1691-1694]

206. As a result, much of Judge Brue's testimony regarding her objections to the Supplemental Request for Comments was placed on a separate record for possible consideration by the Commission.

CONCLUSIONS OF LAW

As to Count One

1. Judge Brue has been and is currently subject to the duties and responsibilities imposed by the Michigan Supreme Court and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.202.

2. Judge Brue makes decisions every day she is on the bench that impact people's lives. **[Trial Tr.**, Vol. 7, p. 1404]

3. Falsely accusing a person or institution of being racist can be damaging to the lives and careers of persons and to the public perception of institutions, because branding someone a racist is exceptionally negative, insulting, and highly inflammatory in our culture. [**Trial Tr.**, Vol. 7, p. 1406]

4. It is highly inappropriate for a judge to accuse a person or entity of being racist based on nothing more than an objectively unsubstantiated and wholly subjective feeling. [**Trial Tr.**, Vol. 7, pp. 1406-1407]

5. On the basis of the evidence before her, it was highly inappropriate for Judge Brue to allege to Green or to Officer Hardy that Green was racist.

6. On the basis of the evidence before her, it was highly inappropriate for Judge Brue to allege to the Commission that Green or Officer Hardy were racist.

7. Judge Brue's claims to Officer Hardy, Trooper Bergsma and the Commission that Green snatched the receipt from her were false and she knew they were false when she made them.

8. An "assault" is an intentional act that causes another person to reasonably fear or apprehend immediate harm or contact. *See e.g.* MI Crim JI 17.1.

9. Intent is an element of an assault charge. In order to establish intent, the defendant must have intended to either cause physical injury to another person, or make the victim reasonably fear an immediate battery (unwanted physical contact). *See e.g.* MI Crim JI 17.1.

10. There is no evidence that Green intended to physically harm Judge Brue or even initiated any physical contact with Judge Brue.

11. Judge Brue's allegations that Green initiated contact with her were false and she knew they were false when she made them.

12. Judge Brue's statement that Green acted with violence toward her was false and she knew it was false when she said it.

13. Green was 69 years old at the time of this interaction and there is no evidence that Judge Brue was ever frightened that Green was going to cause her physical harm. [**Trial Tr.**, Vol. 2, pp. 362-363]

14. Another element of an assault charge is an overt act. The defendant must have committed some act that would cause a reasonable person to fear or expect an immediate battery. Words alone are not enough—there must be some conduct (e.g., raising a fist, lunging). *See e.g.* MI Crim JI 17.1.

15. Green did not take any action that would constitute an overt act. Judge Brue initiated the contact and Green actually pulled back the receipt to avoid contact because Judge Brue was reaching over the desk to grab it out of his hand.

16. Judge Brue knew full well that Green had not assaulted her, yet she reported an assault to Officer Hardy and Trooper Bergsma.

17. Judge Brue's statements to Green, Officer Hardy, Trooper Bergsma and the Commission that Green assaulted her were false and she knew they were false when she made them.

18. It is not a defense to Judge Brue trying to grab the ticket from Green that Judge Brue thought the ticket was her property. Contrary to Judge Brue's assertion, Michigan's Claim of Right law did not give her the right to use force to retrieve a piece of paper the only value of which is in the data contained therein. [**Trial Tr.**, Vol. 3, p. 695; **Trial Tr.**, Vol. 7, pp. 1532-1533]

19. Section 750.411a of the Michigan Penal Code provides that "(1) Except as otherwise provided in subsections (2) and (3), a person who intentionally makes a false report of the commission of a crime, or intentionally causes a false report of the commission of a crime to be made, to a peace officer, police agency of this state or of a local unit of government, 9-1-1 operator, or any other governmental employee or contractor or employee of a contractor who is authorized to receive reports of a crime, knowing the report is false, is guilty of a crime as follows: (a) Except as provided in subdivisions (b) through (e), if the report is a false report of a misdemeanor, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93

days or a fine of not more than $500.00, or both. (b) Except as provided in subdivisions (c) through (e), if the report is a false report of a felony, the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $2,000.00, or both."

20. Section 750.411a of the Michigan Penal Code creates repercussions for citizens who lie to the police during an investigation.

21. Judges are held to higher standards than the average citizen. Canon 2 of the Code of Judicial Conduct provides that "[a] judge must therefore accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly."

22. Since all judges are required to interpret and apply the law, and since a fair application of the law relies on truthful statements, it is even more egregious for a judge to lie to the police than it is for the average citizen to lie to the police.

23. Judge Brue's conduct on Mackinac Island violated the following canons:

a. Canon 2(A), which requires a judge to avoid all impropriety and the appearance of impropriety;

b. Canon 2(B), which prohibits conduct that tends to erode confidence in the integrity of the judiciary;

c. Canon 2(B), which requires a judge treat all persons with courtesy and respect.

d. Canon 2(C), which forbids judges to use the prestige of their office to advance personal interests.

e. MCR 9.104(2), which forbids lawyers to engage in conduct that exposes the courts to contempt, obloquy, censure, or reproach.

f. MCR 9.104(3), which forbids conduct that is contrary to justice, ethics, honesty, or good morals.

g. MCR 9.104(5), which forbids conduct that violates a criminal law of a state.

h. MCL 750.479c(1)(b), which forbids knowingly and willfully making any statement to a peace officer that the person knows is false or misleading regarding a material fact.

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

j. MRPC 8.4(c), which prohibits a judge from engaging in conduct that is prejudicial to the administration of justice.

As to Count Two

24. MCR 9.221(B) provides that Judge Brue's signature on her response to the Commission's request for comments served as her "attestation as to the veracity" of the response."

25. Judge Brue knew that if she did not recall a particular detail of the incident about which the request for comments asked her, she could provide that answer.

26. Judge Brue's claim that she believed she was compelled to make up answers to the Commission's questions, rather than saying that she did not know the answer, was false.

27. Contrary to her attestation that her answers to the request for comments were truthful, Judge Brue provided false answers to the Commission.

28. Judge Brue's statement on page seven of her response to the Commission's Request for Comments and her response to No. 31, both of which denied that she told Green she was a judge, were false and she knew they were false, because she told Green that she was a judge and knew she had done so. [**Ex. Z**, No. 31]

29. Judge Brue's statement on page seven of her response to the Commission's request for comments, that she did not tell Officer Hardy that she and Judge Nance were judges, was false and she knew it was false, because she had told Officer Hardy this and she knew she had done so. [**Ex. Z**, p. 7]

30. Judge Brue's response to Request for Comment No. 15, that she did not tell Green or Officer Hardy that she and Judge Nance were judges, was false and she knew it was false, because she had told Officer Hardy and Green these things and knew she had done so. [**Ex. Z**, No. 15]

31. Judge Brue's denials in her response to Request for Comment No. 43 were false and Judge Brue knew they were false because even if Judge Brue did not say the precise words referenced in that question ("You attacked me and I am in fear for my life"), at a minimum she said words to that effect and knew she had done so. [**Ex. Z**, No. 43]

32. Judge Brue's response to Request for Comment No. 44 to the effect that Officer Hardy did not speak with her or Judge Nance when he first came to the bike shop was false and Judge Brue knew it was false, because Judge Brue knew that Officer Hardy spoke with her and Judge Nance when he first arrived at the shop. [**Ex. Z**, No. 44]

33. Judge Brue's response to Request for Comment No. 46, in which she claimed that Officer Hardy said he would not have to speak with her because the video would show him the information he needed to know, was false and Judge Brue knew it was false because she knew that Officer Hardy spoke to her and Judge Nance for ten minutes and listened attentively to what Judge Brue said to him. In fact, Officer Hardy spoke to Judge Brue and Judge Nance for an additional 10-15 minutes after he reviewed the video. [**Ex. Z**, No. 46]

34. Judge Brue's response to Request for Comment No. 46, which asserted that she did not tell Officer Hardy that Green assaulted her, was false and she knew it was false because she knew she told Officer Hardy that Green had assaulted her. [**Ex. Z**, No. 46]

35. Judge Brue's statements attempted to create a false impression for the Commission that Officer Hardy mistreated and ignored both her and Judge Nance and only paid attention to Green, and Judge Brue knew that impression was false when she attempted to create it.

36. Judge Brue's statements on pages 10-11 of her response to the request for comments and her responses to Request for Comment Nos. 37, 45, 50, and 51 were false and Judge Brue knew they were false, because they asserted that Officer Hardy "ordered" her and Judge Nance to stand by the curb but she know that Officer Hardy did not order them to stand by the curb and Judge Brue and Judge Nance did not in fact stand by the curb. [**Ex. Z**, pp. 10-11, Nos. 37, 45, 50, 51]

37. Judge Brue's responses to Request for Comment Nos. 46 and 55 were false and Judge Brue knew they were false in that she had originally and falsely told both Officer Hardy and Trooper Bergsma that Green grabbed the ticket from her and later acknowledged that he had not done so, contrary to these answers. [**Ex. Z**, Nos. 46, 55]

38. Judge Brue should be familiar with police investigations through her career as a prosecutor and a judge of the Thirty-Sixth District Court. It is not typical for the police to share with a suspect all of the evidence that the police have gathered before taking the suspect's statement because revealing evidence can allow a suspect to tailor or fabricate their story to match or explain the evidence. Police generally prefer to hear the suspect's version without influence, which may help expose inconsistencies or lies. Police also can test the credibility of a suspect or witness by withholding what they know in order to compare the suspect's statement to the actual evidence.

39. Notwithstanding this knowledge, Judge Brue claimed that the Commission should have provided its evidence to her before asking her to answer questions about the incident on Mackinac Island. Contrary to Judge Brue's claim, the Commission did not have any obligation to provide video to Judge Brue before Judge Brue was required to respond to the Commission's Request for Comments, and it would have been contrary to the Commission's duty to investigate effectively to do that.

40. Judge Brue acknowledges that she received all the video in the Commission's possession years before the start of the public hearing. [**Trial Tr.**, Vol. 8, p. 1688]

41. Judge Brue's response to the request for comments could have simply stated that she did not recall certain portions of the incident and, if there was additional video, that video might refresh her recollection.

42. Instead, Judge Brue made unequivocal and false representations regarding her interactions with Green and Officer Hardy – representations that were so affirmatively stated that they do not suggest any weakness of memory.

43. Judge Brue's knowingly false statements to the Commission that are alleged in count two violated the following canons, court rules, and Rules of Professional Conduct:

a. Canon 2(A), which requires a judge to avoid all impropriety and the appearance of impropriety;

b. Canon 2(B), which prohibits conduct that tends to erode confidence in the integrity of the judiciary;

c. MRPC 8.4(b,) which forbids a lawyer to engage in conduct involving dishonesty.

d. MRPC 8.4(c), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

e. MCR 9.104(2), which prohibits a lawyer from engaging in conduct that exposes the legal profession or the courts to obloquy, contempt, censure or reproach.

f. MCR 9.104(3), which prohibits a lawyer from engaging in conduct that is contrary to justice, ethics, honesty, or good morals.

g. MCR 9.104(6), which prohibits knowing misrepresentation of facts or circumstances surrounding a request for investigation or complaint.

As to Count Three

44. MCR 9.221(B) provides that "[t]he commission may request that a respondent comment on any aspect of an investigation."

45. MCR 9.202(B)(1)(f) requires a judge to cooperate with a reasonable request made by the Commission in its investigation.

46. MCR 9.221(E) provides that "[a] judge … must comply with a reasonable request made by the commission in its investigation. Failure to cooperate may be considered judicial misconduct …"

47. Judge Brue's refusal to answer the Commission's Supplemental Request for Comments Nos. 4-8 violated MCR 9.202(B)(1)(f) and MCR 9.221(E).

48. The Michigan Court Rules do not require the Commission to justify its questions before a respondent is required to answer.

49. Judge Brue did not have the option to unilaterally decide whether to cooperate with the Commission's investigation.

50. Supplemental Request for Comments Nos. 4-8 were not the same questions Judge Brue had previously answered. [**Ex. AA**, Nos. 4-8]

51. The Commission's supplemental questions were reasonable because they sought material information regarding communications between Judge Brue and Judge Nance and her counsel.

CONCLUSION

The moment that Judge Brue reached across the counter and forcibly attempted to take the ticket from Green, their minor dispute crossed a critical line. Regardless of the emotional weight caused by Judge Brue's perception that she was not getting that to which she was entitled — as a customer, or perhaps as a judge — the physical action - abrupt, uninvited, and forceful – was wrong. It was an abuse of her authority and inconsistent with the dignity, restraint, and professionalism that we expect from members of the judiciary.

Judge Brue claims that her unreasonable behavior, the forcible grab, was a response to the allegedly racist treatment she received from Green. Judge Brue has highlighted and illuminated the use of idioms, such as "free ride" and "you guys," to justify her logic and her behavior. But in the context of a bike shop, a refusal to pay for a bike rental is literally an attempt to get a free ride. Judge Brue's justification fails not because terms with a negative connation haven't been historically used toward African-Americans, but specifically because the overwhelming weight of the evidence at the public hearing shows that if the phrase was used with Judge Brue, it was *not* related to race. Judge Brue made a determination very early on that Green was racist. That conclusion was drastic, it was biased, Judge Brue had no demonstrable basis for it, and it was wrong.

Judge Brue allowed her own feelings about race, racial injustice, and perceived racial hatred to destroy her ability to rationally and objectively deal with the situation. Racism is hateful whenever it occurs, but a claim of racism is not a shield

to excuse misbehavior. No injustice in society is a defense to excuse judges from accountability for their wrongdoing. Judge Brue's attempt to use the societal evil of racism to excuse her own misconduct is dishonest. It is harmful. It derails genuine dialogue about the extremely difficult question of race, and it pollutes the moral clarity necessary to confront injustice when it really does exist.

The evidence is clear that Judge Brue lied and abused her office on Mackinac Island on August 20, 2019. Despite knowing that her allegation of assault was false, and that she was only using her racial animus claim to justify her wrongful actions, she knowingly misrepresented to the Commission in her testimony and in several of her answers and pleadings.

This case is about the responsibility that comes with authority. Judge Brue violated the judicial canons, the Michigan Court Rules, and the Rules of Professional Conduct by falsely accusing an innocent man of assault and then lying about doing so; by falsely accusing a police officer of neglecting his duty and then lying about doing so; and by unjustifiably claiming that innocuous actions were racially motivated. She is charged with serious misconduct and must be held accountable.

Respectfully submitted,

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