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** **REPLY IN SUPPORT OF RESPONDENT'S MOTION TO COMPEL RE: SUBPOENA TO JUDGE JULIE A. MATA**

I. INTRODUCTION

Let's be honest – one side in this case is telling the truth. One side is not. How does the Court know which side to believe?

Answering that question requires evidence. Respondent (who knows the answer) seeks evidence that will prove this point conclusively for the Court. That anyone involved in this process advocates concealing the truth is deeply disturbing. This Court should firmly reject that result.

Here is the real question – did a judge break the law and is she now fighting conceal her misconduct? We expect judges to hold themselves to the highest degree of ethical conduct. But history shows this is not always the case. Judges are human beings. Like everyone else, judges sometimes make mistakes.

That happened in *Reprimand of Judge B. Carlton Terry, Jr*, North Carolina Judicial Standards Commission Inquiry No. 08-234 (April 1, 2009) (a copy of which is attached as Exhibit A).[1] The facts of *Terry* are strikingly similar to the alleged misconduct of Judge Julie A. Mata in *Owens v. Echard*.

[1] Available at: https://www.nccourts.gov/assets/inline-files/Public-Reprimand-08-234-Terry.pdf

Like *Owens*, *Terry* involved a family court matter. The assigned judge (Hon. Carlton Terry) posted comments about the case on Facebook, and he also "used the internet site 'Google' to find information about [a party's] photography business." The judge also visited the website of a party and copied a poem from that party's website which he recited at trial.

Upon discovering these facts, a party moved to disqualify the judge, moved to vacate the judge's post-trial orders and moved to have the case reassigned. Those requests were granted in their entirety. The North Carolina Judicial Standards Commission publicly reprimanded Judge Terry for his conduct, finding he committed multiple violations of the Canons of Judicial Conduct, including by "conducting [an] independent *ex parte* online research about a party presently before the Court" and by having *ex parte* discussions about the case. The Commission found the judge's actions were "prejudicial to the administration of justice that brings the judicial office into disrepute."

Unfortunately, *Terry* is hardly an outlier.

Similar judicial misconduct occurred in *State v. Emanuel*, 159 Ariz. 464 (App. 1989). In that case, a judge assigned to a criminal matter personally investigated the facts by conducting *ex parte* witness interviews before sentencing the defendant. The Court of Appeals found the judge's actions violated the defendant's due process rights and the Code of Judicial Conduct, requiring automatic recusal of the judge and resentencing before a different judge. *See Emanuel*, 159 Ariz. at 469.

Many other examples exist of judges committing the same or similar acts of misconduct. *See*, *e.g.*, *Davis v. United States*, 567 A.2d 36, 42 (D.C.Cir. 1989) (reversing conviction and ordering new trial where judge asked a law clerk to investigate the facts of the case, and explaining, "under our system of laws, a judge is not an investigator; the investigative function belongs to the parties and their agents. Laudable goals and lofty purposes cannot be attained when the cost is the loss, or even the appearance of loss, of judicial impartiality.") (emphasis added) (citing *Kennedy v. Great Atlantic & Pacific Tea Co*., 551 F.2d 593, 596 (5th Cir. 1977) (reversing conviction and ordering new trial where the trial judge's law clerk personally visited the scene of the slip-and-fall accident, and clerk later testified about the outcome of his investigation; "It was unacceptable that the most damaging evidence against the defendants in this case was brought about by the intervention of a court official in the accumulation of evidence. . . . It was the law clerk's duty as much as that of the trial judge to avoid any contacts outside the record that might affect the outcome of the litigation[]" and further explaining, "the law clerk's 'private view of an accident in litigation' was a prohibited *ex parte* communication that violated Code of Judicial Conduct) (emphasis added); *State v. Dorsey*, 701 N.W.2d 238, 249-50 (Minn. 2005) (ordering a new trial after judge independently investigated facts of case; noting such conduct constitutes a *per se* violation of due process; "when a defendant has been deprived of an impartial judge, automatic reversal is required …. This deprivation constituted a structural error, which precludes harmless-error analysis ….") (emphasis added)

Here, following a short, two-hour evidentiary hearing in *Owens v. Echard* (an *exceptionally* high-profile case followed by thousands of people on social media and personally attended by the judge's own father), the trial judge, Julie A. Mata, issued a decision that contained a finding of fact which *everyone* concedes is 100% false. This issue is extremely important, so the finding in question is shown below (this order is Exhibit 103 to Respondent's Request for Judicial Notice at page 10):

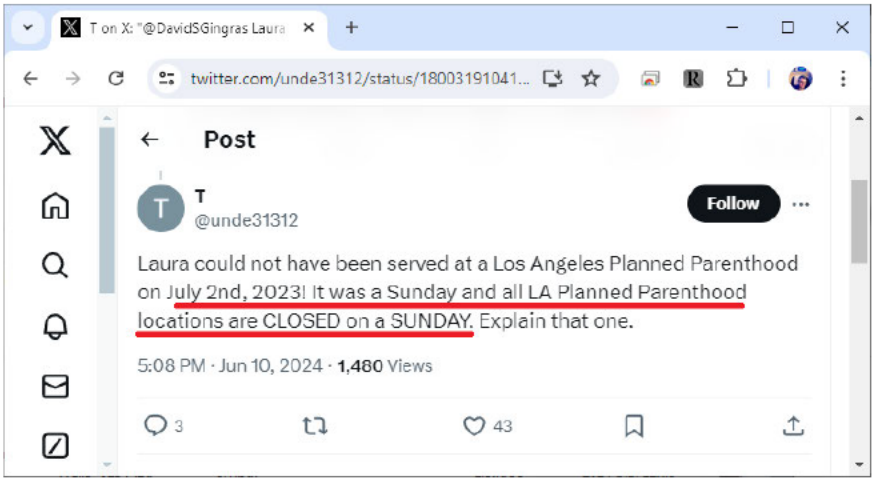
Samantha Deans, MD, MPH

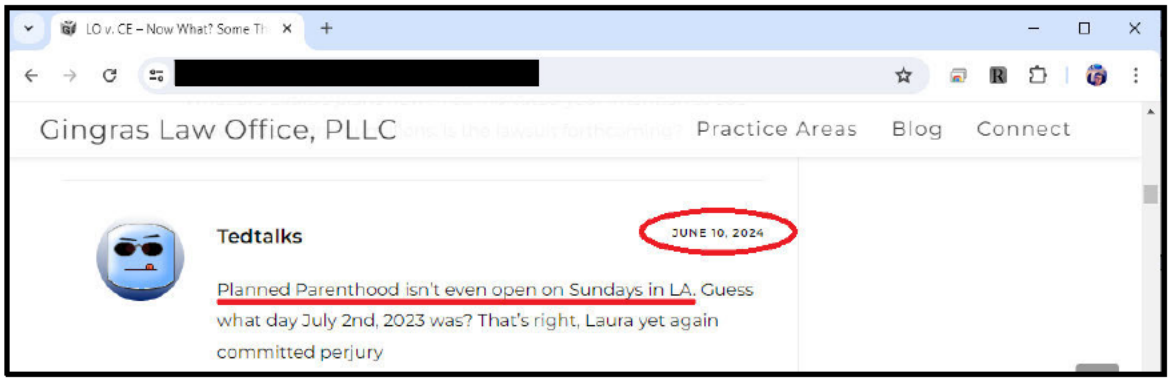
- Dr. Samantha Deans, MD, MPH, reviewed Petitioner's records and provided her analysis of the hCG results. (Ex. B. 39, 41). Additionally, she was the prior Associate Medical Director of Planned Parenthood in Florida, and Pennsylvania.
- She testified that Planned Parenthood does not accept anonymous patients. They do not accept patients using an alias. Patients are required to provide a government issued form of identification. She further testified that Planned Parenthood is not open on Sundays, when Petitioner testified, she sought care July 2, 2023.
- Dr. Deans testified that hCG does not confirm pregnancy. There must be serial hCG or an ultrasound and examination, which were never done, or never

The trial transcript shows[2] – beyond all question – the finding regarding the testimony of Dr. Deans was entirely false. Dr. Deans never testified about Planned Parenthood's business hours, nor did any other witness. That topic was simply never mentioned at trial. Not by any witness, any lawyer, the judge, or anyone else.

But the topic *was* discussed *extensively* on social media after the trial ended. Multiple examples of social media posts discussing Planned Parenthood's business hours were set forth in Respondent's Affidavit submitted in support of Ms. Owens' Notice of Change of Judge. *See* RJN Ex. 105 at p. 36 (shown next page):

[2] The complete trial transcript was attached as Exhibit 105 to Respondent's Request for Judicial Notice at pp. 75–212.





Based on these undisputed true facts, Respondent formed an opinion – Judge Mata's finding "Planned Parenthood is not open on Sundays" was not based on any admitted trial evidence. As such, the judge must have either personally reviewed social media posts (which were never admitted at trial, since they were not posted until after the trial ended), or she spoke with someone (possibly her father) who shared that information with her. Understandably concerned, Respondent reported the matter to the Commission on Judicial Conduct (as occurred in *Terry*).

After more than seven months of investigation, the CJC closed the case, claiming "clear and convincing evidence did not show judicial misconduct." Of course, the CJC and Judge Mata have fought vigorously to conceal all evidence that allegedly supported that result.

If the CJC had information showing Judge Mata *did not* engage in misconduct, why would either the CJC or Judge Mata fight to prevent the release of that information? The answer is simple and obvious – because the information *does not* exonerate Judge Mata.

Only the CJC and Judge Mata know what information is being withheld, so at this point Respondent must resort to mild speculation, but the answer seems fairly clear – the CJC's own rules (and the Code of Judicial Conduct itself) explain not every act of misconduct will result in discipline:

> The black letter of the rules is binding and enforceable. It is not intended, however, that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the rules and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

Code of Judicial Conduct, *Introduction* at 2 (emphasis added).[3]

Here, there is clear and convincing evidence of misconduct. Indeed, the evidence is literally undisputed – Judge Mata made a finding of fact that was 100% false. This was not a simple typographical error or good faith confusion about which witness made the statement. It is undisputed no trial witness testified about Planned Parenthood's business hours. It is also undisputed this point was discussed extensively on social media after the trial ended.

[3] Available at: https://azcjc.azcourts.gov/Portals/5/137/rules/2025%20Code%20of%20Judicial%20Conduct.pdf

Given those facts, there is only one reasonable explanation for what happened: the Commission on Judicial Conduct reviewed the evidence (including a written response submitted by Judge Mata). The Commission concluded the evidence DID show Judge Mata engaged in misconduct (exactly as Respondent has alleged). Yet for whatever reason, the Commission chose to exercise its discretion not to impose discipline (as the Code allows).

Perhaps that decision was based on the fact Judge Mata was appointed to the bench in September 2020. She had only been a judge for less than four years when the trial in *Owens* occurred. Perhaps some other reason, personal or political, may have convinced the CJC not to impose discipline.

Whatever those reasons may be are irrelevant. Judge Mata cannot lawfully withhold relevant, non-privileged evidence simply to avoid embarrassment. The state bar has filed extremely serious charges against Respondent, accusing him of lying about Judge Mata's conduct. If those allegations are true, of course Respondent deserves punishment.

But the bar's allegations are not true. They are, in fact, completely false. Respondent did not lie about the fact Judge Mata issued a decision that contains a materially false finding. Respondent did not lie about the fact this false finding was discussed extensively on social media. The bar does not dispute either of those points. But for reasons unknown, the bar still accuses Respondent of lying about some aspect of Judge Mata's integrity (despite the fact the bar has disclosed no evidence whatsoever to support that allegation).

The subpoena Respondent served on Judge Mata bears directly on the issue of truth. As Respondent has explained before, the U.S. Supreme Court has *unanimously* agreed that the public's faith and trust in the judicial system requires that cases be decided based on *all relevant facts*, even if those facts are harmful to a person in power:

> 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 ….

United States v. Nixon, 418 U.S. 683, 709 (1974) (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)).

The law is clear – Respondent is entitled to obtain all relevant, non-privileged evidence. *See* Ariz. R. Civ. P. 26(b). The subpoena served on Judge Mata seeks nothing more than relevant, non-privileged evidence.

This Court is bound by these rules. Thus, the Court has only one choice – it must grant Respondent's Motion to Compel and deny Judge Mata's Motion to Quash so the truth may finally come to light.

II. DISCUSSION

A. Judge Mata Raises No Valid Objections

a. The Motion To Compel Is Not Premature

As a starting point, Judge Mata argues Respondent's Motion to Compel is "premature" because she "has not failed to comply with any court orders, nor has Judge Mata indicated that she will do so." In other words, Judge Mata appears to contend a party may *only* move to compel *after* a Court has ordered compliance. Thus, "Until Judge Mata refuses to obey a lawful court order, a motion to compel is not ripe for consideration." Opp. at 2:22–3:2.

This argument is groundless.

The controlling rule is Civil Procedure Rule 37(a)(3)(B)(v) which states: "A party seeking discovery may move for an order compelling an answer, designation, production, or inspection if … a person fails to produce materials requested in a subpoena served under Rule 45." (emphasis added). Also relevant is Civil Procedure Rule 45(c)(6)(B) (entitled "*Procedure After Objecting*"). Rule 45(c)(6)(B)(ii) provides if a witness objects to a subpoena (as Judge Mata did): "The party serving the subpoena may move under Rule 37(a) to compel compliance with the subpoena."

Both Rules permit Respondent to move to compel. There is no requirement that the Court must *order* compliance before such a motion may be brought. This first aspect of Judge Mata's objection has no merit.

b. Respondent's Subpoena Does NOT Seek Any Privileged Information Because *Ex Parte* Communications Are *Per Se* Excluded From Protection

While furiously invoking "judicial thought privilege", Judge Mata ignores the fact Respondent's subpoena does not seek any information that would even arguably fall within the narrow scope of that privilege. As a starting point, Judge Mata does not cite any Arizona authority that specifically recognizes "judicial thought privilege" (also sometimes referred to as a "mental process privilege"). However, citing various cases from outside Arizona, the Arizona Supreme Court alluded to the privilege in *In Re Aubuchon*, 233 Ariz. 72 (Ariz. 2013), and Respondent agrees such a privilege generally exists.

However, this narrow privilege *never* applies to a judge's *ex parte* communications (which is *precisely* what Respondent's subpoena seeks to expose). The reasoning behind that conclusion is explained in an *extremely* helpful case, *Commonwealth v. McClure*, 172 A.3d 668 (Pa.Super.Ct. 2017).

McClure was a criminal appeal where the defendant claimed the trial judge (Hon. Bradley P. Lunsford) violated her due process rights by engaging in *ex parte* conversations with prosecutors. To prove that claim, the defendant obtained a subpoena which required Judge Lunsford to produce certain documents including:

> [A]ny and all correspondence, writings, text messages, emails, letters, summaries, statements, admissions, acknowledgments, or any other document or thing relating to any criminal cases where discussions occurred with the District Attorney's office, when the defendant[s] or defense counsel were not copied or included in that communication ….

McClure, 172 A.3d at 679.

After receiving the subpoena, Judge Lunsford moved to quash, arguing judicial privilege. The trial judge *denied* the motion. Judge Lunsford immediately appealed.

The Court of Appeals issued a lengthy, extremely detailed decision analyzing judicial thought privilege. As an initial point, it noted: "Our courts have long recognized that judges may not be compelled to testify regarding their thought processes in reaching official judgments." *McClure*, 172 A.3d at 686.

BUT, the Court of Appeals explained judicial privilege does not, by definition, protect a judge's *ex parte* communications with others:

> McClure's subpoena directs former Judge Lunsford to produce copies of any *ex parte* communications between him and the Centre County prosecutors at the time of this case. She also seeks to have him testify about such communications. We hold that the privilege does not protect such documents or information from disclosure.
>
> Courts around the country generally agree that material *ex parte* communications are improper in any case. They can extraneously influence decisions by introducing information outside the court record, and can do so unfairly because the communications are not shared with all participants. *Ex parte* communications thus are widely forbidden as a matter of procedure, due process, and ethics, as they deprive a litigant of the right to a fair trial before an impartial tribunal. In Pennsylvania, judges are prohibited from receiving *ex parte* communications by the Code of Judicial Conduct, and lawyers are prohibited from sending *ex parte* communications to a judge by the Rules of Professional Conduct. Accordingly, in seeking to determine whether such forbidden communications took place in this case, **McClure is not invading a part of the judicial process that deserves privileged protection**.

Id. at 688–89 (emphasis added) (cleaned up) (citing/quoting *Rho–Sigma, Inc. v. Int'l Control & Measurements, Corp*., 691 So.2d 16, 17 (Fla. Dist. Ct. App. 1997) (per

curiam); *Matter of Marek*, 609 N.E.2d 419, 420 (Ind. 1993) (per curiam); *In re Conduct of Burrows*, 291 Or. 135, 629 P.2d 820, 826 (1981) (en banc); *United States v. Barnwell*, 477 F.3d 844, 854 (6th Cir. 2007); *Yohn v. Love*, 76 F.3d 508, 516–17 (3d Cir. 1996); *Abdygapparova v. State*, 243 S.W.3d 191 (Tex. App. 2007)).

Other courts agree with *McClure*. For instance, in *In re Enforcement of Subpoena*, 463 Mass. 162 (Mass. 2012) the Supreme Court of Massachusetts considered a situation almost identical to this case. There, a lawyer filed a complaint accusing a judge of bias. A subpoena was then issued to the judge which demanded certain documents.

As a matter of first impression, the Massachusetts Supreme Court recognized the existence of judicial thought privilege. The Court then agreed with *McClure*, finding the privilege is narrow, and it does not apply to a judge's *ex parte* communications with third parties:

> Nor does the privilege apply to inquiries into whether a judge was subjected to improper "extraneous influences" or *ex parte* communications during the deliberative process. **By definition**, such influences and communications lie outside the protected sphere of the judge's internal deliberations.

In re Enforcement of Subpoena, 463 Mass. at 1033 (emphasis added).

In addition, the Supreme Court concluded the privilege does not apply when a judge is deemed a necessary witness in a later legal proceeding: "the privilege does not apply when a judge is a witness to or was personally involved in a circumstance that later becomes the focus of a legal proceeding." *Id*.

This is *precisely* the case here. Respondent's subpoena to Judge Mata asked her to produce five categories of documents. Judge Mata indicated she has no documents responsive to the fourth and fifth categories, so those are not implicated by this motion.

As for the other three categories, those requests only seek documents Judge Mata has sent to or received from third parties, including her father and the Commission on Judicial Conduct. Exactly as the court held in *McClure*, by definition, judicial thought privilege cannot and does not protect Judge Mata's communications with third parties.

Because Respondent's subpoena seeks only documents which are *by definition* non-privileged, Judge Mata's privilege objection has no merit.

c. Any Judicial Privilege Has Been Implicitly Waived

Because no privilege applies to any documents Respondent is seeking, it is not necessary to decide whether the privilege was waived. But as Respondent's initial motion explained, Judge Mata *implicitly* waived the privilege by speaking with bar counsel and by providing information which the bar intends to use as a sword against Respondent. This presents a textbook example of waiver simply because it would be so patently unfair to allow Judge Mata to provide *favorable* testimony to the bar while simultaneously allowing her to refuse to give information that would be favorable to Respondent.

Hoping to put the toothpaste back into the tube, Judge Mata cites *Robert W. Baird & Co. v. Whitten*, 244 Ariz. 121 (Ariz.App. 2017) for the principle that

"[w]aiver much be a knowing and voluntary relinquishment." That case involved an issue of attorney/client privilege (not judicial thought privilege). Due to the extremely unique facts of the case, "in which a malpractice defendant represented the plaintiff in an initial transaction, and later sought to discover, based on its defenses, privileged information related to the plaintiff's representation by separate counsel in litigation arising from the transaction[]", 244 Ariz. at 126, the Court of Appeals found the privilege was *not* waived.

That finding was based on the fact the privileged information was *not* placed in dispute by the privilege holder. At the same time, the Court of Appeals clearly explained: "Waiver occurs only when the party seeks to use protected information as both sword and shield. The touchstone for implied waiver is whether the protected information is inherently relevant to the privilege-holder's theory of the case." *Baird*, 244 Ariz. at 127 (emphasis added).

Here, even assuming Respondent was seeking information covered by judicial thought privilege, Judge Mata (the holder of that privilege) implicitly waived it when she spoke with bar counsel in an effort to support the bar's quest for punishment. As noted before, bar counsel had a Rule 11 obligation to investigate the facts of this case *before* the Complaint was filed. Such an investigation must have included interviewing Judge Mata to determine whether Respondent's criticism of her was false.

In that situation, Judge Mata waived any privilege that would otherwise have applied, because she chose to voluntarily disclose information to the bar. *See Phelan*

v. Thompson, 161 F.R.D. 7, 8 (D.N.H. 1994) (recognizing judicial thought privilege, but concluding, "a judge may elect to waive his judicial privilege and 'be a competent witness to prove all that occurred before him ….'") (emphasis added) (quoting *Gelinas v. Metropolitan Property & Liability Insurance Company*, 131 N.H. 154, 551 A.2d 962 (1988)); *see also Di Lapi v. City of New York*, 2012 WL 37576, *5–6 (E.D.N.Y. 2012) (holding "the mental process privilege can, like the deliberative process or executive privileges, be waived…" and holding waiver occurred where judicial officer disclosed otherwise protected information to third parties).

To the extent she addresses this issue at all, Judge Mata suggests judicial privilege is "absolute" in the same sense as a different form of privilege – *litigation privilege*. Apparently, Judge Mata argues an "absolute" litigation privilege means the judicial privilege is non-waivable. This argument is not well-taken.

Arizona law recognizes statements made during litigation are protected by an *absolute* privilege, known as "litigation privilege". This privilege means a lawyer or a witness cannot be sued for defamation based on statements made in court, or in pre-litigation correspondence. *See generally Green Acres Trust v. London*, 141 Ariz. 609 (Ariz. 1984). This privilege is "absolute" in the sense that as long as a statement is made within the scope of litigation, the statement is protected regardless of whether the speaker knew it was true or false; "The [litigation] privilege protects judges, parties, lawyers, witnesses and jurors. The defense is absolute in that the

speaker's motive, purpose or reasonableness in uttering a false statement do not affect the defense." *Green Acres*, 141 Ariz. at 613.

But even the "absolute" nature of litigation privilege has limits. For instance, the privilege does not apply to statements made to the media (even when it concerns pending litigation); "publication to the news media lacks a sufficient relationship to judicial proceedings, it should not be protected by an absolute privilege." *Id*. at 614.

Here, even assuming judicial thought privilege is "absolute" in the same way as litigation privilege, that argument does not help Judge Mata. By disclosing helpful information to the state bar, Judge Mata waived any privilege that would otherwise have applied. But as noted above, literally none of the information requested by Respondent's subpoena falls within the privilege.

d. Judge Mata's "Independent Corroboration" Argument Is Frivolous

The final point Judge Mata raises is one of the most troubling, because it appears to be intentionally and actively deceptive. On pages 4–5 of her pleading, Judge Mata argues the subpoena seeks information which is not necessary because "The Bar Complaint Alleges Behavior Which Can Be Independently Corroborated".

Judge Mata then lists several issues which she raised in her initial complaint to the bar, such as the fact Respondent made a 9-1-1 call to have a witness arrested, and that Respondent engaged in "apparent signaling to his client during her trial testimony." There are two serious problems with this argument.

First, fully half of the issues Judge Mata raised in her complaint to the bar were not found to be supported by probable cause and were never submitted to the Disciplinary Committee. Those matters (such as the alleged "signaling" by Respondent to Ms. Owens) are not mentioned anywhere in either the original or amended complaints filed in this matter. Thus, Respondent is not seeking evidence to defend against those allegations because they are not part of this case.

What IS part of this case is the bar's claim Respondent made false statements accusing Judge Mata of specific acts of misconduct. That issue involves matters which *cannot be independently corroborated*, at least not without evidence that is solely in the possession of Judge Mata and her father.

Respondent's subpoena seeks evidence that is relevant, non-privileged, and which is not available from any other source. The fact that there may be *other* issues in this case which are *not* affected by the information sought in the subpoena does not nothing to change the need for the immediate production of this evidence.

III. CONCLUSION

Judge Mata's objection and her Motion to Quash raise no valid arguments which warrant relief. Her Motion to Quash should be denied, and Respondent's Motion to Compel should be granted.

Respectfully submitted April 1, 2026.

David S. Gingras

CERTIFICATE OF SERVICE

COPY of the foregoing emailed
April 1, 2026 to:
Jim Lee
[redacted]
Craig Henley
[redacted]
Senior Bar Counsel

Pamela Peiser
[redacted]
Attorney for Judge Julie Mata

Exhibit A

BEFORE THE

JUDICIAL STANDARDS COMMISSION

INQUIRY NO. 08-234

PUBLIC REPRIMAND

B. CARLTON TERRY, JR.

DISTRICT COURT JUDGE

JUDICIAL DISTRICT 22

This matter came to the attention of the Judicial Standards Commission by a written complaint filed with the Commission. A formal investigation was ordered by the Commission and conducted by the Commission's investigator. During its meeting on February 13, 2009, the Commission completed its review of the investigative report prepared in this matter. The Commission caused a copy of this Public Reprimand to be personally served upon Judge B. Carlton Terry, Jr. In accordance with Rule 11(b) of the Rules of the Judicial Standards Commission, a judge has 20 days within which to accept the Public Reprimand or to reject it and demand, in writing, that disciplinary proceedings be instituted in accordance with Rule 12 of the Rules of the Judicial Standards Commission.

Findings of Fact

1. B. Carlton Terry, Jr., was at all times referred to herein a judge of the General Court of Justice, District Court Division, Judicial District Twenty-two and, as such was subject to the Canons of the North Carolina Code of Judicial Conduct, the laws of the State of North Carolina, and the provisions of the oath of office for a district court judge as set forth in the North Carolina General Statutes, Chapter 11.

2. Beginning Tuesday, September 9, 2008 and continuing through Friday September 12, 2008, Judge Terry presided over a child custody and child support hearing in the matter

of Whitley vs. Whitley, Iredell County File No. 07CVD0008.

3. On or about September 9, 2008, while in the judge's chambers, Judge Terry and Charles A. Schieck, attorney for Mr. Sterling Whitley, the defendant in the proceeding, spoke about "Facebook", a internet social networking website. Jessie Conley, attorney for Mrs. Renee Whitley, the plaintiff in the proceeding, was present during the discussion but stated she did not know what "Facebook" was, and that she did not have time for it. Judge Terry and Mr. Schieck designated themselves as "friends" on their "Facebook" accounts so that they could view each other's account.

4. During an in chambers meeting on or about Wednesday September 10, 2008, Judge Terry, Shieck and Conley were reviewing prior testimony that suggested one of the parties had been having an affair. Schieck asked Judge Terry if he thought Mr. Whitley was guilty of having an affair. Judge Terry stated he believed the allegations were true due to evidence introduced by Conley, but that it did not make any difference in the custody dispute. It was at this time Schieck stated "I will have to see if I can prove a negative".

5. On or about the evening of September 10, 2008, Judge Terry checked Schieck's "Facebook" account and saw where Schieck had posted "how do I prove a negative". Judge Terry posted on his "Facebook" account, he had "two good parents to choose from" and "Terry feels that he will be back in court" referring to the case not being settled. Schieck then posted on his "Facebook" account, "I have a wise Judge".

6. During a break in the proceedings on September 11, 2008, Judge Terry told Conley about the September 10, 2008 exchanges on "Facebook" between Schieck and himself.

7. On or about September 11, 2008, Judge Terry wrote on his "Facebook" account, "he was in his last day of trial". Schieck then wrote "I hope I'm in my last day of trial." Judge Terry responded stating "you are in your last day of trial".

8. Sometime on or about September 9, 2008, Judge Terry used the internet site "Google" to find information about Mrs. Whitley's photography business. Judge Terry stated he wanted to see examples of Mrs. Whitley's photography work. Upon visiting Mrs. Whitley's web site, Judge Terry stated he viewed samples of photographs taken by Mrs. Whitley and also found numerous poems that he enjoyed.

9. When court reconvened at approximately 2:00 p.m. on September 12, 2008, prior to the

to announcing his findings in the case, Judge Terry recited a poem, to which he had made minor changes, that he found on Mrs. Whitley's web site.

10. Judge Terry told the Commission's investigator he quoted the poem because it gave him "hope for the kids and showed that Mrs. Whitley was not as bitter as he first thought". Judge Terry stated that he felt the poem reflected favorably towards Mrs. Whitley.

11. Judge Terry acknowledge he accessed Mrs. Whitley's photography web site on the first two days of trial and stated he may have accessed the site on the last day of trial to copy the poem. Judge Terry could not recall exactly how many times he visited the site but stated that four times was very possible.

12. Judge Terry never disclosed to counsel or the parties at any time during the four days of trial that he had conducted independent research on Mrs. Whitley or had visited any web site belonging to Mrs. Whitley.

13. Following the conclusion of the hearing and after having orally entered his order, Judge Terry requested a bailiff to summon Conley and Schieck to return to the courtroom, whereupon Judge Terry disclosed his actions of having viewed Mrs. Whitley's web site and quoting a poem he found thereon.

14. Conley filed a Motion in the Cause on October 2, 2008, whereby she requested a) Judge Terry's order be vacated, b) a new trial, and c) Judge Terry's disqualification.

15. Judge Terry disqualified himself by Order filed October 14, 2008.

16. Judge Terry's Child Custody and Child Support Order was vacated and an order for a new trial entered on October 22, 2008.

17. Judge Terry cooperated fully with the investigation.

Conclusions

Judge Terry had ex parte communications with counsel for a party in a matter being tried before him. Judge Terry was also influenced by information he independently gathered by viewing a party's web site while the party's hearing was ongoing, even though the contents of the web site were never offered as nor entered into evidence during the hearing. Judge Terry's actions described above evidence a disregard of the principles of conduct embodied in the North

Carolina Code of Judicial Conduct, including failure to personally observe appropriate standards of conduct to ensure that the integrity and independence of the judiciary shall be preserved (Canon 1), failure to respect and comply with the law (Canon 2A), failure to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Canon 2A), engaging in *ex parte* communication with counsel and conducting independent *ex parte* online research about a party presently before the Court (Canon 3A(4)). Judge Terry's actions constitute conduct prejudicial to the administration of justice that brings the judicial office into disrepute (N.C. Const. art IV, § 17 and N.C.G.S. § 7A-376(a)).

Corrective Action and Acceptance of Terms

Judge Terry agrees that he will not repeat such conduct in the future, mindful of the potential threat any repetition of his conduct poses to public confidence in the integrity and impartiality of the judiciary and to the administration of justice.

Judge Terry agrees he will promptly read and familiarize himself with the Code of Judicial Conduct.

Judge Terry further agrees that he will not retaliate against any person known or suspected to have cooperated with the Commission, or otherwise associated with this matter.

Judge Terry affirms he has consulted with, or had the opportunity to consult with counsel prior to acceptance of this Public Reprimand.

I, B. Carlton Terry, Jr., hereby accept the terms contained in this Public Reprimand this the __25__ day of _____March_____, 2009.

ORIGINAL SIGNED BY

_____

B. Carlton Terry, Jr.

ORDER OF PUBLIC REPRIMAND

Now therefore, pursuant to the Constitution of North Carolina, Article IV, Section 17, the procedures prescribed by the North Carolina General Assembly in the North Carolina General Statutes, Chapter 7A, Article 30, and Rule 11(b) of the Rules of the Judicial Standards Commission, the North Carolina Judicial Standards Commission, hereby orders that B. Carlton

Terry, Jr., be and is hereby PUBLICLY REPRIMANDED for the above set forth violations of the Code of Judicial Conduct. Judge Terry shall not engage in such conduct in the future and shall fulfill all of the terms of this Public Reprimand as set forth herein.

Dated this the __1st__ day of_____April_____, 2009.

ORIGINAL SIGNED BY

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John C. Martin, Chairman
Judicial Standards Commission