BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DAVID S. GINGRAS** Bar No. 021097 Respondent.	**No. PDJ 2026-9010** **MOTION TO COMPEL (SECOND)**

Respondent David S. Gingras ("Respondent" or "Gingras") respectfully moves for an order compelling two non-party witnesses — Julie A. Mata and her father Harry Howe — to comply with subpoenas served on them.[1]

I. INTRODUCTION

The Court has three discovery motions to consider – this Motion to Compel, and two Motions to Quash. These motions may appear, at first, to raise simple discovery disputes. In truth, the outcome of these three motions will have a major, almost certainly dispositive, impact on this case.

To avoid confusion, before discussing other issues, it is important to be extremely clear what this motion is *not* intended to do – it is *not* intended to act as a veiled attempt to get the Court to change its prior rulings regarding records Respondent sought from the Commission on Judicial Conduct ("CJC"). This point is important, so it will be addressed first.

[1] Mr. Howe and his daughter, Judge Mata, have also separately moved to quash the two subpoenas. In the interests of creating a clear record, rather than treating this motion as a *response* to the Motion to Quash, Respondent will file a separate brief in response to both motions (even though there is admittedly some overlap between the briefs).

Two weeks ago, on March 6, 2026, Respondent filed a Motion to Compel seeking records held by the CJC. On March 11, 2026, the PDJ issued an order denying the motion.

In that order, the Court quoted from the bar's Complaint (which accuses Respondent of making false statements regarding a judge, Julie A. Mata). After quoting the bar's allegations, the Court summarily stated: "Respondent Gringas [sic] has not demonstrated how the outstanding items in the subpoena duces tecum would assist in his defense regarding such."

Later that same day, on March 11, 2026, Respondent moved for relief from the order denying the Motion to Compel. In that motion, Respondent asserted the PDJ's decision appeared to have been based on an argument that was never raised in the CJC's objection – i.e., that the records in question were *not relevant*.

Respondent then explained the CJC records WERE plainly relevant to the issue of whether his comments about Judge Mata were true or false. Respondent explained truth/falsity is a central issue in this case, because as multiple courts have held, "attorneys may be sanctioned for impugning the integrity of a judge or the court only if their statements are false …" *Standing Comm. v. Yagman*, 55 F.3d 1430, 1438 (9th Cir. 1995) (emphasis added); *see also In re Green*, 11 P.3d 1078 (Colo. 2000) (same); *In re Olin*, 2024 WL 6881775, *9 (Cal. Bar Ct. 2024) (agreeing, "Truth is an absolute defense to any statement made by an attorney that impugns the honesty or integrity of a judge.")

After Respondent explained the CJC records were relevant, the following day, on March 12, 2026, this Court issued a second order affirming the Court's position (that Respondent was not entitled to obtain records from the CJC). In that order, the Court explained Respondent's point about relevance was misplaced (i.e., because the Court indicated the Motion to Compel was *not* denied on that basis). The Court further explained: "The Order to Quash granted relief because of the *confidential designation* that the Arizona Supreme Court has given the documents in question under the CJC Rules." (emphasis added).

To be very clear and to put this as politely and respectfully as possible—Respondent disagrees with the Court's legal conclusion. In his prior pleadings, Respondent noted *confidentiality* is not a valid basis for withholding otherwise relevant information. *See*, *e.g.*, *Fed. Open Market Comm. of Fed. Reserve Sys. v. Merrill*, 443 U.S. 340, 362 (1979) ("there is no absolute privilege for trade secrets and similar confidential information ….")

The Arizona Supreme Court agreed with this rule in *Cornet Stores v. Superior Court*, 108 Ariz. 84 (Ariz. 1972). In that case, a party refused to answer interrogatories on the grounds they asked for information of a "highly confidential nature." The Supreme Court rejected the argument and held confidentiality was *not* a valid basis to withhold otherwise relevant information in discovery. Instead, the party or witness holding confidential information must produce it subject to a protective order (if warranted):

> Defendants further object to this interrogatory on the ground that it calls for 'confidential information.' **We know of no case holding that this is a proper ground for objection to an otherwise proper interrogatory**. Assuming that the information called for by this interrogatory is of a confidential nature which defendants do not want to have included in a public record, they presumably could have applied for a protective order.

Cornet Stores, 108 Ariz. at 88 (emphasis added) (quoting *Columbia Broadcasting System, Inc. v. Superior Court*, 263 Cal.App.2d 12 (Cal.App.2nd Dist. 1968)).

Similarly, in *United States v. Nixon*, 418 U.S. 683 (1974), the U.S. Supreme Court unanimously held a non-party witness (even the President of the United States) could not withhold relevant evidence sought by subpoena on confidentiality grounds. In that landmark ruling the Court was loud, clear and unequivocal:

> The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or by the defense ….
>
> '[T]he public . . . has a right to every man's evidence,' except for those persons protected by a constitutional, common law, or statutory privilege ….

Nixon, 418 U.S. at 709 (emphasis added) (quoting *United States v. Bryan*, 339 U.S. 323, 339 U. S. 331 (1950)); *Blackmer v. United States*, 284 U. S. 421, 284 U. S. 438 (1932)).

Having said this, to avoid ANY misunderstanding: Respondent is not asking the PDJ to revisit, reconsider, or otherwise change the two prior rulings relating to the CJC records. The PDJ has spoken on that issue. At the same time, these points are mentioned because it is possible the Court may believe the current motion implicates the same "confidentiality" issues (even though it does not).

Here's why – the subpoena issued to Judge Mata requests much of the same information Respondent asked the CJC to produce. That's certainly true, as Judge Mata's Motion to Quash begrudgingly notes. But that does not mean this Court has ruled on the separate question of whether *Judge Mata* is required to comply with Respondent's subpoena. Now is the time to do that.

Again, because this issue a little subtle, let's be VERY clear — as to the CJC records, this Court denied Respondent's request to obtain those records because it concluded the CJC's "confidentiality" rules provided a valid basis the CJC to withhold this information. Respondent understands the Court's ruling, but respectfully disagrees with it.

That same confidentiality argument does not apply to Judge Mata. Nothing in the CJC's rules provides that a judge against whom a complaint has been filed may subsequently withhold otherwise relevant information in response to a subpoena (such as the judge's written response to that complaint) simply because the response was also sent to the CJC. The CJC's rules say no such thing.

That argument (if raised) would be like claiming a client involved in an auto accident could refuse to answer any questions about the accident just because

the client later discussed the incident with a lawyer. That is, of course, an incorrect statement of law – although attorney/client privilege protects a client's *discussions* with counsel and shields *those specific conversations* from disclosure, the privilege does not shield any of the underlying facts simply because they were shared with a lawyer. *See* A.R.S. § 12–2234(C) (explaining attorney/client privilege does not permit party "to be relieved of a duty to disclose the facts solely because they have been communicated to an attorney."); *Ulibarri v. Superior Court*, 184 Ariz. 382, 385 (Ariz.App. 1995) (same).

The point here is simple – this Court denied Respondent's request to obtain records from the CJC. It did so because the CJC's rules say records held by the CJC are "confidential". Judge Mata is not the CJC, and her Motion to Quash *does not* claim she is entitled to withhold information on the same grounds as the CJC.

So, while Respondent respectfully disagrees with the PDJ regarding the prior rulings related to the CJC, Judge Mata is in a different position. As such, this Court should reach a different result – it should order her to comply with the subpoena by producing all evidence that is relevant and non-privileged.

The same is true with respect to Respondent's request for records from Judge Mata's father, Mr. Howe. The information sought from Mr. Howe is directly relevant to the issues in this case. It is not privileged, nor is it even arguably confidential.

The only argument Mr. Howe raises is that he is a non-party, and as such, he "is unable to determine if any of the requested documents … are relevant." This

not a valid objection, either factually or legally. Mr. Howe's motion should be denied and this motion should be granted.

II. DISCUSSION

a. Both Subpoenas Seek Relevant Information

The state bar has charged respondent with making false statements impugning Judge Mata's integrity. Among other things, Respondent accused Judge Mata of violating the Code of Judicial Conduct by performing an extra-judicial investigation into the facts of *Owens v. Echard*, by making a factual finding that was not based on admitted trial evidence (and which was based on information Judge Mata obtained from an *ex parte* source), and by having *ex parte* discussions about the case with her father, Mr. Howe which included sharing pleadings from the case with him and discussing those pleadings with him.

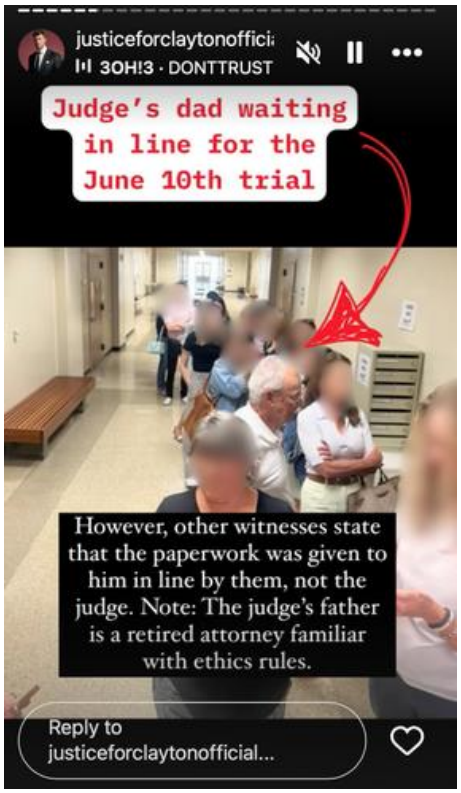
The details of Respondent's accusations against Judge Mata were set forth in a 21-page affidavit filed on July 8, 2024 in *Owens*. That affidavit (entitled Affidavit of David S. Gingras In Support of Petitioner's Notice of Change of Judge For Cause) was provided to this Court as Exhibit 105 to Respondent's Request for Judicial Notice (the affidavit is found at pp. 17–37 of RJN. Ex 105).

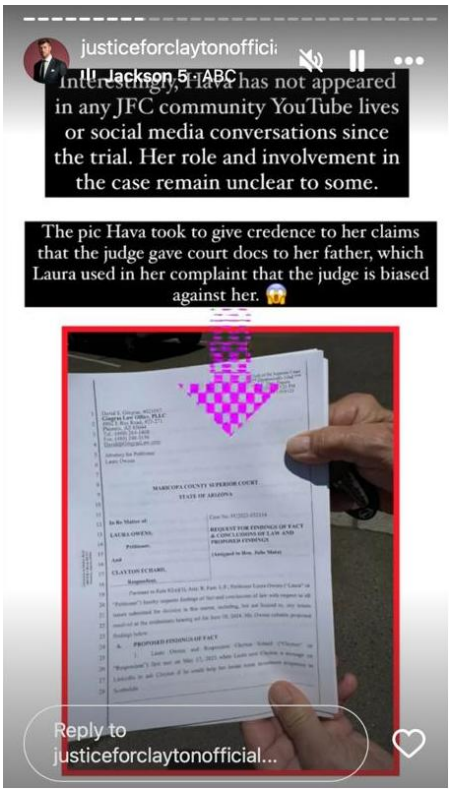
As that affidavit explained, immediately following the trial in *Owens*, multiple witnesses gave video recorded statements claiming Judge Mata's father, Mr. Howe, secretly attended the trial and told spectators he was not there to "support his daughter" but rather "he had been hearing about the case and was here for the circus." At least one witness claimed Mr. Howe said he had been

discussing *Owens* with his daughter, that she had printed case-related documents for him, and that she had discussed those documents with him.

These recorded statements are available to view on Respondent's website: https://gingraslaw.com/Howe.mp4 or YouTube: https://youtu.be/CikQPcq-RAw

In addition to these recorded statements, Mr. Howe was also photographed at the court, allegedly holding pleadings from the case provided by his daughter:





Despite this, after investigating for more than seven months, the CJC somehow determined Respondent's allegations were not supported by clear and convincing evidence. However, the CJC has refused to reveal anything about how it reached that conclusion and has refused to disclose any evidence it considered.

Despite filing charges accusing Respondent of making false statements about Judge Mata and her father, the state bar has disclosed no evidence of any

kind to support that charge, other than a disclosure statement indicating Judge Mata has denied any wrongdoing (again, with zero explanation).

In this posture, there is clearly a factual dispute – were Respondent's allegations about Judge Mata and her father *true* or *false*? As noted above, a lawyer cannot be disciplined for publishing *true* statements criticizing a judge. Accordingly, any evidence that proves the truth of Respondent's claims is relevant, and thus discoverable pursuant to Civil Rule 26(b).

b. The Subpoena To Mr. Howe Seeks Relevant, Non-privileged Evidence

The subpoena Respondent sent to Mr. Howe asked him for two main categories of documents: 1.) correspondence he has exchanged with anyone regarding *Owens v. Echard* (which would include emails/text messages exchanged with his daughter, Judge Mata) and 2.) correspondence he exchanged with the Commission on Judicial Conduct regarding his daughter, Judge Mata.

Considering the specific allegations made by the state bar against Respondent, those two categories of documents are relevant because they bear directly on the issue of whether Respondent's statements about Judge Mata were true. Mr. Howe does not assert privilege, nor does he claim the volume of responsive documents is so large as to constitute an undue burden. He also does not claim the information is not proportional to the needs of this case.

Mr. Howe's relevance objection should be overruled. First because the requested information IS relevant. Second, as the United States Supreme Court

held over 100 years ago, non-party witnesses cannot raise relevance objections for exactly this reason – because they are not in a position to know what information is relevant and what is not:

> [A]side from exceptions and qualifications … the witness is bound not only to attend but to tell what he knows in answer to questions framed for the purpose of bringing out the truth of the matter under inquiry. He is not entitled to urge objections of incompetency or **irrelevancy**, such as a party might raise, **for this is no concern of his**.

Blair v. U.S., 250 U.S. 273, 281–82 (1919) (emphasis added).

The Arizona Supreme Court agrees; "A grand jury witness is not entitled to set limits to the investigation which the grand jury may conduct." *Marston's, Inc. v. Strand*, 114 Ariz. 260, 264 (Ariz. 1977) (emphasis added) (citing *Blair*).

While no Arizona decision has directly applied *Blair* to a bar discipline case, the Court of Appeals in Hawaii issued an extremely helpful decision under closely analogous facts. In that case, *Sameshima v. Yamashiro*, 3 Haw.App. 130, 642 P.2d 544 (Haw.App. 1982), a lawyer filed a complaint accusing a government official of "violations of the Code of Professional Responsibility, the Hawaii Constitution, the Hawaii Revised Statutes, and the Hawaii County Charter, by reason of conflicts of interest …." *Sameshima*, 3 Haw.App. at 135.

The government official (a councilman) obtained a subpoena requiring the lawyer to appear and answer questions about his allegations. The lawyer appeared but refused to answer questions on three grounds: 1.) relevance, 2.) privilege, and 3.) work product.

Citing Rule 26 of the Hawaiian Rules of Civil Procedure (which is identical to Arizona's rule), the trial court rejected all three objections and held the lawyer in contempt. The Court of Appeals affirmed, citing *Blair*:

> The above statement alone [from *Blair*, holding a non-party witness cannot object on relevance] might well dispose of appellant's argument with respect to relevancy since appellant was a witness, not a party, in the action in which the deposition was taken. However, in this case, because appellant is an attorney and, therefore, an officer of the court, we think more needs to be said. Both parties agree that the test really is not relevancy but whether the answers sought appear reasonably calculated to lead to the discovery of admissible evidence. Here, when the appellant refused to answer the questions at the deposition, they were clearly and directly relevant to the specified charges about the meetings made in the complaint. Appellant's conduct at that time in refusing to answer the questions was **reprehensible and unbecoming of an officer of the court**.

Sameshima, 3 Haw.App. at 133 (emphasis added).

The Court of Appeals also held any privilege objection was waived, because the lawyer placed the privileged information at issue by using it to support his allegations against the councilman. *See id*.

This Court should follow the same logic. The only objection Mr. Howe has raised is that *he* cannot determine whether Respondent's subpoena seeks relevant information. Even if relevance was a valid objection (which it is not), that standard is easily met here. Respondent's subpoena only seeks documents which bear on the truth of the statements in dispute. As such, the Court should issue an order compelling Mr. Howe to comply, in full, with the subpoena.

c. Any Judicial Privilege That Might Apply Has Been Waived

Unlike her father, Judge Mata's objection focuses primarily on privilege, arguing judges cannot be asked to explain the bases for their decisions. To be clear – Respondent generally agrees "judicial thought privilege" limits the ability of disappointed litigants to demand a judge answer questions about their legal thinking and analysis.

This argument has no application here for two reasons: 1.) Respondent's subpoena seeks documents which have *nothing whatsoever* to do with Judge Mata's legal thinking and analysis in *Owens*, and 2.) even if Respondent did seek that information, Judge Mata has waived any privilege that would otherwise apply.

Arizona law establishes many privileges; i.e., attorney-client (A.R.S. § 12–2234), husband-wife (A.R.S. § 12–2231), priest-penitent (A.R.S. § 12–2233), doctor-patient (A.R.S. § 12–2235), and so forth. All privileges have one thing in common: they are all waivable under appropriate circumstances.

One of the clearest forms of waiver is a rule which holds, as a matter of basic fairness:

> Privilege cannot be used as both a sword and a shield. That is, a party cannot, by selective invocation of the privilege, disclose documents or testimony favorable to that party while failing to disclose cognate material unfavorable to that party. Implied waiver prevents a party from asserting a particular factual position and then invoking the privilege not only to support that position, but also to prevent the opposing party from impeaching or otherwise challenging it. In other words, waiver can be implied when a party injects a matter that, in the context of the case, creates such a need for the opponent to obtain the information allegedly protected by the privilege that it would be unfair to allow that party to assert the privilege.

Smith v. Smith, 2016 WL 3211197, at *5 (Ariz. App. 2016) (emphasis added) (cleaned up) (quoting *State Farm Mut. Auto. Ins. Co. v. Lee*, 199 Ariz. 52, 61 ¶ 23, 13 P.3d 1169, 1178 (2000). *State v. Wilson*, 200 Ariz. 390, 396 ¶ 16, 26 P.3d 1161, 1167 (App. 2001)); *see also Abdelrahman v. Martin*, 2017 WL 1364861, *2 (Ariz. App. 2017) ("Arizona also recognizes, however, the concept of *implied* waiver of privilege. A waiver is to be predicated ... when the conduct (though not evincing that intention) places the claimant in such a position, with reference to the evidence, that it would be unfair and inconsistent to permit the retention of the privilege. It is not to be both a sword and a shield.") (emphasis added) (quoting 8 WIGMORE ON EVIDENCE 855, § 2388 (McNaughton Rev. 1961)).

Here, the state bar has disclosed Judge Mata as a witness. The bar *claims* Judge Mata will testify in a manner that favors the bar; i.e., that Respondent made false statements about her. For his part, Respondent has raised a defense that everything he said was entirely true.

Clearly, the state bar had a Rule 11 obligation to investigate those claims *before* it filed this proceeding. That means the state bar *must* have interviewed Judge Mata about these issues, and she must have answered questions which the bar believes are sufficient to support discipline (if the bar did not interview Judge Mata, it violated Rule 11 by filing serious charges without any investigation).

In that posture, by agreeing to answer the bar's questions, Judge Mata waived any privilege that might otherwise have applied here, just as a client

waives privilege by disclosing otherwise confidential information to a third party. As a matter of basic fairness, it would be grossly unfair to allow the bar to interview Judge Mata, obtain testimony from her favorable to the bar's position while simultaneously allowing Judge Mata to invoke privilege so she can withhold information that may be *unfavorable* to the bar's position.

In plain English—the bar and Judge Mata cannot have it both ways. If the bar intends to call Judge Mata as a witness, Respondent has a right to cross-examine her and to obtain relevant documents which may be used to challenge and/or impeach her allegations. This is mandated by Rule 26(b).

Consider this – Judge Mata's motion does not cite a single case in which a judicial officer was allowed to invoke privilege as both a sword and a shield. For instance, she cites *In Re Aubuchon*, 233 Ariz. 62 (Ariz. 2013) which was a disciplinary case brought against a former Maricopa County prosecutor who filed groundless criminal charges against several judges. In *Aubuchon*, while those criminal cases were pending, the prosecutor attempted to interview the judicial officers currently presiding over those cases to ask if they could be fair. The Supreme Court correctly held this was improper.

That rule has nothing to do with this case. Here, Judge Mata is *not* presiding over any pending case in which Respondent is involved, and Respondent is not seeking to interview Judge Mata with respect to her ability to be fair on any *future* matters. On the contrary, Judge Mata recused herself from *Owens v. Echard* months ago, and that case is no longer pending in any active sense.

If anything, the cases cited by Judge Mata support Respondent's position – i.e., that a judge can be called as a witness, especially where (as here) "there is no other reasonably available way to prove the facts sought to be established." *In Re Peasley*, 208 Ariz. 27, 35 n.14 (Ariz. 2004) (quoting *State ex rel. Carroll v. Junker*, 79 Wash.2d 12, 482 P.2d 775, 781 (1971)). That is precisely the situation here.

Here, Respondent accused Judge Mata of specific, discrete acts of judicial misconduct which involve her speaking to her father about a high-profile case, printing documents for him from the docket, and making a factual finding that was based on extra-judicial information, not evidence admitted at trial. Although the state bar disingenuously suggests these are "objectively false" statements (implying they could be proven true/false by referring to some objective evidence other than Judge Mata's testimony), the truth is this – no one other than Judge Mata and her father are in a position say whether these claims are true or false.

In that unique posture, Respondent is *clearly* entitled to interview both Judge Mata and her father, and to obtain any relevant, non-privileged documents which bear on the truth. This is hardly a novel concept. *See*, *e.g.*, *Philips v. Clancy*, 152 Ariz. 415, 419 (Ariz.App. 1986) (agreeing with other courts, "a judge is not immune from service of process and may be compelled to testify …" and "judicial testimony has been selectively allowed in situations where the judge has either personal knowledge of a factual matter litigated before him or a firsthand impression of the witness in a trial over which he presided.")

In fact, during the meet and confer process, bar counsel suggested this matter is similar to a recent California case called *In re Olin*, 2024 WL 6881775 (Cal. Bar Ct. 2024). In that case, the California Bar Court found five (5) out of eight (8) charges against a lawyer involved speech protected by the First Amendment, resulting in those charges being dismissed. The Court also agreed if speech is protected by the First Amendment, it cannot support discipline.

Nevertheless, the Court in *Olin* found the following statement by a lawyer was *not* protected speech: "If I ever won the lottery, I would pay someone to kill [Commissioner Veasey's minor child, 'T']." *Olin*, 2024 WL 6881775, *6 (emphasis added). Given that the respondent lawyer *threatened to kill a judicial officer's minor child*, it is hardly surprising the commissioner testified about this threat during the discipline proceeding. *See id*. *4 (explaining, "During his disciplinary trial, Commissioner Veasey testified that she was frightened when seeing him and left the courtroom to lock herself in her chambers.")

If the California bar was able to call a judicial officer as a witness during the disciplinary proceeding in *Olin*, surely the same is true here. But at the same time, the bar cannot solicit allegedly *favorable* testimony from Judge Mata while simultaneously prohibiting Respondent from pursuing discovery which is intended to refute that testimony.

For these reasons, the PDJ must force the state bar (and Judge Mata) to make a choice – if the bar intends to use Judge Mata's testimony as a sword, then the PDJ must hold Judge Mata has waived any privilege that would otherwise

shield her right not to testify. On the other hand, if the PDJ chooses to allow Judge Mata to invoke privilege, then it must issue an order precluding her from testifying in this proceeding. Any other result would be patently unfair.

All of Judge Mata's remaining objections are groundless. For instance, she suggests "Respondent Gingras has offered no legal citation to warrant the release of information from a non-party …." Mot. at 7:20–21. That statement is simply false; Respondent informed Judge Mata's counsel Civil Procedure Rule 45 *expressly* authorizes the issuance of subpoenas to non-party witnesses.

She also claims Respondent is engaged in a "fishing expedition" and "has made no credible offer of proof as to the existence of anything." *Id*. at 8:12–13. That argument ignores both the multiple video recorded witness statements cited above, and the lengthy affidavit in which Respondent discussed those exact issues. *See* RJN. Ex 105 at 17–37.

III. CONCLUSION

For the reasons stated, the Motion to Compel must be granted.

Respectfully submitted March 23, 2026.

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[redacted]
Respondent

CERTIFICATE OF GOOD FAITH

The undersigned certifies that prior to filing the instant motion, he made a good faith attempt to personally meet and confer by phone with opposing counsel in an effort to resolve the issues without court intervention. Those efforts were not successful.

CERTIFICATE OF SERVICE

ORIGINAL of the foregoing electronically filed
this 23rd day of March 2026, with:

Office of Presiding Disciplinary Judge
Honorable Lisa VandenBerg
c/o Disciplinary Clerk of the Superior Court
[redacted]
Phoenix, Arizona 85007
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