SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE 1300 Broadway, Suite 250 Denver, Colorado 80203	**FILED** December 18, 2023 **Presiding Disciplinary Judge** **Colorado Supreme Court**
Complainant: THE PEOPLE OF THE STATE OF COLORADO Respondent: LINDA STANLEY, #45298	**COURT USE ONLY**
Steven Jensen, Attorney at Law Steven Lawrence Jensen 27483 Silver Spur Street Steamboat Springs, Colorado, 80487 Phone Number: (303)886-4351 FAX Number: E-mail: jensen.guziak@comcast.net Attorney Reg. #14141	Case Number: 23PDJ041

ANSWER TO COMPAINT

Comes now Steven Lawrence Jensen, Attorney at Law, legal counsel for the Respondent, Linda Stanley, and files an Answer to the Complaint filed by Regulation Counsel, and answers as follows:

1. On October 30, 2023, Regulation Counsel filed a Complaint and Citation against the Respondent, District Attorney Linda Stanley.

2. Presiding Disciplinary Judge Byron Large entered an order on November 20, 2023, granting Respondent until December 18, 2023, to file an answer to the Complaint.

3. **Complaint heading: Jurisdiction** (averments 1 and 2)

   The Respondent admits averment 1 stating, "The Respondent has taken and subscribed the oath of admission, was admitted to the bar of this Court on October 29, 2012, and is registered upon the official records of this Court, registration no. 45298."

   The Respondent generally admits **averment 2** stating, "Respondent is subject to the jurisdiction of this Court in these disciplinary proceedings. The Respondent's registered business address is 136 Justice Center Road, Suite 203, Canon City, Colorado 81212." However, to the extent that there are certain claims of Regulation Counsel that are beyond the scope and authority of Regulation Counsel to regulate because they involve a violation of principles of separation of powers and interfere with the prerogatives of the executive branch of government, the Respondent denies jurisdiction to regulate those

matters. The Respondent will articulate when such claims arise and explain such challenges to jurisdiction.

4. **Complaint heading: General Allegations** (averments 3-16)

The Respondent admits **averment 3** stating, "Respondent is the elected District Attorney for the 11th Judicial District, which includes Fremont, Chaffee, Park and Custer Counties."

The Respondent admits **averment 4** stating, "Respondent won her campaign for District Attorney in November 2020, and took office on January 12, 2021."

The Respondent generally admits **averment 5** stating, "Months prior to her election, on May 10, 2020, Suzanne Morphew disappeared and a massive search and rescue effort ensued along with a potential criminal investigation involving the FBI and CBI." However, this statement is incomplete in that it fails to state that the investigation also involved many other law enforcement agencies and the District Attorney's office.

The Respondent generally admits **averment 6** stating, "The Chaffee County Sheriff's Office and other law enforcement executed hundreds of search warrants, and a massive amount of electronic data was collected."

Specifically, the Respondent admits that search warrants and electronic data was collected. However, the Respondent has not counted the number of warrants or quantified the amount of electronic data collected, so does not know if the characterization of "hundred" and "massive" are correct.

The Respondent generally admits **averment 7** stating, "The Morphew case was highly publicized and hundreds of community members participated in their own searches for Suzanne Morphew."

Specifically, the Responded agrees that the case was highly publicized and community members participated in searches. However, the Respondent has no knowledge of the number of community members who participated in their own searches for Suzanne Morphew.

The Respondent admits **averment 8** stating, "Respondent was aware of the Suzanne Morphew investigation prior to becoming District Attorney on January 12, 2021."

The Respondent did not have any specific knowledge as to what was going on in the investigation prior to taking office. She only knew that Suzanne Morphew was missing, and that law enforcement was investigating the matter. In essence, just the same information the general public knew.

The Respondent generally admits **averment 9** stating, "Respondent met with law enforcement regarding the ongoing Morphew investigation on January 22, 2021, in a meeting that included Alex Walker, Joseph Cahill, Robin Burgess, and Deputy District Attorney ("DDA") Jeff Lindsey."

The Respondent does not recall the exact date of the meeting and believes there were more people at the meeting than those listed in the averment.

The Respondent admits **averment 10** stating, "As of January 2021, no charges had been filed related to Suzanne Morphew's disappearance."

The Respondent denies **averment 11** stating, "Respondent assigned Lindsey to be lead prosecutor on the Morphew investigation."

The Respondent did not assign Mr. Lindsey to be "lead prosecutor." He wanted to be in Chaffee County and handling felony cases. This was a felony case in Chaffee County that was part of his assigned cases.

Additionally, the Respondent denies that Regulation Counsel has the authority to regulate or question the personnel decisions of the Respondent, who is the elected District Attorney for the 11th Judicial District, which is part of the executive branch of the government of the State of Colorado.

The Respondent generally admits **averment 12** stating, "Respondent also assigned Lindsey the entire Chaffee County felony docket, in addition to handling the Morphew investigation."

The characterization concerning Deputy DA Lindsey's assignment is incorrect. He was assigned the Chaffee County felony docket, and the Morphew case was a felony case investigation in Chaffee County. To the extent the statement implies that the Respondent was somehow piling on Deputy DA Lindsey too much work , the Respondent denies the averment. To the extent that the averment suggests that Deputy DA Linsey was solely tasked with handling the Morphew investigation, the Respondent denies the averment.

The Respondent denies that Regulation Counsel has the authority to regulate or question the personnel decisions of the Respondent, who is the elected District Attorney for the 11th Judicial District, which is part of the executive branch of the government of the State of Colorado.

The Respondent generally admits **averment 13** stating, "On April 30 and May 3, 2021, Walker emailed Respondent and DDA Lindsey an amended draft Affidavit for Arrest Warrant for Barry Morphew."

The Respondent does not know the exact dates of emailed or other communications with Walker, or the number of communications concerning the draft affidavit. The Respondent acknowledges that such communications took place before a final version of the Affidavit for Arrest was approved.

The Respondent generally admits **averment 14** stating, "On May 5, 2021, Walker submitted an Affidavit in Support of Arrest to the court, seeking a warrant with a no bond hold of Barry Morphew for first degree murder of his wife, Suzanne Morphew.

The Respondent believes the Affidavit for Arrest was submitted on May 4.

The Respondent generally admits **averment 15** stating, "Judge Patrick Murphy found that there was probable cause to arrest Barry Morphew and signed arrest warrant the same day."

However, the Respondent believes the warrant was presented to Judge Murphy late on the afternoon of May 4, and that he stayed late to review it. The Respondent believes she was notified late on the evening of May 4th that the arrest warrant had been signed. Barry Morphew was then arrested on May 5, 2021.

The Respondent generally admits **averment 16** stating, "On May 18, 2021, Respondent and DDA Lindsey filed a 'Complaint and Information' which lists the official charges against Barry Morphew as: one count of first degree murder, one count of tampering with a deceased human body, one count of tampering with physical evidence, possession of a dangerous weapon, and one count of attempt to influence a public servant."

Deputy DA Lindsey filed the Complaint and Information in question. As with all documents filed by the District Attorney's Office for the 11th Judicial District, the name of the elected District Attorney appeared on the complaint.

5. **Complaint heading: Respondent's Statements to Press and Influencers Start Early and Continue** (averements 17-26)

The Respondent denies the above unnumbered characterization. It is argumentative and inaccurate.

The Respondent admits **averment 17** stating, "From April 2021 to August 2022, Respondent was in contact via text messaging with Mike King, host of the "Profiling Evil" YouTube channel."

The Respondent is without knowledge or information sufficient to form a belief as to the truth of **averment 18** stating, "Mike King is part of global network of "true crime" podcasters and influencers", but admits that "his YouTube channel discussing 'true crime' is called 'Profiling Evil'."

The Respondent denies **averment 19** stating, "Respondent frequently updated King and responded to his requests for information about the Morphew case."

The Respondent admits **averment 20** stating, "On May 3, 2021, Respondent exchanged text messages and had a phone call with King regarding the Morphew case."

To the extent that there is any implication that there was anything improper in the communications referenced in the averment, the Respondent denies the averment.

The Respondent generally admits **averment 21** stating, "On May 5, 2021, the same day Walker submitted an arrest affidavit to the court for Morphew's arrest, Respondent attended a press conference along with Sheriff John Spezze."

The Respondent believes that May 4, 2021, was the day Walker submitted the arrest warrant, but acknowledges that the press conference took place on May 5, 2021.

By way of supplementation, Respondent indicates that she did not call said press conference, nor did she desire to attend it, but ultimately did attend it after being strongly encouraged to do so by the Public Information officer for the Colorado Bureau of Investigation. Respondent was not seeking the expansion of publicity relating to this matter but decided to participate in order to comply with her perceived obligations as an elected District Attorney to keep the public informed as to a criminal case in her judicial district.

The Respondent admits **averment 22** stating, "In response to a question about whether Morphew was cooperating with the investigation and whether Morphew was asked if he knew where the body was, Respondent told the media,

He was taken into custody and when asked questions he said he wanted a lawyer and all questioning ended."

The Respondent admits **averment 23** stating, "On May 15, 2021, when Mike King of "Profiling Evil" texted Respondent asking her for more information about the short rifle Barry Morphew allegedly used to kill Suzanne Morphew, as had been identified in the Complaint, Respondent replied, "Um, I will see what I can do. Only because it's you, Mike."

The Respondent admits **averment 24** stating, "When King texted Respondent and asked her if perhaps Mr. Morphew strangled Suzanne in the hot tub, Respondent replied, "We know it wasn't bloody. The hot tub was drained with 'crust' around the drain areas indicating it had not been used in a long time. But keep on spinning ideas in your brain!"

The Respondent admits **averment 25** stating, "When King texted Respondent and asked her about Suzanne Morphew's car keys, Respondent replied, "We think she always left her purse in the car."

The Respondent admits **averment 26** stating, "In June 2021, when King texted Respondent to comment about a new video on Barry Morphew, Respondent replied, "I'm great! Thanks!! We got him. No worries."

6. **Complaint Heading: Meanwhile, the Prosecution Struggles with Its Discovery Obligations** (averments 27-40)

The Respondent generally admits **averment 27** stating, "Within the first few months after Morphew's arrest, Respondent was made aware by Lindsey and other staff that her office was having extreme difficulty complying with Crim P. 16 mandatory disclosures in a timely manner in the Morphew case.

The Respondent admits she was eventually made aware that that the office was having difficulty in providing discovery in the Morphew case. The volume of material was taxing the office's ability to process discovery. Additionally, the discovery came through without labels or identifiers, so office staff would have to go through every single item to try to determine what it was and label it. That was something that the office staff had not had to deal with in the past, and it seriously complicated the processing of discovery.

The Respondent denies **averment 28** stating, "Respondent was aware that the Salida Office (Chaffee County) did not have enough bandwidth to send to defense counsel large amounts of electronic discovery, data, videos, and photos via the ACTION system in a timely manner.

Specifically, this averment is indefinite as to when and what the averment refers to. The Respondent acknowledges that the Action system had limitations and rural judicial districts often struggle in its utilization as compared to larger, better resourced judicial districts. The Respondent's office made substantial efforts to comply with discovery requirements and took steps to work around limitations of that statewide system. The Respondent's office frequently supplied discovery on the Morphew case via hard drive and hand delivered it so that the defense would receive it in a timely fashion. The office also made sure to document what was on the hard drives, so as to be able to address frequent defense claims they didn't get files, or they were corrupted.

The Respondent generally **admits averment 29** stating, "Morphew's defense counsel filed a motion to compel and for sanctions because the prosecution failed to timely disclose all information to Morphew as required by Crim. R. 16. By way of clarification, the Respondent admits that this was the allegation of defense counsel, not that it was a meritorious allegation.

The Respondent admits **averment 30** stating, "On June 3, 2021, Judge Murphy issued an Order in response to defendant's discovery motions declaring,

> The defense request for all "emails and text messages between law enforcement officers and all individuals (including prosecutors) contacted and pertaining to this case" is too broad and is not required by case law or statute. … Therefore it is ordered that any electronic communications created or received by law enforcement officers related to this case must be disclosed to the defense if they are material to the prosecution of the case or if they contain any evidence that would be in any way favorable to the defense."

The Respondent generally admits **averment 31** stating, "On July 20, 2021, the prosecution disclosed a May 19, 2021, CODIS DNA Casework Match letter containing potentially exculpatory information, which the prosecution had in its possession for two months prior to disclosure." However, the Respondent is not sure when the Match letter was received or when it was first reviewed to determine whether it was appropriate for discovery. Discovery is not an automatic process and review of materials takes time and effort. The time involved in such review by the District Attorney's Office for the 11th Judicial District, and any District Attorney's Office, can be increased based on the amount and nature of material received from a law enforcement agency. Staffing limitations can affect the rapidity with which discovery can be processed. The limited budget of the 11th Judicial District and the volume of material gathered in the Morphew case did impact the speed at which potentially discoverable materials could be discovered to the defense.

The match letter in question was discovered to the defense well in advance of the August 9, 2021, start of the Preliminary / Proof Evident Presumption Great hearing in the case, which was the next critical stage in the proceedings (see **In the Matter of Attorney C**, 47 P.3d 1167 (Colo. 2002), "We therefore hold that, when a prosecutor is aware of exculpatory evidence before any critical stage of the proceeding, she must disclose that evidence before the proceeding takes place.").

The Respondent generally admits **averment 32** stating, "On July 22, 2021, after another hearing on discovery issues, Judge Murphy determined the prosecution had violated discovery rules, by failing to timely provide cell phone data and other electronic discovery to the defense, and ordered further production from the prosecution within seven days.

The Respondent believes that this issue involved a defense desire that they receive the mirror images of the phones produced by Rocky Mountain Labs. This was not a typical request or procedure followed by Rocky Mountain Labs, which had produced the data extracted from the phones. Since the phone data had been discovered, which was the cell phone data in question, and the mirror imagining of the phones was not in the possession or control of the prosecution until it was later provided to the DA, the prosecution disagreed with the court's determination that the prosecution had violated discovery rules. However, the request was resubmitted to the agency and the mirror imaging was obtained. The data was then promptly discovered.

The Respondent admits **averment 33** stating, "Between July 22 and August 2, 2021, the prosecution disclosed a significant amount of information to the defense including: (1) a Tempe CODIS Match letter dated 10/22/20, (2) a Phoenix CODIS Match letter dated 11/19/20, and (3) an Illinois CODIS Match letter dated 4/28/21.

This information was all discovered to the defense some one to two weeks in advance of the August 9, 2021, start of the Preliminary / Proof Evident Presumption Great hearing in the case, which was the next critical stage in the proceedings (see **In the Matter of Attorney C**, 47 P.3d 1167 (Colo. 2002), "We therefore hold that, when a prosecutor is aware of exculpatory evidence before any critical stage of the proceeding, she must disclose that evidence before the proceeding takes place.").

The Respondent admits **averment 34** stating, "In August 2021, Lindsey contacted Dan Edwards (FN6: Edwards has been practicing criminal law for 47 years—as a PD, a DA, and assisting the AG.), who at the time was not employed by that district attorney's office, to assist with motions practice in the prosecution of Barry Morphew."

The Respondent admits **averment 35** stating, "Sheriff Spezze was able to obtain help on the Morphew prosecution by obtaining $100,000 from the Chaffee County Commissioners."

The Respondent denies **averment 36** stating, "The funds obtained by Sheriff Spezze could support hiring additional personnel, so Mark Hurlbert was hired as an additional deputy district attorney, and he began assisting on August 4, 2021.

The Respondent believes that the services of Attorney Mark Hurlbert had already been secured by the Respondent prior to Sheriff Spezze obtaining supplemental funding. The extra money was utilized to secure the services of Attorney Bob Weiner.

The Respondent admits **averment 37** stating, "Morphew's combined preliminary hearing ("PH") and presumption evident presumption great ("PEPG") hearing was set for August 9-10 and 24-25, 2021.

The Respondent admits **averment 38** stating, "On August 9-10, 2021, during the first two days of Morphew's combined PH and PEPG hearing, defense identified a May 19, 2021 CODIS DNA Casework Match letter regarding DNA swabbed from Ms. Morphew's Range Rover which partially matched an unknown suspect who was being investigated for sexual assault."

By identified, the Respondent means it was identified at the proceeding as a piece of potential exculpatory evidence or a subject to be cross-examined upon. The item had been disclosed to the defense some 20 days prior to the proceeding. The Respondent has no knowledge of when the defense first read the discovered item or recognized it had potential evidentiary significance.

The Respondent admits **averment 39** stating, "Defense questioned Walker about the letter extensively on cross examination."

The Respondent admits part of **averment 40** stating, "Although prosecutors in Respondent's office had the May 19, 2021 CODIS DNA Casework Match letter containing potentially exculpatory information in their possession, the letter was not

disclosed to the defense until two months later on July 20—only 20 days before the preliminary and PEPG hearing."

Specifically, the Respondent admits that her office had the May 19, 2021, Codis DNA Casework Match letter containing potentially exculpatory evidence in their possession and the letter was disclosed to the defense on July 20, 2021, which was 20 days prior to the PH and PEPG hearing. CBI does not automatically immediately provide all materials it generates to local law-enforcement agencies or the DA's offices handling cases. Although the letter was dated May 19, 2021, it was not received until sometime after that date when the lit package was requested and then provided by CBI. The Respondent denies any implication of wrongdoing or unethical conduct contained in the averment.

The Respondent is not sure when the Casework Match letter was received by her office or when it was first reviewed to determine whether it was appropriate for discovery. As indicated previously, discovery is not an automatic process and review of materials takes time and effort. The time involved in such review by the District Attorney's Office for the 11th Judicial District, and any District Attorney's Office, can be increased based on the amount and nature of material received from a law enforcement agency. Staffing limitations can affect the rapidity with which discovery can be processed. The limited budget of the 11th Judicial District and the volume of material gathered in the Morphew case did impact the speed at which potentially discoverable materials could be discovered to the defense.

The match letter in question was discovered to the defense nearly three weeks in advance of the August 9, 2021, start of the Preliminary / Proof Evident Presumption Great hearing in the case, which was the next critical stage in the proceedings (see **In the Matter of Attorney C**, 47 P.3d 1167 (Colo. 2002), "We therefore hold that, when a prosecutor is aware of exculpatory evidence before any critical stage of the proceeding, she must disclose that evidence before the proceeding takes place."). It appears from the information contained in averment 39 that the defense was not prejudiced by the disclosure 20 days prior to the proceeding, since they extensively cross-examined a witness concerning the letter.

7. **Complaint heading: Respondent Goes on the "Profiling Evil" Show After the PEPG Hearing** (averments 41-59)

The Respondent generally admits **averment 41** stating, "On August 24-25, 2021, the last two days of the PEPG hearing, defense cross-examined former CBI Agent Cahill regarding the CODIS DNA Casework Match letter.

Specifically, the Respondent believes that the defense called CBI Agent Cahill as a witness and directly examined him and did not cross-examine him.

The Respondent admits **averment 42** stating, "On August 24, at 10:31am, during the third day of the PEPG hearing, Mike King texted Respondent the question, "feeling good?" and Respondent replied, "Yes. Only because the judge has basically indicated that he's done. That's good for us."

The Respondent admits **averment 43** stating, "Later on August 24, King texted Respondent, "Now the noise. I heard Defendant tried to stare you down this morning?" and Respondent replied, "I stared him down. I have tried to every single day."

Although the Respondent has no idea what this statement has to do with anything related to this matter, the Respondent will clarify that she was joking with Mr. King. She has a

first amendment right to do so and did not in any way comment on Mr. Morphew's conduct or character.

The Respondent admits **averment 44 in part and denies averment 44 in part** stating, "On August 29, King and Respondent discussed via text messaging and phone what King would say to his audience about the Morphew case, and what King would say to his audience about Respondent."

Specifically, the Respondent admits that on August 29, 2021, she discussed with King what questions she would answer and what questions she would not answer in an appearance on his YouTube channel. She explained that she would be there to generally speak about procedures, etc.—things like what is a preliminary hearing and what is meant by proof evident and presumption great. She informed him that she could not talk about the case unless the information had already been released to the public.

The Respondent admits **averment 45** stating, "On August 30, 2021, Respondent appeared on Mike King's YouTube channel called "Profiling Evil," a publicly viewable show and comment forum, to discuss the Barry Morphew case.

The Respondent admits **averment 46** stating, "During or after the "Profiling Evil" podcast, Respondent also made written statements in the online comment section after the podcast ended."

The Respondent admits **averment 47** stating, "In addition to commenting immediately after the podcast, Respondent used her own name as her username and authored numerous other comments in response to various members of the public who had also written comments to "Profiling Evil."

The Respondent admits **averment 48** stating, "A commenter on YouTube with the username "Gian-Luc Brasseur" posted the following on "Profiling Evil," in response to Respondent's statements about Morphew:

> ... in a preliminary hearing you are supposed to lay out enough evidence to take the accused to trial. The defense did a great job of debunking a few of the theories. Most reasonable observers of this case aren't even confident that the state laid out enough evidence to take this to a trial. How do you expect them to win a case with 0 DNA and 0 body with a very weak preliminary hearing? If there was some smoking gun they could have provided more info at the preliminary hearing causing the judge to actually send it to trial on day 4. Him needing time is not a sign of a very strong case. He has read the holy [sic] affidavit already so if you think there is something special in there, think again. It's best for the state to let this one go for now. Try the man again if you find better evidence.

The Respondent admits **averment 49** stating, "In response to this public comment by Gian-Luc Brasseur, Respondent, again using her own name as her username, wrote,

> …the judge explained why he was going to take time with it. He actually should because there was a lot of evidence admitted. I'm curious how long you've been a criminal law attorney since you like to think that you know it. Look this up: Dante Lucas. Convicted in Pueblo, Colorado (right next to my jurisdiction) less than a year ago for First Degree Murder!! Guess what?? No DNA. No Body, No murder weapon, No "smoking gun" as you say. But here's the clincher! He was the last one to see Kelsey alive!! And Barry was the last one to see Suzanne alive (as we stated in the prelim).

> Those items you listed may be important to you, but not for others (PS Dylan Redwines father was also just recently convicted of first degree murder in the death of his son. Same scenario. Didn't have any of the laundry list of items that you think are required for a conviction. I can come up with plenty more. Just let me know."

The Respondent admits **averment 50** stating, "On September 14, 2021, Respondent exchanged Facebook Messenger messages with Julez Wolf, creator of "True Crime with Julez," which is a podcast available through YouTube and other public platforms, regarding Barry Morphew."

The Respondent admits **averment 51** stating, "When Julez Wolf asked whether Morphew was getting ready to flee, Respondent said, "possibly".

The Respondent admits **averment 52** stating, "These text messages were made public by Wolf and remained available for the public to read."

The Respondent admits **averment 53** stating, "On September 16, 2021, Morphew's defense filed a Motion for Sanctions for violation of the Court's Pre-Trial Publicity Order of June 3, 2021.

The Respondent admits **averment 54** stating, "The motion was based in part on Respondent's statements to the media and Respondent's written comments to the public on the "Profiling Evil" YouTube channel, and to Julez Wolf, creator of "True Crime with Julez."

The Respondent admits **averment 55** stating, "On September 17, 2021, the Court found that there was probable cause for the charges against Morphew, but that the prosecution did not meet its burden regarding the proof evident presumption great portion of the hearing.

The Respondent admits **averment 56** stating, "Defense requested a $50,000 bond, the prosecution requested a $10 million dollar bond, and ultimately the court set a $500,000 cash only bond.

The Respondent admits **averment 57** stating, "On September 17, 2021, defense also requested the court address Defense Motion D-22 regarding a request for sanctions for Respondent's extrajudicial statements.

The Respondent admits **averment 58** stating, "Judge Murphy stated he had not reviewed the defense motion, but advised Respondent:

> While I won't order it, it certainly seems reasonable to limit interaction and interviews with the media regarding a specific case that you are prosecuting. That is the normal route that I see most prosecutors take. So I'm not ruling on the motion, I'm not issuing an order other than the order I've already issued, but I am saying if there's a violation it's going to be a self-inflicted wound."

The Respondent admits **averment 59** stating, "Later, when King from "Profiling Evil" texted Respondent questions about the hearing, Respondent responded to his text, "Not surprised on bail. No CH, and our CBI witness, Cahill, majorly screwed up on his testimony. He's not on the case anymore."

8. Complaint heading: **With No Additional Funding Requested, the Prosecution Team Struggles with Staffing** (averments 60-64).

   The Respondent denies **averment 60** stating, "Respondent did not ask for additional funding for the Morphew prosecution when she submitted her 2022 budget to the commissioners in September 2021, reasoning that to do so would,

   > …take a whole lot of time away from us to have a public meeting in front of all the commissioners [and commissioners would argue] why are we paying more for your entire budget when this is over in May. And if it doesn't go, for whatever reason it doesn't go, are they going to ask for that money back, et cetera."

   Although Regulation Counsel did not attribute their quote to any source, it is a partial quote from page 104 of the deposition of the Respondent. The quote only contains a portion of the discussion that was had concerning budget considerations. Specifically, pages 101-112 are dedicated to questions around this subject. Much of regulation counsel's questioning seemed confused and disjointed, suggesting she really has little conception of how budgeting for a District Attorney's office works. The quote above is taken out of context and provides an inaccurate impression. During the discussion on this subject, Respondent explained the steps taken to hire additional attorneys to work on the Morphew case. In point of fact, the Respondent brought on 3 highly skilled and experienced attorneys to assist with the case.

   However, the Respondent denies that Regulation Counsel has the authority to regulate or question the budget request decisions of the Respondent, who is the elected District Attorney for the 11th Judicial District, which is part of the executive branch of the government of the State of Colorado. Her decisions as an elected official to request funding from the County Commissioners for Chaffee county, who are also elected officials, is a purely political decision inherent in her role as an elected District Attorney.

   The Respondent admits **averment 61** stating, "Lindsey resigned in October 2021 and gave four weeks of notice."

   The Respondent denies **averment 62** stating, "Respondent assigned Hurlbert to take over as lead counsel on the Morphew case."

   Mark Hurlbert was brought on as Deputy District Attorney. He was one of the prosecutors assigned to assist with the Morphew case. Although Mr. Hurlbert did have a significant role in the Morphew case prosecution, there was no prosecutor designated as "lead counsel".

   The Respondent admits **averment 63** stating, "On October 29, 2022, Lindsey left the 11th JD office and Respondent hired Bob Weiner to assist with the Morphew case."

   The Respondent supplements the answer with the information that she was already in discussions with Bob Weiner about assisting with the Morphew case before Jeff Lindsey resigned.

9. Complaint heading: **Court Requires Change of Venue, in Part Due to Respondent's Extrajudicial Statements** (averment 64-69)

   The Respondent admits **averment 64** stating, "On January 25, 2022, the court held a hearing on defense's motion for sanctions for pretrial extrajudicial statements, which

highlighted numerous statements by Respondent to the media as well as Respondent's written comments to the public on the "Profiling Evil" YouTube channel, and to Julez Wolf, creator of "True Crime with Julez.".

The Respondent admits **averment 65** stating, "Judge Murphy recused himself because he was good friends with the lawyer representing Barry Morphew's new girlfriend, Shoshanna Darke."

The Respondent admits **averment 66** stating, "Judge Ramsey Lama was then assigned to preside over the case—now Fremont County case 22CR47."

The Respondent is either without knowledge to sufficiently form an answer or denies **averment 67** stating, "Judge Lama reviewed numerous statements Respondent made publicly regarding Morphew, as well as an affidavit from a Salida community member, who attested that "the talk of the town was that the media, DA Stanley, and the Judge [Murphy] all made statements that convinced them that Barry Morphew killed his wife."

Specifically, Respondent is not clear on what statements Judge Lama reviewed and denies the characterization of "numerous statements Respondent made publicly regarding Morphew". In terms of the affidavit from a Salida community member, there is no indication that any statements by DA Stanley were extra judicial statements, and Respondent believes the reference to statements probably refers to statements made in court during the Preliminary/ Proof Evident Presumption Great hearing. The media was allowed by the court to tweet out coverage of the hearing while it was being conducted. Certainly, the reference to Judge Murphy making statements was a reference to statements made in court, unless Regulation Counsel is also accusing him of making extrajudicial statements.

The Respondent denies **averment 68** stating, "On January 31, 2022, the court issued an Order granting Motion to Change Venue, based in part on Respondent's out of court statements.

Specifically, from the testimony of former Judge Lama at an earlier proceeding, it is not at all clear that the Order Granting Motion to Change Venue was based in part on Respondent's out of court statements. The portion of the Order relating to statements was riddled with errors, was not specific as to statements of the Respondent upon which it was based, and it appears to have been primarily based on the erroneous reasoning that appearing on any program entitled "profiling evil" was improper and inherently prejudicial. This particular reason for change of venue was only one of ten reasons relied upon by the court and it is highly probable that venue would have been changed regardless of the existence of any out of court statements of the Respondent.

The Respondent denies **averment 69** stating, "Judge Lama determined that Respondent's out of court statements materially prejudiced Morphew's right to a fair and impartial jury."

Respondent incorporates the explanation provided in the answer to averment 68 in denying this averment.

10. Complaint heading: **Respondent Fails to Ensure the Prosecution Team Properly Discloses Its Experts** (averments 70-101)

The Respondent denies **averment 70** stating, "Respondent knew or should have known the Morphew case depended heavily on expert testimony, given there was no body to

establish murder and much of the typical forensic evidence in a homicide was not available, such that the expert disclosure requirements needed to be met fully and on time.

The Respondent admits **averment 71** stating, "The prosecution's expert disclosures were due February 14, 2022."

However, the Respondent would note that Colorado Rules of Criminal Procedure Rule 16, Part 1 (b) (3) provides, "The prosecuting attorney shall perform all other obligations under subsection (a) (1) as soon as practicable but not later than 35 days before trial." The Morphew trial was set to commence on April 28, 2023. Thus, the trial court set a disclosure deadline that was 73 days prior to trial, or 38 days prior to the mandatory disclosure deadline set by Rule 16 of the Colorado Rules of Criminal Procedure.

The Respondent is without knowledge or information sufficient to form a belief as to the truth of **averment 72** stating, "Edwards drafted the expert disclosures without ever having reviewed the discovery—pulling names only from the pleadings."

Additionally, the Respondent believes that attorney Dan Edwards did consult with other prosecution team members about the expert witness disclosures, regardless of what specific discovery he may, or may not have reviewed. Team members would have discussed with attorney Dan Edwards factual information concerning the potential expert witnesses.

The Respondent denies **averment 73** stating, "Edwards filed the expert disclosures on February 14, but expert disclosures were inaccurate and incomplete."

Specifically, the Respondent denies the characterization that "expert disclosures were inaccurate and incomplete." Respondent acknowledges that some disclosures required further supplementation, based on the requirements imposed by the court.

The Respondent denies **averment 74** stating, "Neither Respondent, nor Hurlbert, nor Weiner reviewed Edwards' expert disclosure for accuracy before it was filed."

The Respondent denies **averment 75** stating, "No one from the prosecution team timely disclosed the CVs and expert reports of prosecution's experts as required by the court's order."

Specifically, some CVs and expert reports had been disclosed, and some were not yet provided to the defense because the expert witnesses had not yet provided the requested materials. The expert witnesses were not employees of the District Attorney and the prosecution has limited ability to compel timely compliance with all of its requests for supplemental information.

The Respondent denies **averment 76** in part and admits **averment 76** in part stating, "On February 24, 2022, the court held a hearing on expert disclosures, during which the prosecution conceded their expert disclosures did not comply with Rule 16 or the court's case management order."

The Respondent admits that a hearing was held on February 24, 2022, but denies the prosecution conceded their expert disclosures did not comply with Rule 16 or the court's case management order. The Respondent acknowledges that the statements of the court required supplementation of the disclosures.

The Respondent generally admits **averment 77** stating, "The prosecution sought and received an extension of time to February 28, 2022, to supplement their expert disclosures."

The Respondent admits that an extension of time to supplement the expert disclosures to comply with the particulars required by the court was requested, and the court granted a four-day extension to February 28, 2022.

The Respondent admits **averment 78** stating, "On February 24, 2022, Edwards filed his notice of withdrawal and left the prosecution team."

The Respondent supplements this response by stating that Mr. Edwards' stated reason for leaving the prosecution team was due to health reasons. This departure was not caused by the Respondent or under her control. The sudden loss of such an experienced member of the prosecution team did create a hole in the prosecution team that was difficult to fill. Mr. Edwards was responsible for drafting most of the responses of the prosecution team and his sudden loss caused an immediate void. This created a disruption for the team and made it more difficult to quickly respond and follow up on legal issues as they arose.

The Respondent admits **averment 79** stating, "On February 28, 2022, Hurlbert filed "P-44 People's Superseding Endorsement of Expert Witnesses" which admitted that some listed experts were still in the process of preparing a statement."

The Respondent admits **averment 80** stating, "The prosecution's superseding expert disclosure, filed February 28, 2022, was still missing expert reports and CVs from various experts, which were specifically required by the court's prior order."

The Respondent admits **averment 81** stating, "Respondent was aware that defense filed multiple motions to exclude experts' opinions based on the prosecution's failure to comply with expert disclosure requirements."

Specifically, the Respondent admits that the defense filed such motions. The prosecution does not admit the merit of the content of the motions.

By way of supplementation, the Respondent notes that the defense seemed to be constantly filing motions of the type alleged. Frequently, the court would allow such motions to be heard even when the prosecution was not provided with adequate advance notice of the filing of such motions. The court did not engage in similar behavior directed against the defense. At times the court presented as being openly hostile to the prosecution.

The Respondent admits **averment 82** stating, "On March 1, 2022, defense filed a "Supplemental Motion to Strike Witnesses Proffered as Experts and Motion to Strike" noting prejudice to the defense because prosecution still had not included an expert CV, expert opinion or written summaries, for several experts and provided no underlying facts or data supporting the opinion."

Specifically, the Respondent admits that the defense filed said motion. The prosecution does not admit the merit of the content of the motion.

The Respondent specifically incorporates the supplementation to averment 81 above.

The Respondent admits **averment 83** stating, "On March 2, 2022 the defense filed a "Supplement to Motion to Strike Proposed Expert Witnesses."

Specifically, the Respondent admits that the defense filed said motion. The prosecution does not admit the merit of the content of the motion.

The Respondent specifically incorporates the supplementation to averment 81 above.

The Respondent admits **averment 84** stating, "Grant Grosgebauer joined the Morphew prosecution team in March 2022."

Specifically, Grant Grosgebauer, an experienced Deputy DA with the 18th Judicial District, was brought onto the prosecution to help fill the void caused by the departure of Dan Edwards.

The Respondent denies **averment 85** stating, "On March 3, 2022, the prosecution provided additional discovery including emails with law enforcement created as far back as May 2020, which the prosecution obtained during November 2021 and January 18, 2022."

The Respondent admits **averment 86,** but states it is either confused or misleading, stating, "On March 7, 2022, well-after the extended expert supplemental disclosure deadline, Hurlbert filed a "Good Faith Witness List" and "Notice of Endorsement of Witness."

Specifically, a good faith witness list is an indication of who the prosecution believes it will be actually calling at trial. Many of the witnesses on such a list are not expert witnesses. Non-expert witnesses are not subject to the same disclosure requirements as expert witnesses. The filing of such a list allows the other side to better prepare for who the prosecution intends to call at trial. The extended supplemental disclosure deadline of the court would not generally have applicability to the filing of such a list.

The Respondent admits **averment 87** stating, "March 8, 2022, the defense filed a "Supplement to Motion for Discovery Sanctions" based on the prosecution's February 28 and March 3, 2022 discovery production."

Specifically, the Respondent admits that the defense filed said motion. The prosecution does not admit the merit of the content of the motion.

The Respondent specifically incorporates the supplementation to averment 81 above.

The Respondent admits **averment 88** stating, "On March 9, 2022, Hurlbert filed prosecution's response to the defense's motion to strike witnesses proffered as experts, arguing the defense was not prejudiced by the inadequate expert disclosures."

The Respondent **admits averment 89** stating, "On March 10, 2022, the court issued a verbal order striking several prosecution experts finding that the prosecution failed to comply with Rule 16 and Court Orders, as follows:

> The court finds a pattern of neglect demonstrating a need for modification of a party's discovery practices in this case... this is trial by ambush. That's exactly what the rules are designed to prevent. And I'm not finding it willful, but I'm finding a pattern and I'm finding prejudice. There's a record to support a pattern of neglect here and prejudice."

Specifically, the Respondent admits that the court made the ruling quoted. The Respondent strenuously disagreed with the substance of the ruling, other than that portion that states, "I'm not finding it willful". The Respondent does not agree that the ruling was supported by either the facts or the law.

The Respondent admits **averment 90** stating, "On March 30, 2022, Grosgebauer attended and participated in a *Shreck* hearing on the qualifications and scope of opinion of expert Doug Spence."

The Respondent denies **averment 91** stating, "The night before the hearing, Grosgebauer called Spence to prepare him for the hearing, and at that point learned that no one on the prosecution team had actually spoken to expert Spence."

The Respondent believes that the Respondent's investigator, Alex Walker, had had contact with Spence. Alex Walker was certainly on the prosecution team.

The Respondent admits **averment 92** stating, "Spence expressed opinions during his telephone conversation with Grosgebauer the night before the *Shreck* hearing that were not entirely consistent with what had been included in the prosecution's expert endorsement."

The Respondent admits **averment 93** stating, "Prosecution's initial and supplemental expert endorsement for Spence had indicated that Spence would offer an opinion based on a law enforcement canine, Rosco, following a scent down to a creek in the direction of the Morphew home, but this was not consistent with what Spence told Grosgebauer the night before the *Shreck* hearing."

The Respondent admits **averment 94** stating, "In addition, on cross-examination of Spence, the defense elicited that Spence had, in fact, authored his own report of his investigation, which he had not provided previously."

Specifically, for some inexplicable reason Spence had not disclosed to anyone on the prosecution team that he had authored his own report, including in his telephone meeting with Grant Grosgebauer. The witness had previously been asked about a report and did not disclose that he had authored something. This report was not in the possession of the prosecution, and they had no advanced knowledge of its existence.

The Respondent admits **averment 95** stating, "At that point, the *Shreck* hearing focused on a possible Rule 16/discovery violation for prosecution's failure to disclose an endorsed expert's report."

The Respondent **admits averment 96** stating, "Grosgebauer acknowledged in court that because the prosecution had endorsed Spence as an expert but failed to turn over Mr. Spence's report (of which Grosgebauer reported he had no prior knowledge), the prosecution was not in compliance with Rule 16."

The Respondent admits **averment 97** stating, "Grosgebauer proposed that the remedy was for the Court to strike Spence as a witness."

The Respondent admits **averment 98** stating, "The Court agreed and on March 30, 2022, the court excluded expert witness Spence based upon the stipulation of the People that they had failed to disclose the opinion or report of their own expert."

The Respondent admits **averment 99** stating, "On April 8, 2022, the court granted another one of the defense's motions for sanctions for discovery violations, and determined:

> the People failed to put in place a system to preserve emails as ordered by Judge Murphy on June 3… The Court finds a continuing pattern by the People of an inability and failure to comply with its Rule 16 obligations as well as the Court's case management orders…

Specifically, the Respondent admits that the court ruled as quoted. However, the Respondent strenuously disagrees with the ruling of the court and contends that the prosecution had engaged in substantial efforts to comply with the order of Judge Murphy. Law enforcement had been informed of the order. Attorneys on the prosecution team repeatedly reminded officers that they needed to preserve and disclose emails of the type ordered by Judge Murphy.

The June 3, 2021, order of Judge Murphy regarding preservation of emails was as follows:

> The defense request for all "emails and text messages between law enforcement officers and all individuals (including prosecutors) contacted and pertaining to this case" is too broad and is not required by case law or statute. … Therefore it is ordered that any electronic communications created or received by law enforcement officers related to this case must be disclosed to the defense if they are material to the prosecution of the case or if they contain any evidence that would be in any way favorable to the defense."

However, Judge Lama seemed to ignore in his ruling the specifics of Judge Murphy's order that "any electronic communications created or received by law enforcement officers related to this case must be disclosed to the defense if they are material to the prosecution of the case or if they contain any evidence that would be in any way favorable to the defense." Instead, Judge Lama acted as if all law enforcement emails were covered by the order of Judge Murphy.

The Respondent admits **averment 100** stating, "In the same order issued April 8, 2022, the court excluded most of the prosecution's experts, finding:

> the People's actions amount to negligent, and arguably, reckless disregard for their Rule 16 obligations and duty to abide by court orders… the court excludes 11 out of 16 of the People's endorsed expert witnesses [a sanction] warranted based upon the record… The case is set for trial to begin on April 28, 2022.

Specifically, the Respondent admits that the court ruled as quoted. However, the Respondent strenuously disagrees with the ruling of the court. Respondent filed a motion to reconsider this ruling, but it was never ruled upon by the court.

The Respondent admits **averment 101** stating, "Respondent was informed by the prosecution team that expert dog handler Spence had been excluded, such that of the 16 experts initially endorsed by the prosecution, 15 had been excluded altogether, and 1 had their scope of testimony reduced.

Specifically, the Respondent admits that the court ruled as quoted. However, the Respondent strenuously disagrees with the ruling of the court as to most of these

exclusions (the Respondent agreed with the exclusion of dog handler Spence). The Respondent filed a motion to reconsider the court's other exclusion rulings, but it was never ruled upon by the court.

11. Complaint heading: **Respondent Orders Investigation of Judge Lama After Series of Adverse Rulings** (averments 102-114)

    The Respondent admits **averment 102** stating, "On March 12, 2022, two days after the court hearing regarding the prosecution's deficient expert disclosures, Respondent texted the Morphew prosecution team (now Hurlbert, Weiner and Grosgebauer) a petition started by Julez Wolf."

    The Respondent clarifies by explaining that she had just become aware of the petition, which states that it started on March 12, 2022. She and her prosecution team had no participation in the creation of the petition. Under why this petition matters, there was explanation as follows:

    > RE:2022CR47 People of the State of Colorado v. Barry Lee Morphew
    >
    > Judge Lama (Colorado11th Judicial) recently made the decision to disallow any testimony regarding Domestic Abuse/Violence in 2022CR47 People of the State of Colorado v. Barry Lee Morphew. The Arrest Affidavit for Mr. Morphew has been made public, and includes text messages from the victim (Suzanne Morphew) indicating domestic abuse, statements from one of the couple's daughters that indicate she observed domestic abuse in the home, statements from friends and family members of Suzanne Moorman Morphew that indicate they had concerns regarding Domestic Abuse, and statements from Barry Morphew (the accused) which appear to corroborate Domestic Abuse.
    >
    > The decision by Judge Lama was concerning enough, as it could be cited in future to exclude such testimony in future cases as well, but it then became known that the ex-wife of Judge Lama is an advocate of Suzanne Morphew and victims of Domestic abuse. She also is a member of the Gym that the defendant, Barry Morphew, belonged to.
    >
    > There appears to be a conflict of interest for Judge Lama. Please look into this issue and if Judge Lama has a conflict of interest, remove him from this case.

    The Respondent admits **averment 103** stating, "Respondent sent the prosecution team the petition written by Julez Wolf, which claimed "the ex-wife of Judge Lama is an advocate of Suzanne Morphew and victims of Domestic abuse."

    By way of clarification, the Respondent sent the prosecution team the link to the petition. The petition was being circulated online on a link called change.org. It was entitled, "Help Give Suzanne Her Voice!" The petition had a red box entitled, sign this petition. When someone signed the petition, they were allowed to give reasons for signing. At the bottom of the page was a list of people who had signed and their stated reasons. There was a bar that shows how many people signed the petition, eventually that bar would show it received 2,541 signatures. The Respondent does not recall how many signatures were garnered by the petition when she first saw it and brought it to the attention of the prosecution team.

The respondent admits part of **averment 104** and denies part of the averment stating, "Respondent continued texting the other prosecutors, encouraging them to investigate whether Judge Lama ever abused his ex-wife, Iris Lama."

The Respondent engaged in a group discussion with her Morphew prosecutors by exchanging text messages about the petition. In the days before there had been a discussion about the need to talk because of the judge's behavior directed against the prosecutors. The prosecution team believed that Judge Lama had acted unprofessionally and inappropriately toward the prosecution team members. The prosecution team was perplexed as to the cause of this behavior. Learning of the public petition that was being circulated calling for an investigation of Judge Lama, raised the possibility that there might be a connection between his perceived hostility toward the prosecution team and his ex-wife, Iris Lama. The team members texted back and forth about this subject.

It is an inaccurate and unfair characterization of the communications exchanged that the "Respondent continued texting other prosecutors, encouraging them to investigate whether Judge Lama ever abused his ex-wife, Iris Lama." Regulation Counsel attached exhibit A under seal to, apparently, support this claim. However, that exhibit does not show what is claimed. Nowhere does it show that the Respondent was encouraging them to investigate whether Judge Lama ever abused his ex-wife.

The Respondent admits **averment 105** stating, "Respondent decided to interview Iris Lama because,

> …we couldn't understand Judge Lama's orders that were so egregious against us, and he's normally not like that. And we were discussing what's going on, and those two came together. And I said, let's see if we can get somebody to interview her to see if there was something going on or if she suspects that he is trying to get back at her, essentially, in almost a passive-aggressive way by making this case impossible to prosecute… So we wanted to see if she would say anything to us about any of that or if these actions by the judge may be almost a passive-aggressive move at her."

By way of supplementation, the Respondent points out that the decision to interview Judge Lama's ex-wife was a team decision. Discussion was had on this topic, and the Respondent was by no means the driving force in pushing for an interview. The Respondent actually expressed some reticence, and the issue was discussed jointly amongst the Respondent and the highly experienced attorneys working on the Morphew team.

The Respondent admits **averment 106** stating, "In March 2022, Respondent and Weiner called Commander Walker at the Chaffee County Sheriff's Office and asked if he had an investigator to investigate an allegation of prior domestic abuse by Judge Lama."

The Respondent admits in part and denies in part **averment 107** stating, "Walker refused, telling Respondent she had no good source for the investigation."

The Respondent admits that Commander Walker declined to provide an investigator to interview Judge Lama's ex-wife. However, the Respondent believes that Commander Walker expressed other reasons for not wanting to have an investigator from his agency interview her.

The Respondent generally admits **averment 108** stating, "Respondent persisted and enlisted her own investigator to interview Judge Lama's ex-wife."

The Respondent agrees that her own investigator was enlisted to contact Judge Lama's ex-wife. The Respondent does not know what the characterization the "Respondent persisted" means.

Respondent admits **averment 109** stating, "On April 7, 2022, Respondent emailed Hurlbert and others and informed them that investigator Andrew Corey, who worked for Respondent's office, was going to interview Iris Lama regarding Judge Lama."

The Respondent did not authorize a general investigation of Judge Lama, but only narrowly focused questioning.

Respondent admits **averment 110** stating, "On April 9, 2022, the day after the expert disclosures sanctions order and 19 days before the scheduled commencement of the Morphew trial, Investigator Andrew Corey met with Respondent, Hurlbert and Weiner and wrote in his notes that Respondent wanted to find out if Judge Lama had spoken to Iris about the Morphew case, and whether domestic violence had occurred during their relationship."

Respondent admits **averment 111** stating, "A week later, on April 15, 2022, Respondent's investigator, Andrew Corey, interviewed Iris Lama."

Respondent admits **averment 112** stating, "Corey reported that Iris Lama told him there was never any domestic abuse in their relationship, and that Judge Lama never said anything to her about the Morphew case."

Respondent admits **averment 113** stating, "On April 19, 2022, Respondent moved to dismiss case at the pretrial readiness conference, which was nine days before the trial was scheduled to begin."

Respondent admits **averment 114** stating, "The court granted the motion and dismissed the Morphew case without prejudice."

12. Complaint heading: **CLAIM I**
[A Lawyer Shall Act with Reasonable Diligence and Promptness—Colo. RPC 1.3]
(averments 115-120)

Respondent admits **averment 115** stating, "Colo. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client." The respondent denies that she violated Colo. RPC 1.3.

Respondent denies **averment 116** stating, "After being placed on notice by the prosecution team, defense and the court of repeated problems in meeting Rule 16's requirements by not timely disclosing all information required, Respondent failed to ensure that the prosecution team would timely and completely comply with Rule 16's requirements concerning the strategically vital expert disclosures."

Respondent denies **averment 117** stating, "As a result of that lack of diligence, the prosecution's expert disclosures to Morphew were not timely, and were incomplete."

Respondent denies **averment 118** stating, "Even after the court granted the prosecution additional time to supplement their expert disclosures, Respondent failed to diligently or promptly assist with expert disclosures."

Respondent denies **averment 119** stating, "As a sanction for violating the court's expert disclosure order, 15 of the 16 experts tendered by the prosecution were stricken and only one was permitted to testify as an expert."

Respondent denies **averment 120** stating, "By such conduct, and in each instance described above, Respondent violated Colo. RPC 1.3.

The Respondent put in place a skilled and qualified team of prosecutors to handle the motion's practice relating to the issues raised in this claim. They acted with reasonable diligence and promptness. The rulings of the Judge in the case were viewed by the prosecution team as being unreasonable and unsupported by the facts and were contested and objected to by the prosecution. The Respondent was not responsible for the outcome of these rulings. The prosecution team acted with reasonable diligence and promptness.

Additionally, the claimed underlying facts involve alleged discovery violations. The controlling law with respect to consideration of these issues as ethical violations is the Colorado Supreme Court's decision announced **In the Matter of Attorney C**, 47 P.3d 1167 (Colo. 2002). Attorney regulation counsel has not demonstrated ethical violations relating to failure to comply with discovery requirements that contravene the standards articulated by In the Matter of Attorney C. In fact, this allegation represents an attempt by regulation counsel to circumvent those requirements.

In **In the Matter of Attorney C**, 47 P.3d 1167 (Colo. 2002) the Court wrote about the propriety of turning discovery violations into ethical violations as follows:

> As we consider the conduct in this case, we first note that discovery violations in criminal cases are different from other kinds of disciplinary rule violations for a number of reasons. First, discovery issues arise in almost every criminal case. Trial courts routinely make findings of fact and enter orders and sanctions designed to respond to the severity of the violation. As a result, the problems are visible, immediately addressed, and any harm to the public or to the individual parties is dealt with in the context of the pending case. Not only is management, regulation, and supervision of discovery preeminently a trial court function, see Sams v. Dist. Court, 908 P.2d 520, 524 (Colo. 1995), but we also have case law and rules of procedure specifically tailored to redress any discovery violations. We neither wish to upset that process nor to interject regulatory counsel into it.
>
> Indeed, when the court revised the attorney discipline system in 1998, it did so to make the system more responsive to the goal of protecting the public. As part of this goal, we revised the formal complaint and litigation system to assure greater attention to serious allegations of professional misconduct. The new grievance system is designed to "shift the emphasis from punishment to prevention . . . [and to] protect the public as well as educate attorneys. The process will reduce delay and focus resources on the more serious cases filed." Linda Donnelly et al., How the New Attorney Regulation System Will Work, 28 Colo. Law. 57, 59 (Feb. 1999).
>
> We also note that the Preamble to the Colorado Rules of Professional Conduct states that the purpose of the rules "can be subverted when they are invoked by opposing parties as procedural weapons." Colo. RPC pmbl. In the context of discovery in criminal cases, that danger is a real one. We do not wish to create a mechanism that could be used to obstruct the progress of a case.

> Hence, we have an adjudicative system in place that deals regularly with discovery issues, and also an attorney grievance system that is ill-suited to addressing any but the most serious discovery violations.
>
> Because we do not wish to interfere with the discretion of trial courts to handle discovery disputes in the way dictated by the facts of the case, and because we do not wish the possibility of a grievance proceeding to permeate every discovery dispute in criminal cases, we choose to read the rule itself as including the mens rea of intent.

The Respondent would note that a similar effort to circumvent the requirements of **In the Matter of Attorney C**, 47 P.3d 1167 (Colo. 2002), was demonstrated in the disciplinary case of **People v. Ruybalid**, 13PDJ065 (consolidated with 14PDJ064), dated August 17, 2016. In that case, Presiding Disciplinary Judge William Lucero found that allegations premised on Crim. P.16(I)(a)(2), whether pleaded under Colo. RPC 3.8(d) or another rule, are subject to the materiality and intentionality requirements outlined in Matter of Attorney C. The Judge quoted at length the language recited above, in rejecting Regulation Counselor's effort to violate DA Ruybalid's probation based on alleged discovery violations.

13. Complaint heading: **CLAIM II**
[Pretrial Publicity—Colo. RPC 3.6(a)]
(averments 121-123)

Respondent admits **averment 121** stating, "Colo. RPC 3.6(a) states that a lawyer who is participating in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter."

However, the Respondent notes that the averment only quotes a portion of Colo. RPC 3.6, and omits any reference to the provisions of rule 3.6 (b), which reads:

> (b) Notwithstanding paragraph (a) and Rule 3.8(f), a lawyer may state:
> (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
> (2) information contained in a public record;
> (3) that an investigation of a matter is in progress;
> (4) the scheduling or result of any step in litigation;
> (5) a request for assistance in obtaining evidence and information necessary thereto;
> (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
> (7) in a criminal case, in addition to subparagraphs (1) through (6):
> (i) the identity, residence, occupation and family status of the accused;
> (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
> (iii) the fact, time and place of arrest; and
> (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

Respondent denies averment 122 (a) stating, Respondent violated this rule on several occasions, including but not limited to:

(a) On May 5, 2021, when she told the media Barry Morphew "was taken into custody and when asked questions he said he wanted a lawyer and all questioning ended."

Specifically, respondent denies that a comment of this nature, referencing only an invocation of the right to counsel, without any other elaboration or expression of condemnation, constitutes a violation of Colo. RPC 3.6 (a). A limited reference to invocation of the right to counsel under the 6th Amendment, which terminates law enforcement questioning, is not the same as a comment on the right to remain silent under the 5th Amendment. A request for an attorney to be present during questioning is not the same as a refusal to make a statement, both legally and in the minds of the public. In the context presented here, this comment just showed that law enforcement and the prosecution were engaged in action to scrupulously protect the rights of the defendant.

Additionally, the comment was so limited that it did not have a substantial likelihood of materially prejudicing an adjudicative proceeding. It represented a very small part of the press conference that was called by the Sheriff. There was no elaboration or follow-up on the statement. There was nothing said to in any way to imply that Mr. Morphew was attempting to hide anything by asking for an attorney.

Colo. RPC 3.6 comment 6 notes that in assessing the potential for prejudicial impact of a statement it is relevant to look at the nature of the proceeding involved:

"Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding."

The defendant had just been arrested and charges filed. No adjudicative proceeding had been set in the matter, so in making the statement there certainly cannot be inferred any knowledge or intent to influence any particular adjudicative proceeding. The first adjudicative proceeding that would eventually be set would be a combined Preliminary Hearing and Proof Evident Presumption Great Hearing, for August 8, 9, 23, and 24 of 2021, which was more than three months in the future. That proceeding would be before a judge, who would be totally unaffected by hearing that Mr. Morphew had requested counsel, causing any attempted questioning to immediately cease, as is required by the Constitution. When a trial was eventually set, the date would not be until April 28, 2022, just shy of a year after the press conference statement. Any assessment of potential prejudice on an adjudicative proceeding made by Respondent's limited statement made on May 5, 2021, would have to be that it was *de minimis* at best, and certainly not coming even close to having "a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter".

Furthermore, at the Preliminary Hearing / Proof Evident Presumption Great Hearing there was extensive testimony concerning statements made by Barry Morphew during the course of the investigation. As such, any inference

from the Respondent's statement that Barry Morphew had invoked his right to remain silent in the case and refused to make statements to law enforcement would have been dispelled by the information concerning the many statements he did make. Likewise, the public release of the arrest warrant affidavit would also have disclosed statements made by Barry Morphew during the course of the investigation, dispelling any inference that in invoking his right to counsel at the time of arrest that he had refused to make statements in the case.

Respondent denies averment 122 (b) stating, Respondent violated this rule on several occasions, including but not limited to:

> b) In late August and early September 2021, when Respondent appeared on the YouTube channel "Profiling Evil" to discuss the Morphew case, and also made written extrajudicial statements in the public comment section after the podcast ended—wherein she wrote Gian-Luc Brasseur and made specific comparisons between Barry Morphew and a prior murder conviction where no body was found (Dante Lucas)."
>
> Specifically, the comment in question was not in any way a comment on the guilt or innocence of the accused or any other item listed in the comments associated with Colo. RPC 3.6 (a). In essence, the comment was a discussion of the legal fact that it is not necessary to have the body of a murder victim to prosecute and convict an individual of a murder charge. It merely pointed out some cases entirely unrelated to Barry Morphew where this had been successfully accomplished by the prosecution. This is a comment on the law as it had previously been applied in Colorado. The comments spoke of no specific facts of Barry Morphew's behavior or character. This is not the type of comment that "will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter", as required by Colo. RPC 3.6 (a).

Respondent denies averment 122 (c) stating, Respondent violated this rule on several occasions, including but not limited to:

> (c) On September 14, 2021, when Respondent exchanged Facebook Messenger messages with Julez Wolf of "True Crime with Julez", and in response to her question about whether Morphew might flee, Respondent stated, "possibly."
>
> Specifically, this comment was made during the time that the case was in the Preliminary / Proof Evident Presumption Great hearing phase of the proceedings. The Respondent's message to Julez Wolff was no more than a statement of the obvious, and of the law of Colorado as it existed at that time when considering this issue of Proof Evident Presumption Great. In People v. Spinuzzi, 149 Colo. 391, at 398, 369 P.2d 427 (1962), the Colorado Supreme Court noted:
>
> > "The historical reason for denying bail in a capital case is because temptation for the defendant to leave the jurisdiction of the court and thus avoid trial is particularly great in such case. Courts should therefore proceed with extreme caution in permitting bail in a capital case and in the determination of whether the proof is evident or the presumption great."
>
> Rule 3.6 (b)(6) allows for "a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest." Commenting that

there was a possibility that the defendant might flee if released on bond is just such a warning of a likelihood of a substantial harm to the public interest, or to the public if an alleged killer against whom probable cause was established was to flee while on bond.

When on September 17, 2021, the trial court found that there was probable cause for the charges against Morphew but that the evidence did not support a finding of proof evident presumption great, this then required the setting of bond. Arguments were conducted by the parties concerning the appropriate amount of bond, with the defense requesting a $50,000 bond and the prosecution requesting a $10 million dollar bond, and the court setting a $500,000 cash only bond. The prosecution argued in open court that Morphew was a flight risk. In this context, the comment by the Respondent that Morphew was a possible flight risk was nothing more than a very watered-down version of what was publicly argued in court. It is also, in essence, what the court found in setting a $500,000 cash only bond. Of course, anyone faced with a charge of first-degree murder, which carries with it a mandatory sentence of life in prison, is a possible flight risk, if released on bond. When placed in this context, there was absolutely no likelihood that the statement "will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter". Also, the exceptions of Rule 3.6 (b)(2) "information contained in a public record" and Rule 3.6 (b)(4) the "result of any step in litigation" exclude this type of statement from being a violation of rule 3.6(a).

Respondent denies averment 122 (d) stating, Respondent violated this rule on several occasions, including but not limited to:

d) In June 2021, when Respondent texted King in response to a Barry Morphew video, "we got him. No worries."

Specifically, this statement to an individual in a text has not been shown to have been publicly disseminated. It is not a comment made during any type of media broadcast. Under these circumstances it is not a statement that "will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter". Additionally, the statement is ambiguous in nature. The next court event was the preliminary hearing. Saying "we got him. No worries", does not appear to be a comment on guilt or innocence, but a prediction that probable cause would be established at the preliminary hearing, as it was.

Colo. RPC 3.6 comment 6 notes that in assessing the potential for prejudicial impact of a statement it is relevant to look at the nature of the proceeding involved:

> "Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding."

It is hard to conceive of any likely prejudicial effect a statement like "we got him" could have on the preliminary hearing in the case. When a trial was eventually set, the date would not be until April 28, 2022, some ten months after the text message exchange. It is the wildest speculation that a potential juror

would have even heard of such a text message exchange or inferred anything prejudicial by it. And what would that inference be? That the prosecution thought they had a case against Mr. Morphew and could prove it? Wouldn't any potential juror called to Mr. Morphew's murder trial automatically assume that the prosecutor thought they had a case? There is no possibility that it can be shown that this text message had "a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter".

14. Complaint heading: **CLAIM III**
[Prosecutor's Extrajudicial Comments—Colo. RPC 3.8(f)]
(averments 124-126)

Respondent admits **averment 124** stating, "Colo. RPC 3.8(f) states the prosecutor in a criminal case shall refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused."

However, the Respondent notes that averment only quotes a portion of Colo. RPC 3.8(f). The full text of RPC 3.8(f) reads:

> (f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused unless such comments are permitted under Rule 3.6(b) or 3.6(c), and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

Respondent denies averment **125 (a)** stating, Respondent violated this rule on several occasions, including but not limited to:

> (a) On May 5, 2021, when she told the media Barry Morphew "was taken into custody and when asked questions he said he wanted a lawyer and all questioning ended."

Specifically, respondent denies that a comment of this nature, referencing only an invocation of the right to counsel, without any other elaboration or expression of condemnation, constitutes a violation of Colo. RPC 3.8(f). A limited reference to invocation of the right to counsel under the 6th Amendment, which terminates law enforcement questioning, is not the same as a comment on the right to remain silent under the 5th Amendment. A request for an attorney to be present during questioning is not the same as a refusal to make a statement, both legally and in the minds of the public. In the context presented here, this comment just showed that law enforcement and the prosecution were engaged in action to scrupulously protect the rights of the defendant.

Additionally, the comment was so limited that it did not have "a substantial likelihood of heightening public condemnation of the accused." It represented a very small part of the press conference that was called by the Sheriff. There was no elaboration or follow-up on the statement. There was nothing said to in any way to imply that Mr. Morphew was attempting to hide anything by asking for an attorney.

Regulation Counsel's claims do not articulate how this statement had "a substantial likelihood of heightening public condemnation of the accused." What public condemnation of the accused can be inferred from the limited statement that Barry

Morphew was taken into custody and when asked questions he said he wanted a lawyer and all questioning ended? The only possible condemnation that comes to mind is based on a speculative inference that he was refusing to make statements and was therefore hiding information or refusing to cooperate with the investigation. Any such speculative inference would have been quickly dispelled by the public release of information and the proceedings in the case. At the Preliminary Hearing / Proof Evident Presumption Great Hearing, there was extensive testimony concerning statements made by Barry Morphew during the course of the investigation. As such, any inference from the Respondent's statement that Barry Morphew had invoked his right to remain silent in the case and refused to make statements to law enforcement would have been dispelled by the information concerning the many statements he did make. Likewise, the public release of the arrest warrant affidavit would also have disclosed statements made by Barry Morphew during the course of the investigation, dispelling any inference that in invoking his right to counsel at the time of arrest that he had refused to make statements in the case.

Respondent denies **averment 125 (b)** stating, "Respondent violated this rule on several occasions, including but not limited to:

> (b) In August and September 2021, when Respondent appeared on a YouTube channel called "Profiling Evil" to discuss the Morphew case.
>
> Appearing on a podcast does not constitute a violation of Colo. RPC 3.8(f). The rule covers the making of extrajudicial comments of a proscribed type. Merely appearing on a particular type of media is not an "extra judicial comment", regardless of the name of the podcast. The Respondent has rights under the first amendment and also as an elected District Attorney to speak publicly about matters relating to her office.
>
> The Respondent notes that there is a disturbing pattern with Regulation Counsel's allegations that seem to condemn the Respondent for alleged ethical violations that are based on the media source with which she has interacted, and not based on the content of comments or statements. This permeates the allegations of violations of Colo. RPC 3.8(f) and the related alleged violations of Colo. RPC 3.6(a). The Respondent hopes that attorney regulation in this state has not devolved to such a state of unconstitutional oppression of free speech. Regulation Counsel's efforts are not supported by the wording of Colo. RPC 3.8(f) or Colo. RPC 3.6(a), nor are they consistent with any past interpretation of those rules.

Respondent denies **averment 125 (c)** stating, "Respondent violated this rule on several occasions, including but not limited to:

> (c) In August and early September 2021, when Respondent appeared on the YouTube channel "Profiling Evil" to discuss the *Morphew* case, and also made written extrajudicial statements in the public comment section after the podcast ended—wherein she wrote Gian Luc Brasseur and made specific comparisons between Barry Morphew and a prior murder conviction where no body was found (Dante Lucas convicted for murder).
>
> Specifically, the comment in question was not in any way a comment that had "a substantial likelihood of heightening public condemnation of the accused" as required by Colo. RPC 3.8(f). In essence, the comment was a discussion of the legal fact that it is not necessary to have the body of a murder victim to prosecute and convict an individual of a murder charge. It merely pointed out some cases entirely unrelated to Barry Morphew where this had been

successfully accomplished by the prosecution. This is a comment on the law as it had previously been applied in Colorado. The comments spoke of no specific facts of Barry Morphew's behavior or character.

Comments that inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose are specifically excluded from Colo. RPC 3.8(f) (see full wording of Colo. RPC 3.8(f) quoted above). Disabusing members of the public about erroneous interpretations of law, which was what was occurring in the exchange that is alleged, serve to inform the public of the nature of the prosecutor's actions and served a legitimate law enforcement purpose of educating the public about the law.

Respondent denies **averment 125(d)** stating, "Respondent violated this rule on several occasions, including but not limited to:

> (d) On September 14, 2021, when Respondent exchanged Facebook Messenger messages with Julez Wolf of "True Crime with Julez", and in response to her question about whether Morphew might flee, Respondent stated, "possibly."

Specifically, this comment was made during the time that the case was in the Preliminary / Proof Evident Presumption Great hearing phase of the proceedings. The Respondent's message to Julez Wolff was no more than a statement of the obvious, and of the law of Colorado as it existed at that time when considering this issue of Proof Evident Presumption Great. In People v. Spinuzzi, 149 Colo. 391, at 398, 369 P.2d 427 (1962), the Colorado Supreme Court noted:

> "The historical reason for denying bail in a capital case is because temptation for the defendant to leave the jurisdiction of the court and thus avoid trial is particularly great in such case. Courts should therefore proceed with extreme caution in permitting bail in a capital case and in the determination of whether the proof is evident or the presumption great."

As quoted above in the full text of Colo. RPC 3.8(f), Rule 3.8(f) specifically incorporates the exceptions listed in Rule 3.6(b). Rule 3.6 (b)(6) allows for "a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest." Commenting that there was a possibility that the defendant might flee if released on bond is just such a warning of a likelihood of a substantial harm to the public interest, or to the public if an alleged killer against whom probable cause was established was to flee while on bond.

When on September 17, 2021, the trial court found that there was probable cause for the charges against Morphew but that the evidence did not support a finding of proof evident presumption great, this then required the setting of bond. Arguments were conducted by the parties concerning the appropriate amount of bond, with the defense requesting a $50,000 bond and the prosecution requesting a $10 million dollar bond, and the court setting a $500,000 cash only bond. The prosecution argued in open court that Morphew was a flight risk. In this context, the comment by the Respondent that Morphew was a possible flight risk was nothing more than a very watered-down version of what was publicly argued in court. It is also, in essence, what the court found in setting a $500,000 cash only bond. Of course, anyone faced with a charge of first-degree murder, which carries with it a mandatory sentence of life in prison, is a possible flight risk, if released on bond. When placed in this context, there was absolutely no

likelihood that the statement "a substantial likelihood of heightening public condemnation of the accused" as required by Colo. RPC 3.8(f). Also, the exceptions of Rule 3.6 (b)(2) "information contained in a public record" and Rule 3.6 (b)(4) the "result of any step in litigation" exclude this type of statement from being a violation of rule 3.8(f).

Respondent denies **averment 125 (e)** stating, Respondent violated this rule on several occasions, including but not limited to:

> In June 2021, when King texted about a Barry Morphew video Respondent replied to the host of the Profiling Evil YouTube channel with a text stating, "We got him. No worries."

Specifically, this statement to an individual in a text has not been shown to have been publicly disseminated. It is not a comment made during any type of media broadcast. Under these circumstances, it is not a statement that has "a substantial likelihood of heightening public condemnation of the accused". Additionally, the statement is ambiguous in nature. The next court event was the preliminary hearing. Saying "we got him. No worries", does not appear to be a comment on guilt or innocence, or character, or any quality that would heighten public condemnation of the accused, but rather was a prediction that probable cause would be established at the preliminary hearing, as it was.

What is the heightened public condemnation of the accused associated with this statement? It is hard to conceive of any. The only plausible inference of this statement is that the prosecution thought they had a case against Mr. Morphew and could prove it. Wouldn't any member of the public automatically assume that the prosecutor thought they had a case, if they filed one? Certainly, the bringing of murder charges against someone carries a risk of public condemnation. Afterwards, in anticipation of an eventual finding of probable cause by the court, stating in a text message to another individual, "we got him. No worries", does not seem in any way to risk heightening public condemnation of the accused above what was already inherent in the proceedings that were ongoing against Mr. Morphew.

Respondent denies **averment 126** stating, "By such conduct, and in each instance described above, Respondent violated Colo. RPC 3.8(f)."

The Respondent incorporates the answers to averments 125 (a-e) above in denying this averment.

15. Complaint heading: **CLAIM IV**
[Responsibilities of Supervisory Lawyer—Colo. RPC 5.1(a) and (b)]
(averments 127-133)

Respondent admits **averment 127**, stating "Colo. RPC 5.1(a) and (b) provide, (a) a partner in a law firm12, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct, and (b) a lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct."

Respondent denies **averment 128** stating, "Respondent violated section (a) of this rule because she failed to make reasonable efforts to ensure the 11th Judicial District Attorney's Office had in effect measures giving reasonable assurance that all prosecutors

in her office conformed to the Rules of Professional Conduct, including Colo. RPC 3.4(c) and 3.8(d)."

The Respondent further answers by claiming that the averment and complaint fails to specify with sufficient detail how the Respondent has failed to make such reasonable efforts to allow the Respondent to defend against this claim.

Respondent denies **averment 129** stating, "Respondent failed to make reasonable efforts to ensure that subordinate prosecutors were adequately trained regarding discovery and timely disclosures, including expert disclosures, and failed to make reasonable efforts to implement adequate office procedures to facilitate compliance with Crim. P. 16 and related orders from the tribunal relating to discovery and disclosures."

The Respondent further answers by claiming that the averment and complaint fails to specify with sufficient detail how the Respondent has failed to make such reasonable efforts to allow the Respondent to defend against this claim.

Respondent denies **averment 130** stating, "Respondent failed to make reasonable efforts to implement adequate measures to ensure administrators and prosecutors could consistently comply with the Rules of Professional Conduct."

The Respondent further answers by claiming that the averment and complaint fails to specify with sufficient detail how the Respondent has failed to make such reasonable efforts to allow the Respondent to defend against this claim.

Respondent denies **averment 131** stating, "Respondent violated section (b) because she failed to make reasonable efforts to ensure the *Morphew* prosecutors would comply with the Rules of Professional Conduct."

The Respondent further answers by claiming that the averment and complaint fails to specify with sufficient detail how the Respondent has failed to make such reasonable efforts to allow the Respondent to defend against this claim.

Respondent denies **averment 132** stating, "Even after Respondent was on notice her prosecution team had been sanctioned for discovery violations, Respondent failed to verify that designated experts had been interviewed as to the scope of their opinion prior to being disclosed, failed to verify expert disclosures had been reviewed before filing, failed to verify that all material in support of the expert disclosures had been disclosed, and failed to ensure that all such disclosures were timely, and thus did not make reasonable efforts to ensure prosecutors in the *Morphew* case were complying with the Rules of Professional Conduct."

The Respondent further answers by claiming that the averment and complaint fails to specify with sufficient detail how the Respondent has failed to make such reasonable efforts to allow the Respondent to defend against this claim.

Respondent denies **averment 133** stating, "By such conduct, Respondent violated Colo. RPC 5.1(a) and (b)."

16. Complaint heading: **CLAIM V**
[Attempt to Violate the Rules of Professional Conduct and Conduct Prejudicial to the Administration of Justice—Colo. RPC 8.4(a) and Colo. RPC 8.4(d)]
(averments 134-143)

Respondent admits **averment 134**, stating "Colo. RPC 8.4(a) prohibits a lawyer from attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another.

Respondent admits **averment 135**, stating "Colo. RPC 8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice."

Respondent admits **averment 136**, stating "Respondent, in her role as elected district attorney, instructed her Chief Investigator, Andrew Corey, to interview the ex-wife of Judge Lama, the judge who was presiding over the *People v. Morphew* case.

The Respondent denies **averment 137,** stating, "Respondent did so in an effort to uncover information about Judge Lama that would be cause for his recusal or disqualification from continuing to preside over the *Morphew* case.

The Respondent denies **averment 138**, stating "Respondent took this approach despite having had no credible source for suspecting that Judge Lama had physically abused his ex-wife, or other conduct that would justify a criminal investigation.

The Respondent denies **averment 138**, stating "Respondent persisted in having her own investigator interview the Judge Lama's ex-wife, even after Commander Walker refused to interview Judge Lama's ex-wife due to a lack of credible evidence to warrant an interview.

Specifically, it is believed that Commander Walker expressed concerns about interviewing the witness other than what is reflected in averment 138.

Respondent denies **averment 140**, stating "Respondent used her position and office's resources in a manner intended to prevent others, including Judge Lama, from effectively performing their roles in the criminal justice system."

Respondent contents that she used her position as District attorney in an attempt to see that Justice was done in the 11th Judicial District. In deciding how to proceed, she consulted with other experienced and ethical prosecutors. She at no time did anything to prevent anyone else from lawfully and effectively performing their roles in the criminal justice system.

Respondent denies **averment 141**, stating "Respondent's actions constituted of an abuse of her power as an elected district attorney and were contrary to a prosecutor's responsibility to act as a minister of justice."

Respondent denies **averment 142**, stating "Through her actions, Respondent acted in a manner that constituted an attempt to prejudice the administration of justice, and also was prejudicial to the administration of justice."

Respondent denies **averment 143**, stating "By such conduct, Respondent violated Colo. RPC 8.4(a) and 8.4(d)."

The Respondent committed no ethical violation in choosing to conduct a limited investigation of Judge Lama under the circumstances presented. The issue of whether to possibly interview Judge Lama's ex-wife arose because the Respondent became aware that a petition, called "help give Suzanne Morphew back her voice (and all the other Suzannes)", was being publicly circulated calling for an investigation of Judge Lama for

a potential conflict of interest and calling for his removal from the case if it proved warranted. This petition was not initiated by the Respondent or anyone on her prosecution team. It was initiated through an entity called change.org. The petition stated it was started on March 12, 2022, by Julez Wolf, who Regulation Counsel refer to in averments 50-52, 122(c), and 125(d). Julez Wolf wrote the following in support of the petition:

> RE:2022CR47 People of the State of Colorado v. Barry Lee Morphew
>
> Judge Lama (Colorado11th Judicial) recently made the decision to disallow any testimony regarding Domestic Abuse/Violence in 2022CR47 People of the State of Colorado v. Barry Lee Morphew. The Arrest Affidavit for Mr. Morphew has been made public, and includes text messages from the victim (Suzanne Morphew) indicating domestic abuse, statements from one of the couple's daughters that indicate she observed domestic abuse in the home, statements from friends and family members of Suzanne Moorman Morphew that indicate they had concerns regarding Domestic Abuse, and statements from Barry Morphew (the accused) which appear to corroborate Domestic Abuse.
>
> The decision by Judge Lama was concerning enough, as it could be cited in future to exclude such testimony in future cases as well, but it then became known that the ex-wife of Judge Lama is an advocate of Suzanne Morphew and victims of Domestic abuse. She also is a member of the Gym that the defendant, Barry Morphew, belonged to.
>
> There appears to be a conflict of interest for Judge Lama. Please look into this issue and if Judge Lama has a conflict of interest, remove him from this case.

Additionally, the petition would eventually receive 2,541 signatures in support, many with statements from individuals as to the reasons for their support. Some of those signatures included named individuals who lived in the 11th Judicial District. By way of example, a Stephanie Pulliam wrote:

> Suzanne and her family were neighbors for years. I can't imagine she can not have her voice heard and get the justice she deserves. Domestic violence should never be overlooked under any circumstances."

A Jessica Braden wrote:

> "She was my 6th grade teacher, always kind and more then deserves justice and a proper burial."

A Lori Wilmot wrote:

> Suzanne Morphew MUST BE HEARD and THIS JUDGE IS WRONG!!!!! The DOMESTIC VIOLENCE ABUSE AT THE HANDS OF BARRY MORPHEW MUST BE HEARD! IT IS SUZANNES CONSTITUTIONAL RIGHT TO BE HEARD! She was brutalized and this judge thinks it shouldn't be heard or this is no evidence? He is suppressing vital evidence!!!

And on, and on, and on went the criticisms of Judge Lama's perceived aberrant conduct by the petition signers.

Against this backdrop was the experience of the prosecution team in dealing with Judge Lama. They felt that the court had not been even handed in his rulings. They felt that the Judge was biased against the prosecution. They disagreed with many of his rulings, which they felt were unsupported by the evidence or the law. The court had effectively acted in its rulings in a way that forced the case to be dismissed.

It was in the above context that it was decided to have an investigator contact Judge Lama's ex-wife. The prosecution team did not understand why the court was showing such hostility toward the prosecution, and the content of the petition raised the possibility of a connection between attitudes toward domestic violence and his ex-wife. The allegations of the petition about Judge Lama suppressing probative evidence in the case regarding domestic violence against Zuzanne Morphew was known to be true, since the prosecution team had in fact experienced this aberrant ruling by Judge Lama over their objections. The prosecution team knew that judge Lama's ex-wife was listed as a director of the Alliance Against Domestic Abuse, a charitable organization located within Chaffee County, which is in the 11th Judicial District. Since the petition revealed that Judge Lama's ex-wife was an advocate for Zuzanne Morphew, a fact that the Respondent was personally aware of from previous live chat communications with Judge Lama's ex-wife, it seemed reasonable to attempt to conduct an interview with her to determine if there could be any merit to the claims raised in the public petition.

The interview that was conducted was brief and was very limited. It was entirely voluntary on the part of Judge Lama's ex-wife. It was not coercive or threatening in any way. Its goal was solely to ascertain if she was aware of any basis for a possible bias or conflict of interest involving Judge Lama and issues relating to domestic violence. It did not attempt to lead Judge Lama's ex-wife into making any type of statement against Judge Lama. There were no further interviews of judge Lama's family or associates.

The interview was not in any way an attempt to prejudice the administration of justice. To the contrary, the interview was an attempt to ensure that there was no basis to a widely circulated public claim that the administration of justice had been prejudiced by a possible conflict of interest or bias on the part of the judge. This case was a matter of great public concern. This interview was an attempt to engage in due diligence to investigate this claim to see whether it had any merit. The fact that literally thousands had signed a petition calling for this matter to be looked into seemed to justify some investigation. When a request to local law-enforcement to investigate was denied, the Respondent felt it was necessary to have her own investigator conduct the interview.

Further, there is no evidence that this limited interview in any way prejudiced the administration of Justice. Although Attorney Regulation raises this claim, there is not a single word of supporting evidence or analysis provided to support it. This interview was not used in any way to influence or intimidate the court or anyone else associated with the case. The interview did not delay the case. The interview did not prevent the eventual dismissal of the case without prejudice. The fact that it had been conducted was not publicly revealed by the Respondent or her office. Ironically, the only person that seems to have had a desire to make it public is former Judge Lama, who went on television to speak about it and suggest disbarment of the Respondent, despite the fact that he is a lawyer and there was a pending disciplinary matter that could be influenced by his prejudicial remarks.

The right of the prosecution to conduct investigations of matters relating to the prosecution of criminal cases is clear. ***ABA Standards for Criminal Justice: Prosecutorial Investigations, Third Edition*** © 2014, American Bar Association, sets out standards for specific investigative functions of the prosecutor:

STANDARD 2.1 THE DECISION TO INITIATE OR TO CONTINUE AN INVESTIGATION

(a) The prosecutor should have wide discretion to select matters for investigation. Thus, unless required by statute or policy:

(i) the prosecutor should have no absolute duty to investigate any particular matter; and

(ii) a particularized suspicion or predicate is not required prior to initiating a criminal investigation.

Various law enforcement functions require a particular standard. For instance, a stop requires reasonable suspicion. A search or arrest requires probable cause. The filing of criminal charges requires probable cause. A conviction at trial requires proof beyond a reasonable doubt. However, as noted by Standard 2.1(1) a particularized suspicion or predicate is not required prior to initiating a criminal investigation.

STANDARD 3.2 PROSECUTOR'S ROLE IN ADDRESSSING SUSPECTED JUDICIAL MISCONDUCT

(a) Although judges are not exempt from criminal investigation, the prosecutor's office should protect against the use of false allegations as a means of harassment or abuse that may impact the independence of the judiciary.
(b) If a line prosecutor has reason to believe that there is significant misconduct or illegal activity by a member of the judiciary, the line prosecutor should promptly report that belief and the reasons for it to supervisory personnel in the prosecutor's office.
(c) Upon receiving from a line prosecutor, or from any source, an allegation of significant misconduct or illegal conduct by a member of the judiciary, a supervisory prosecutor should undertake a prompt and objective review of the facts and circumstances.
(d) If the prosecutor's office has a reasonable belief that a member of the judiciary has engaged in criminal conduct, the prosecutor's office should initiate, or seek the initiation of, a criminal investigation.
(e) If the prosecutor's office concludes that a member of the judiciary has not engaged in illegal conduct, but has engaged in non-criminal misconduct, the prosecutor's office should take appropriate action to inform the relevant officer of the judicial authorities. Reporting may also be required to comply with requirements of the applicable rules of professional conduct, the Model Rules and the law of the jurisdiction.
(f) The prosecutor's office should take reasonable steps to assure the independence of any investigation of a judge before whom the prosecutor's office practices. In some instances, this may require the appointment of a "pro tem" or "special" prosecutor or use of a "fire-wall" within the prosecutor's office.

The Respondent complied with the standards set out in standard 3.3 for addressing suspected judicial misconduct. As indicated above, judges are not exempt from investigation. The following up on the claims made in the public petition relating to the conduct of the judge was a reasonable exercise of prosecutorial discretion to see if there was any basis for that claim. Rather than repeat the allegations made in the petition or use them in court to attempt to recuse the judge, the Respondent chose to have a single interview conducted to see if it could shed any light on the claim. When it did not, the investigation ended. Standard 3.2(c) specifically indicates, "Upon receiving from a line

prosecutor, or from any source, an allegation of significant misconduct or illegal conduct by a member of the judiciary, a supervisory prosecutor should undertake a prompt and objective review of the facts and circumstances."

Additionally, the Respondent claims that Attorney Regulation is without jurisdiction or authority to regulate the District Attorney's investigative decisions. These are decisions that fall within the purview of the executive branch of the Colorado government and are not subject to attorney regulation. The doctrine of separation of powers prevents attorney regulation of the exercise of the District Attorney's power to investigate.

The Colorado Supreme Court has consistently held that district attorneys, although elected from judicial districts, are members of the executive branch of government. Beacom v. Board of County Commissioners, 657 P.2d 440 (Colo. 1983). People v. Macrander, 828 P,2d 234, 240 (Colo. 1992) ("the district attorney is a member of the executive department"); People v. District Court, 767 P.2d 239, 240 (Colo. 1989) ("The district attorney is part of the executive branch of government..."); People v. Wright, 742 P.2d 316, 319 (Colo. 1987) ("A district attorney is a member of the executive branch of government."). People v. District Court, 632 P.2d 1022, 1024 (Colo. 1981) ("It is clear that while the district attorney is an officer of the court, as is any member of the bar, he is not a judicial officer nor a part of the judicial branch of government. The district attorney belongs to the executive branch of government"); People v. District Court, 527 P.2d 50, 52 (Colo. 1974) ("While he is an officer of the court as any other attorney, a district attorney is not a judicial officer not a part of the judicial branch of government. A district attorney belongs to the executive branch.").

Colo. Const. Art. III provides:

"The powers of the government of this state are divided into three distinct departments, — the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted."

The Colorado Supreme Court has repeatedly held that the doctrine of separation of powers compels separation of the judicial and prosecutorial functions. In People in Interest of J.A.L., 761 P.2d 1137, 1139 (Colo. 1988) the Court wrote:

> "The prohibition against judicial intervention in or control of the exercise of prosecutorial discretion flows from the doctrine of separation of powers." People v. Thorpe, 641 P.2d 935, 938 (Colo. 1982). The prosecutor, not the court, is charged with the duty to prosecute individuals for violations of criminal laws. People v. District Court, 632 P.2d 1022, 1024 (Colo.1981). A prosecutor has broad discretion "to determine who shall be prosecuted and what crimes shall be charged." Id. In order to preserve the required separation of powers, decisions of this nature "may not be controlled or limited by judicial intervention."

The decision as to who to investigate falls squarely within the prosecutorial function as a member of the executive. Unlike attorneys in general and judges, district attorneys also are statutorily listed as peace officers. 16-2.5-132, C.R.S. They have investigative authority and the authority to enforce all laws. 16-2.5-101, C.R.S. In the seminal Colorado case on prosecutorial immunity, Higgs v. District Court, 713 P.2d 840 (Colo. 1985), the Court specifically noted that district attorneys have investigative functions that are attenuated from their quasi-judicial functions. The court found that a distinction must be drawn between a prosecutor's "advocatory" functions, which are closely related to the

judicial process and thus are absolutely immune, and his "investigative" and "administrative" functions, which have a more attenuated connection with the judicial process and are therefore only qualifiedly immune. The Court gave an example as follows: "The Fifth Circuit similarly observed in *Marrero* that "[w]hen a prosecutor makes an investigative decision, such as whether to conduct a search and seizure, he is making a decision essentially comparable to that of a policeman" and there is "no reason why prosecutors deserve greater protection [than policemen] for the same kind of decisions . . . ." 625 F.2d at 508." If the exercise of the district attorney's discretion to file criminal charges is not subject to judicial intervention, then the exercise of his police power to investigate, which is even more attenuated from the judicial process, is certainly protected by the doctrine of separation of powers.

If the District Attorney is not allowed to investigate allegations of misconduct of judges, then there is a real possibility that confidence in the judicial branch might be undermined. It violates the "axiom that no man is above the law." Sanctioning a prosecutor for undertaking a single interview of a person that was mentioned in a widely circulated petition calling into question the conduct of a judge, would certainly deter prosecutors from attempting to investigate any allegations of judicial misconduct. To do so, would seriously infringe on the executive power of the district attorney and violate principles of separation of powers.

17. Complaint heading: **Respondent's Extrajudicial Statements Become More Brazen** (averments 144-155)

Respondent admits **averment 144**, stating "On May 22, 2023, a child abuse case was initiated against William Henry Jacobs stemming from the death of a 10 month old child."

Respondent admits **averment 145**, stating "Approximately a week later, Brooke Crawford, the mother of the child, was charged as a co-defendant on June 2, 2023."

Respondent admits **averment 146**, stating "The charges arose from an incident that occurred while the child was in Mr. Jacobs' care."

Respondent admits **averment 147**, stating "Respondent subsequently formally charged Mr. Jacobs with Murder in the First Degree and two counts of felony Child Abuse resulting in death for the death of a 10 month old child; he was also charged with misdemeanor Animal Cruelty."

Respondent admits **averment 148**, stating "Ms. Crawford was charged with felony child abuse resulting in serious bodily injury, misdemeanor child abuse, and misdemeanor animal cruelty."

Respondent admits **averment 149**, stating "On August 1, 2023, a television interview aired with Respondent and KRDO channel 13 Investigative Reporter Sean Rice discussing the child abuse cases."

Respondent admits **averment 150**, stating "As of the date of this filing, KRDO's video and audio news story can be accessed at: https://krdo.com/news/2023/08/01/fremont-co-district-attorney-believes-accused-baby-killergot-with-babys-mom-just-to-get-laid/."

Respondent admits in part **averment 151**, stating "During the television interview on channel 13, Respondent made the following statements about defendants Mr. Jacobs and Ms. Crawford:

Stanley: I think she saw a live-in babysitter. Now she can just really pound out the hours, right? She's got a live-in babysitter now she doesn't have to worry about anything, right?

Rice: DA Linda Stanley is speaking about Brooke Crawford, a Canon City mom charged with child abuse resulting in death. Her 10-month old son, Edward, was left in the care of William Jacobs back in May. Police say Jacobs told detectives he shook and slapped the baby on the back to get him to breathe.

Stanley: I just had so many buzzers going off when they said the boyfriend was watching him.

Rice: While police investigated the case, the baby died at Children's Hospital. That's when DA Stanley's office upgraded Jacobs' child abuse charges to first degree murder.

Stanley: There's no witnesses. There's no nothing. There's a whole lot of things indicative of prior – of a prior incident with that baby.

Rice: Prior abuse that Stanley says is the direct result of Jacobs having direct access to a child he didn't care about. She says the pair moved into a Motel 6 room together mere days after meeting one another. The DA tells 13 Investigates the criminal evidence points to a relationship where the child was not the first priority.

Stanley: Without the caring factor, without the love factor, then the baby's a pain in the ass.

Rice: The DA says just before the baby was killed, Jacobs had been released from a youth correctional facility. She says Jacobs was previously convicted of a sex crime and assault.

Stanley: I mean, I'm going to be very blunt here. He had zero investment in this child. Zero. He is watching that baby so he can get laid. That's it. And have a place to sleep. I'm sorry to be so blunt, but honest to God that's what's going on.

Rice: Today we reached out to Jacobs' attorney for comment on Stanley's view of his motives in this case. We're still awaiting his response. Jacobs will be due back in court later this month.

Specifically, Respondent admits that the above quoted statements were broadcast by KRDO. Respondent admits that she made the statements that are recorded of her speaking, as reflected in the original recording of the entirety of interview. However, Respondent denies that she made the statements that are attributed to her by reporter Sean Rice in his oral commentary. Respondent maintains that reporter Sean Rice has selectively edited the purported copy of the original interview, which calls into question the accuracy of what was stated in the interview, and he has also misquoted her in his commentary.

Additionally, Respondent claims that all of the above statements were aired by Sean Rice and KRDO in violation of a request and agreement that the statements were off the record. The Respondent unquestionably told Sean Rice that she could not speak about any pending cases. All matters that he went on to report about involved a pending case.

Respondent admits in part **averment 152**, stating "The online article that accompanied the news video went on to include Respondent's comments about Mr. Jacobs' ability to flee as follows,

> The 11th DA says she was worried Jacobs would be 'gone' if they didn't arrest him soon after the baby's death. This was because, according to Stanley, Jacobs was just recently released from custody.

Specifically, Respondent admits that the above statement appeared in the online article that accompanied the news video. Respondent admits that she made the statements that are recorded of her speaking, as reflected in the original recording of the entirety of interview. However, Respondent denies that she made the statements that are attributed to her by reporter Sean Rice in his written online article, unless they are reflected in the original recording of the interview.

Additionally, Respondent claims that all statements attributed to the Respondent that were contained in the online article that accompanied the news video were published by Sean Rice and KRDO in violation of a request and agreement that the statements were off the record. The Respondent told Sean Rice that she could not speak about any pending cases. All matters that he went on to report about involved a pending case.

Respondent admits **averment 153**, stating "Respondent stated, I said you got to hook him because he's going to be gone. He knows what's going on. He's no dummy to this process and what's happening and he knows what he did."

However, the Respondent claims that all statements attributed to the Respondent that were contained in the online article that accompanied the news video were published by Sean Rice and KRDO in violation of a request and agreement that the statements were off the record. The Respondent told Sean Rice that she could not speak about any pending cases. All matters that he went on to report about involved a pending case.

Additionally, this reported statement was about the defendant being a flight risk. This statement was made after bond arguments were made in open court. Therefore, this statement is allowed, under 3.6(b), which states, "Notwithstanding paragraph (a) and Rule 3.8(f), a lawyer may state: (2) information contained in a public record.

Respondent admits **averment 154**, stating "On August 8, 2023, defense counsel for Ms. Crawford filed a Motion to Dismiss for Outrageous Government Conduct, based on Respondent's statements to Sean Rice at KRDO."

Respondent denies **averment 155**, stating "Notwithstanding this filing, Respondent did not contact KRDO to request that the video or corresponding written article be removed from its website."

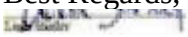
Specifically, on December 18, 2023, the Respondent sent Sean Rice of KDRO the following strongly worded email requesting :

> Mr. Rice,
>
> I am writing to you regarding the video you aired in August regarding the Jacobs/Crawford cases. As you recall, the interview was actually recorded on July 12. My comments were aired in violation of our agreement that my statements were off the record. I repeatedly told you that I could not talk about any pending cases. You disregarded that request and broadcasted my statements about the

Jacobs/Crawford cases.

In reflecting on your conduct in this regard, I have come to the conclusion that this disregard of your professional obligations to honor my request that the conversation be off the record was a calculated decision. Unlike the myriad of requests I receive from KRDO asking for comment on a soon-to-be-aired story, you never asked for comment before you aired this.
Oddly enough, I had a phone conversation with you that very day regarding your attempt to obtain court documents, yet you never mentioned what you had planned for the evening news.
You and I both know the reason for that. You and I both know what was off the record on July 12. And that's precisely why you didn't ask me for comment: It was always meant to be an ambush.

I request that you immediately remove the video from all media sources. Not only because you aired it when you knew it was off record, but also because you are potentially causing harm to the case due to your lack of integrity and ethics. If you care about the case more than your own agenda and more than ratings, you will permanently remove it and do so immediately

Best Regards,

District Attorney
11th Judicial District

18. Complaint heading: **CLAIM VI**
[Pretrial Publicity—Colo. RPC 3.6(a)]
(averments 156-162)

Respondent admits **averment 156**, stating "Colo. RPC 3.6(a) states that a lawyer who is participating in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter."

Respondent denies **averment 157**, stating "Even after she'd already suffered the consequences of her extrajudicial statements in the Morphew case, Respondent continued with more brazen statements."

Respondent denies **averment 158**, stating "Respondent violated this rule when she made extrajudicial statements to KRDO reporter, Sean Rice, which she knew or reasonably should have known would be disseminated by means of public communication and would have a substantial likelihood of materially prejudicing an adjudicative proceeding in the Jacobs and Crawford matters."

Respondent claims that all of the above statements were aired by Sean Rice and KRDO in violation of a request and agreement that the statements were off the record. The Respondent unquestionably told Sean Rice that she could not speak about any pending cases. All matters that he went on to report about involved a pending case. Therefore,

the Respondent did not know that these statements would be disseminated by means of public communication and would have a substantial likelihood of materially prejudicing an adjudicative proceeding in the Jacobs and Crawford matters. If the statements had not been publicly broadcasted or placed on KRDO's website, they would not have had any likelihood of materially prejudicing an adjudicative proceeding.

The circumstances of the statements did not create a situation where the Respondent reasonably should have known the statements would be disseminated by means of public communication. The Respondent's experience with members of the media was that they honored their agreements that off the record statements would not be broadcast. She had never before had a journalist disregard the request that a communication be off the record. The Respondent had attended ethics training concerning communications under Colo. RPC 3.6(a) and 3.8(f) and believed that the off the record conversation was appropriate.

Respondent denies **averment 159**, stating "As the Elected District attorney, Respondent's stated belief of a defendant's guilt or innocence is inherently prejudicial."

The Respondent does not know what stated belief as to guilt or innocence is being alleged. In point of fact, the above quoted part of the specifically has the Respondent saying, "There's no witnesses. There's no nothing."

Respondent denies **averment 160**, stating "Her statements had a substantial likelihood of materially prejudicing the Jacobs and Crawford trials: these were charged as felony cases, under media scrutiny, and Respondent offered her opinions as to Mr. Jacobs' intent, his prior juvenile conviction, and his guilt."

Respondent denies **averment 161**, stating "Respondent also made statements about Ms. Crawford's character, judgment and motives."

Respondent denies **averment 162**, stating "By such conduct Respondent violated Colo. RPC 3.6(a)."

The Respondent incorporates all answers above in denying this averment.

Specifically, the Respondent claims that all of the above statements were aired by Sean Rice and KRDO in violation of a request and agreement that the statements were off the record. The Respondent unquestionably told Sean Rice that she could not speak about any pending cases. All matters that he went on to report about involved a pending case. Therefore, the Respondent did not know that these statements would be disseminated by means of public communication and would have a substantial likelihood of materially prejudicing an adjudicative proceeding in the Jacobs and Crawford matters. If the statements had not been publicly broadcasted or placed on KRDO's website, they would not have had any likelihood of materially prejudicing an adjudicative proceeding.

The circumstances of the statements did not create a situation where the Respondent reasonably should have known the statements would be disseminated by means of public communication. The Respondent's experience with members of the media was that they honored their agreements that off the record statements would not be broadcast. She had never before had a journalist disregard the request that a communication be off the record. The Respondent had attended ethics training concerning communications under

Colo. RPC 3.6(a) and 3.8(f) and believed that the off the record conversation was appropriate.

19. Complaint heading: **CLAIM VII**
[Prosecutor's Extrajudicial Comments—Colo. RPC 3.8(f)]
(averments 163-166)

Respondent admits **averment 163**, stating "Colo. RPC 3.8(f) states the prosecutor in a criminal case shall refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused."

Respondent denies **averment 164**, stating "Respondent's statements to Sean Rice at KRDO regarding Ms. Crawford's character, intent, and judgment, had a substantial likelihood of heightening the public's condemnation of the accused, Ms. Crawford."

Respondent claims that all of the statements alleged to have been made about Ms. Crawford were aired by Sean Rice and KRDO in violation of a request and agreement that the statements were off the record. The Respondent unquestionably told Sean Rice that she could not speak about any pending cases. All matters that he went on to report about involved a pending case. Therefore, the Respondent did not know that these statements would be disseminated by means of public communication. If the statements had not been publicly broadcasted or placed on KRDO's website, they would not have a substantial likelihood of heightening public condemnation of the accused.

The Respondent claims a mistake of fact as a defense to this claim. The Respondent believed that the statements were off the record. The Respondent's experience with members of the media was that they honored their agreements that off the record statements would not be broadcast. She had never before had a journalist disregard the request that a communication be off the record. The Respondent had attended ethics training concerning communications under Colo. RPC 3.6(a) and 3.8(f) and believed that the off the record conversation was appropriate.

Respondent denies **averment 165**, stating "Respondent's statements to Sean Rice at KRDO regarding Mr. Jacobs' intent, his prior juvenile conviction, and his guilt, had a substantial likelihood of heightening the public's condemnation of the accused, Mr. Jacobs."

Respondent claims that all of the statements alleged to have been made about Mr. Jacobs were aired by Sean Rice and KRDO in violation of a request and agreement that the statements were off the record. The Respondent unquestionably told Sean Rice that she could not speak about any pending cases. All matters that he went on to report about involved a pending case. Therefore, the Respondent did not know that these statements would be disseminated by means of public communication. If the statements had not been publicly broadcasted or placed on KRDO's website, they would not have a substantial likelihood of heightening public condemnation of the accused.

The Respondent claims a mistake of fact as a defense to this claim. The Respondent believed that the statements were off the record. The Respondent's experience with members of the media was that they honored their agreements that off the record statements would not be broadcast. She had never before had a journalist disregard the request that a communication be off the record. The Respondent had attended ethics training concerning communications under Colo. RPC 3.6(a) and 3.8(f) and believed that the off the record conversation was appropriate.

Respondent denies **averment 166**, stating "By such conduct Respondent violated Colo. RPC 3.8(f)."

The Respondent incorporates all answers above in denying this averment.

Respondent claims that all of the statements alleged to have been made about Mr. Jacobs or Ms. Crawford were aired by Sean Rice and KRDO in violation of a request and agreement that the statements were off the record. The Respondent unquestionably told Sean Rice that she could not speak about any pending cases. All matters that he went on to report about involved a pending case. Therefore, the Respondent did not know that these statements would be disseminated by means of public communication. If the statements had not been publicly broadcasted or placed on KRDO's website, they would not have a substantial likelihood of heightening public condemnation of the accused.

The Respondent claims a mistake of fact as a defense to this claim. The Respondent believed that the statements were off the record. The Respondent's experience with members of the media was that they honored their agreements that off the record statements would not be broadcast. She had never before had a journalist disregard the request that a communication be off the record. The Respondent had attended ethics training concerning communications under Colo. RPC 3.6(a) and 3.8(f) and believed that the off the record conversation was appropriate.

20. Prayer for Relief: Respondent prays that the People's Claims be denied; Respondent prays that requests for discipline be denied; Respondent prays that if any disciplinary violations are found to have occurred, that the discipline imposed be proportionate to any harm caused by said violations and consider all relevant mitigating circumstances; Respondent prays that any imposition of costs of the proceedings be proportioned only on the basis of the People's success in proving by clear and convincing evidence the specific claims alleged in the complaint and that the People not be awarded costs associated with any claims not so proven. Further, the Respondent claims an offset of costs incurred by the Respondent in defending against the People's failed claim for Interim Suspension.

DATED this 18th day of December of 2023.

Respectfully submitted,

By:

Steven Lawrence Jensen
Registration No. 14141