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** **REPONDENT'S NOTICE OF STATE BAR'S FAILURE TO COMPLY WITH DISCLOSURE RULES**

Pursuant to Ariz. Sup. Ct. R. 58(f)(3) Respondent David S. Gingras ("Respondent" or "Gingras") gives notice that the state bar has failed to comply with its disclosure obligations under Rule 58(e). As required by that rule, Respondent respectfully asks the PDJ to set a telephonic hearing to discuss this matter within five (5) days; "A hearing, which may be telephonic, shall be held within five (5) days of the date the notice is filed." Ariz. Sup. Ct. R. 58(f)(3).

Specifically, the state bar is required to disclose the names and addresses of all witnesses, and such disclosure MUST include "a description of each witness' expected testimony." *See* Ariz. Sup. Ct. Rule 58(e)(1).

The purpose of Arizona's disclosure rules is well-settled — to avoid unfair surprise at trial. *See Carlton v. Emhardt*, 138 Ariz. 353, 355, 674 P.2d 907, 909 (App. 1983) ("[T]rial by ambush is a tactic no longer countenanced in Arizona courts.") Disclosure "should fairly expose the facts and issues to be litigated, as well as the witnesses and exhibits to be relied upon." *Jimenez v. Wal-Mart Stores, Inc*., 206 Ariz. 424, 426 (App. Div. 2 2003).

Although this is a somewhat flexible standard, disclosures which only addresses issues "summarily" or generally are insufficient. *See Bryan v. Riddel*, 178 Ariz. 472, 477, 875 P.2d 131, 136 (Ariz. 1994) (finding disclosure statement did not contain sufficient detail to comply with the rule where it stated witnesses would testify about "all matters referred to in deposition" or "all matters in the complaint of which the witness has knowledge.")

Here, the bar has violated that rule by failing to disclosure any meaningful information regarding the testimony of the bar's primary witness – Judge Julie Mata. In the bar's initial disclosure statement, the ONLY disclosure provided regarding Judge Mata's testimony was generic in the extreme:

b. Honorable Julie Ann Mata
Maricopa County Superior Court
[redacted]
Phoenix, Arizona 85032
[redacted]

Testimony: Judge Mata is expected to testify regarding her rulings regarding David Gingras' attempt to enforce the restraining order against Marraccini, which would have precluded him from appearing at the June 10, 2024 hearing (after being subpoenaed by Clayton Echard's counsel); the adverse impact, if any, of David Gingras' public and social media posts about her; the various rulings in Maricopa County Superior Court No. FC2023-052114, and any other relevant matter regarding FC2023-052114, including her issuance of an order on February 21, 2024, restricting the disclosure of Laura Owens' medical records and May 21, 2024 order denying David Gingras' motion in limine.

Despite the fact the bar has charged Respondent with making knowingly false statements impugning Judge Mata's integrity, <u>nothing in the bar's disclosure identified *any* such false statements</u>, nor did the bar disclose any substance about exactly *how* or *why* anything Respondent said about Judge Mata was false.

To resolve that concern, Respondent met and conferred with bar counsel. In response, on March 11, 2026, bar counsel submitted a supplemental disclosure statement which contained the following additional information regarding Judge Mata's expected testimony:

> a. Honorable Julie Ann Mata
> Maricopa County Superior Court
> [redacted]
> Phoenix, Arizona 85032
> [redacted]
>
> **Testimony**: In addition to the previously disclosed anticipated testimony, it is anticipated that Judge Mata will testify that she (a) did not invite her father to attend the June 10, 2024 hearing "in support of a party," (b) did not engage in prohibited *ex parte* communications with her father, Harry Howe, regarding the *Owens v. Echard* case, (c) did not violate Laura Owens' rights, (d) did not violate Rule 2.9(a) of the Code of Judicial Conduct, (e) did not disregard her ethical duties, (f) would consider a motion to correct an inadvertent error in the final judgment in the *Owens v. Echard* case, (g) did not commit a crime, (h) does not consider Google to be a valid legal source of evidence, (i) did not engage in an act of retaliation against Respondent David Gingras by filing a frivolous bar charge against him, and (j) cares about the rules. Bar counsel is attempting to confirm whether Judge Mata will, in fact, testify as stated; Judge Mata is apparently represented—or will be represented—by a Maricopa County Attorney or Assistant Arizona Attorney General.

On its face, this disclosure contains nothing more than a "negative pregnant"; "i.e., a denial of the literal truth of the total statement, but not of its substance." *Vogel v. Felice*, 127 Cal.App.4th 1006, 1022 (Cal.App.6th Dist. 2005). It therefore violates Rule 58(e)(1)'s requirement that the bar disclose "a description of each witness' expected testimony …" because a bare denial of wrongdoing is *per se* insufficient to prove misconduct by Respondent.

Here, both sides have cited case law holding, in effect, although this is a disciplinary proceeding, a defamation-type standard applies to a lawyer accused of *falsely* impugning the integrity of a judge; "Attorneys who make statements impugning the integrity of a judge are, however, entitled to other First Amendment protections applicable in the defamation context. To begin with, attorneys may be sanctioned for impugning the integrity of a judge or the court only if their statements are false; truth is an absolute defense." *Standing Committee v. Yagman*, 55 F.3d 1430, 1438 (9th Cir. 1995); *In re Olin*, 2024 WL 6881775 (Cal. Bar Ct. 2024) (same); *In Re Green*, 11 P.3d 1078 (Colo 2000) (same).

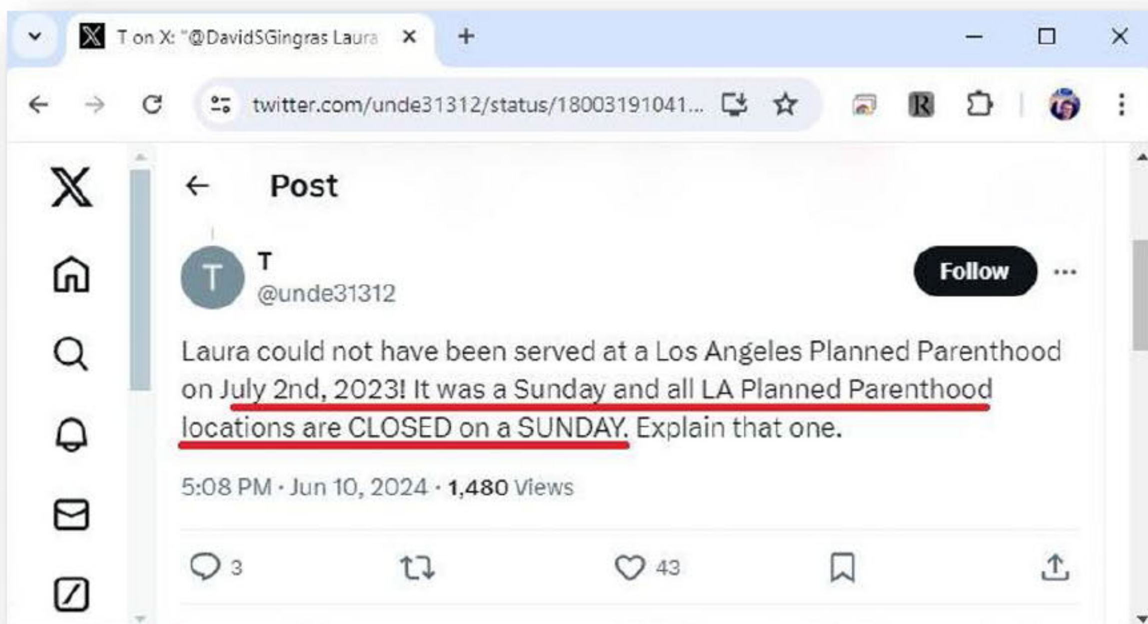
As the California Court of Appeal held in *Vogel*, a "negative pregnant" (meaning a bare denial of a statement's accuracy without any discussion of the substance) is not sufficient to prove a statement is *materially* false. Arizona applies the exact same standard. *See Sign Here Petitions LLC v. Chavez*, 243 Ariz. 99 (Ariz.App. 2017) (explaining, "In an action for defamation, the truth of the contents of ... [a] statement is a complete defense. To prove the truth, the defendant need not prove the literal truth of every detail, but must only prove that the statements are substantially true. Slight inaccuracies will not prevent a statement from being true in substance, as long as the 'gist' or 'sting' of the publication is justified.") (cleaned up) (quoting *Read v. Phoenix Newspapers, Inc.*, 169 Ariz. 353, 356–57, 819 P.2d 939, 942–43 (Ariz. 1991)).

Here, the only disclosure the bar has provided regarding Judge Mata's testimony is, in effect, that she denies the *literal* truth of anything Respondent has

said about her. But this does nothing to show the *substance* of anything Respondent said was false. As the Court of Appeal explained in *Vogel*, such evasiveness may be taken as an admission the underlying statements were *true*; "Vogel's failure to plainly refute the defamatory imputation by stating the true facts may be understood to imply that he did in fact continue to owe substantial amounts of unpaid child support." *Vogel*, 127 Cal.App.4th at 1022.

Here, one of the central issues in this case is this – Judge Mata issued a scathing minute entry order which contained a factual finding that was 100% false – i.e., that Dr. Samantha Deans "testified that Planned Parenthood is not open on Sundays, when Petitioner testified, she sought care July 2, 2023." RJN. Ex. 103 at 10. As reflected in the trial transcript (RJN Ex. 105 at pp. 75–137), Dr. Deans never said this, nor did any other trial witness.

In addition, as explained in Respondent's post-trial affidavit, the issue of Planned Parenthood's business hours was discussed extensively on social media after the trial ended. *See* RJN Ex. 105 at p. 36:



Thus, Judge Mata made a factual finding on a key issue by falsely claiming a witness testified about that issue when, in fact, the witness said no such thing. Furthermore, the issue (whether Planned Parenthood was open on Sunday) was discussed *extensively* on social media after the trial in *Owens* ended. Given those two undisputed facts, it does not take a rocket scientist to understand what occurred here – Judge Mata based her finding *not* on the evidence admitted at trial, but rather on *extra judicial* evidence obtained from an unknown source.

Despite making extremely serious allegations accusing Respondent of "lying" about Judge Mata's conduct, nothing in the state bar's disclosure discusses the substance of this issue in any way. Instead, the only disclosure the bar has provided on this issue is a bare denial by Judge Mata that she "did not violate Rule 2.9(a) of the Code of Judicial Conduct" (that rule provides, in relevant part, "Except as otherwise provided by law, a judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.") But the bar never answers the substance of the question – if Judge Mata did *not* learn about Planned Parenthood's business hours from witness testimony admitted at trial, then where did she get that information?

The bar's failure to address this core issue is inexcusable. Even worse, it appears the bar has disclosed information regarding Judge Mata's testimony *without actually knowing if this disclosure is accurate*. This is indicated by the extremely concerning caveat in the disclosure: "Bar counsel is attempting to confirm whether Judge Mata will, in fact, testify as stated …."

Absent some other explanation, that statement is an admission bar counsel violated Rule 11 by filing extremely serious charges of misconduct against Respondent without first performing a reasonable investigation into those claims. Either way, it is clear the state bar has failed to comply with its disclosure obligations under Supreme Court Rule 58 because it has failed to provide information regarding Judge Mata's actual testimony.

Given that the dispositive motion deadline in this case is only days away, Respondent respectfully asks the PDJ to find the state bar has willfully violated the rules. The appropriate sanction for that violation, pursuant Rule 58(f)(3)(A), is an order precluding the bar from calling Judge Mata as a witness.

In addition to this issue, a second matter has arisen which requires immediate resolution by the PDJ. Specifically, Respondent has disclosed bar counsel James D. Lee as a defense witness regarding multiple different issues. Despite this, Mr. Lee has refused to agree to a voluntary interview and has refused to agree to a deposition. This obstructionist conduct by Mr. Lee is a separate violation of the rules and should be immediately resolved by the PDJ.

Among other things, Mr. Lee spent nearly 18 months investigating this matter, and he is the sole complainant with respect to the charge in File No. 25-1230; a copy of which is attached hereto as <u>Exhibit A</u>. The *extensive* allegations in File No. 25-1230 concern issues that <u>Mr. Lee raised independently</u>, as the sole complaining witness.

For instance, one allegation in File No. 25-1230 is that Respondent "litigated a case (*In re Matter of Owens and Echard* ….) that "was not filed in good faith," was not "grounded in fact or based on law," and "was filed for an improper purpose." Mr. Lee is the complainant who raised those allegations. No other witness aside from Mr. Lee ever submitted a complaint to the bar making those allegations. And, of course, those allegations form part of the charges in this case. *See* Amended Complaint ¶¶ 178–184.

Beyond that discrete issue, File No. 25-1230 contains *extensive* other factual allegations which were raised solely by Mr. Lee, many of which form the specific charges in this case. Again, these are claims raised by Mr. Lee after he had already spent nearly a year investigating every aspect of *Owens v. Echard*.

Mr. Lee is the person who raised these allegations. As such, he is obligated to answer questions concerning the factual and legal bases for his claims.

In addition, Respondent's Answer raises multiple defenses which implicate the testimony of Mr. Lee. Specifically, Respondent has invoked the protection of A.R.S. § 12–751 which will require the dismissal of this action unless the bar can show its claims are "justified by clearly established law" and that the bar did not pursue this matter "in order to deter, prevent or retaliate against the moving party's exercise of constitutional rights." A.R.S. § 12–751(B)(1). As part of the latter showing, the Court must consider whether "the state actor has a consistent practice of pursuing similar legal actions against similarly situated persons who did not lawfully exercise constitutional rights." A.R.S. § 12–751(B)(1)(B).

Here, Respondent has disclosed Mr. Lee as a witness for the purpose of supporting his defense under A.R.S. § 12–751. Respondent claims Mr. Lee has knowledge this case was brought solely for the purpose of deterring, preventing, and retaliating against Respondent for his lawful exercise of his constitutional rights.

Mr. Lee has this knowledge because, among other things, this case represents the second time Mr. Lee has pursued frivolous disciplinary charges in retaliation against Respondent for his lawful exercise of his constitutional rights. Specifically, in 2022, Mr. Lee pursued a groundless disciplinary proceeding against Respondent in PDJ File No. 2022-9037.

In that case, Mr. Lee falsely accused Respondent of violating ER 4.2 by *assisting* a client with drafting a settlement offer which was then shared publicly by the client. After months of litigation, Mr. Lee eventually dropped the charges, claiming he lacked sufficient evidence to prove them.[1]

Here, it is clear Mr. Lee is a necessary witness, both with respect to affirmative allegations *he* has raised, and also with respect to Respondent's defenses. If the PDJ allowed Mr. Lee to withhold relevant testimony which is helpful to the defense, this would violate Respondent's right to due process. *See In*

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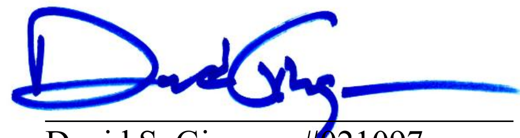
[1] In 2025, the bar petitioned the Arizona Supreme Court to add a comment to ER 4.2 which clarified the type of conduct Respondent committed does not violate ER 4.2. *See* https://www.azcourts.gov/Portals/0/20/2008-2025%20Rule%20Minutes-Orders/2025%20Rules/R-25-0033%20FinalRulesOrder.PDF?ver=zWP4voBVlnRFXl0jraHCRA%3d%3d (adding comment to ER 4.2 explaining, "a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make ….")

re Peasley, 208 Ariz. 27, 34 (Ariz. 2004) (explaining, "[P]rocedural due process in attorney disciplinary proceedings include[s] fair notice of the charges made and an opportunity for the accused to provide an explanation <u>and present a defense</u>.")

For those reasons, Respondent requests that the PDJ set a telephone conference to occur within the next five 5 days to discuss the issues raised above.

Respectfully submitted March 30, 2026.



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[redacted]
Phoenix, AZ 85044
Tel.: [redacted]
[redacted]
Respondent

CERTIFICATE OF GOOD FAITH

Pursuant to Supreme Court Rule 58(f)(3) Respondent certifies that he made a good faith effort to resolve this matter with State Bar counsel prior to filing the instant notice.

/s/ David S. Gingras

CERTIFICATE OF SERVICE

COPY of the foregoing emailed
this 30th day of March 2026 to:
Jim Lee
[redacted]
Craig Henley
[redacted]
Senior Bar Counsel