ADAMS & CLARK, PC

February 9, 2018

HAND-DELIVERED THIS DATE to:
Attorney Discipline Probable Cause Committee
c/o Mark Wilson, Director
Certification and Licensing Division
Administrative Office of the Courts
1501 W. Washington, Suite 104
Phoenix, Arizona 85007

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Re: State Bar File 17-0624 – Respondent Juan Martinez

Dear Members of the Attorney Discipline Probable Cause Committee:

On January 9, 2018, Bar Counsel notified Complainant Jodi Ann Arias that the State Bar was dismissing her above-referenced bar charge against Juan Martinez. **Exhibit 24.** On January 19, 2018, Complainant timely notified Bar Counsel of her objection to the dismissal. **Exhibit 25.**

Rule 55(b)(2)(A)(ii), Ariz. R. Sup. Ct.[1] provides that the Committee must review this matter, and either: (1) sustain the dismissal; (2) overturn the dismissal, or; (3) direct Bar Counsel to conduct further investigation. As to the first option, the rule states: "the Committee shall sustain the dismissal unless it constituted an abuse of discretion." *Ibid.*

The purpose of this letter is to provide the Committee with information for its consideration in reviewing this matter. The information provided *infra* proves that Bar Counsel's dismissal is an abuse of discretion that must be overturned, and that this matter warrants nothing less than an Order of Probable Cause, authorizing Bar Counsel to file a formal complaint. Rule 55(c)(1)(D). If the Committee disagrees, then at a minimum it should direct Bar Counsel to conduct further investigation – which is certain to result in an Order of Probable Cause authorizing a formal complaint.

I. Bar Counsel's Dismissal is an Abuse of Discretion, and the Evidence in this Case warrants an Order of Probable Cause authorizing a formal complaint.

The Arizona Supreme Court has stated that a court "abuses its discretion when it misapplies the law or predicates its decision upon irrational bases." *Blazek v. Superior Court*, 177 Ariz. 535, 537, 869 P.2d 509, 511 (App.1994). An abuse of discretion "is discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Torres v. North American Van Lines, Inc.*, 135 Ariz. 35, 40, 658 P.2d 835, 840 (App.1982). [2]

Along with its January 9 letter to Complainant, Bar Counsel provided a copy of its letter to Respondent of that same date, dismissing the bar charge ("dismissal letter"). **Exhibit 25.** The dismissal letter includes an "educational comment" directed at Respondent.

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[1] All rule citations herein are to the Arizona Rules of the Supreme Court.
[2] Although the Rules contain a "definitions" section (*see* Rule 46), "abuse of discretion" is not defined, and the definition of this term must be gleaned from relevant case law.

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This is the only "explanation" of the dismissal Bar Counsel has provided to Complainant. Bar Counsel's dismissal letter reveals that the State Bar does indeed have probable cause to believe Respondent misconduct exists - and therefore had no authority to dismiss the bar charge. Bar Counsel's letter states numerous times that it's dismissal is based on its determination that the acts of misconduct cannot be proven by clear and convincing evidence. **Exhibit 25.**

Bar Counsel has authority to dismiss a bar charge "if, after conducting a screening investigation, there is no probable cause to believe misconduct exists pursuant to these rules." Rule 49(b)(6). In other words, Bar Counsel can only dismiss if there is no probable cause. But, if there is probable cause of misconduct, it is up to the Committee to decide whether a Complaint should be filed or other informal discipline imposed. Rule 55(c)(2)(A). In deciding whether to authorize Bar Counsel to file a Complaint, the Committee considers whether there is clear and convincing evidence. In other words, if there is probable cause of misconduct, it is an abuse of discretion for Bar Counsel to dismiss because the Supreme Court rules say that determining whether there is clear and convincing evidence is for the Committee to decide. Rule 49(b)(6); Rule 55(c)(2)(A).

A review of the bar charge and the evidence readily available to Bar Counsel demonstrates that there is indeed clear and convincing evidence to support the serious, disturbing misconduct by Respondent set forth in the bar charge, and that Bar Counsel dismissal was an abuse of discretion. What's more: **Respondent either admits or does not deny the most crucial elements of the bar charge.** The evidence available to the State Bar goes well beyond the clear and convincing standard – it is overwhelming, and warrants nothing less than an Order of Probable Cause authorizing the State Bar to file a Complaint. Bar Counsel's decision to dismiss is clearly an abuse of discretion.

Bar Counsel's dismissal letter divides the bar charge allegations into four categories of conduct. Complainant asserts that Respondent engaged in more acts and types of misconduct than those briefly described in the dismissal letter, which are fully set forth in the bar charge. But because Complainant does not have an explanation from Bar Counsel concerning the dismissal of the other allegations, the information provided here is limited to addressing the explanation provided in the dismissal letter.

1. **Respondent's improper personal relationships with two members of the media during his prosecution of this death penalty case violated the ethical rules, and the bar charge contains clear and convincing evidence of this misconduct.**

Bar Counsel's dismissal letter states:

> While the two women deny having sex with you, you neither admitted nor denied having sex with them, **and there is no compelling evidence on the subject.**

Exhibit 1, page 1, ¶4 (emphasis added). The letter goes on to state:

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> **Such a relationship, standing alone, does not constitute a violation of the ethical rules given the specific facts of this case.**

Ibid. (emphasis added).

Bar Counsel's decision is wrong on the facts, and wrong on the law. Bar counsel's bases for dismissing this allegation are irrational as to the evidence, and involve a misapplication of the law as to the ethical rules. Under Supreme Court case law, Bar Counsel's dismissal is therefore an abuse of discretion that must be corrected by the Committee. *Blazek v. Superior Court*, 177 Ariz. 535, 537, 869 P.2d 509, 511 (App.1994); *Torres v. North American Van Lines, Inc.*, 135 Ariz. 35, 40, 658 P.2d 835, 840 (App.1982).

a. Bar Counsel's dismissal of this allegation is an abuse of discretion because it ignores the clear and convincing evidence which proves Respondent's misconduct

Complainant's February 24, 2017 bar charge is 34 single-spaced pages long: attached to it are 35 pages of Exhibits. **Exhibit 11.** In addition, Bar Counsel asked Complainant for additional information via letter dated April 27, 2017 (**Exhibit 15**). Undersigned provided the information via letter dated May 17, 2017 (**Exhibit 16**), which enclosed a thumb-drive containing more than 21,000KB of data. Undersigned thereafter provided Bar Counsel with a list of twenty-five witnesses with personal knowledge of the allegations in the bar charge. **Exhibit 18.**[3]

In his responses to this allegation, Respondent **does not deny** having sexual affairs with these two female media members during his prosecution of the *Arias* case. Rather, he states through his counsel that it is none of the State Bar's business.

i. Respondent does not deny the allegation that he had improper personal relationships with these two female members of the media covering his prosecution of this death penalty case

Respondent does not deny that he had sexual affairs with either of these two female members of the media. The entirety of the correspondence between Bar Counsel and Respondent during the investigation of this matter is as follows:

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[3] Undersigned provided the names of these witness in a phone call with Bar Counsel on May 23, 2017, and an overview of their personal knowledge and/or expected testimony. Bar Counsel informed undersigned that of these 24 witnesses, only five were interviewed by the State Bar during the course of its nearly one-year investigation. Respondent was not interviewed, nor was he deposed. *See* discussion at Section II, *infra*.

1.	3/13/17	State Bar screening letter to Respondent	**Exhibit 12**
2.	4/24/17	Respondent's 1st response	**Exhibit 14**
3.	7/17/17	State Bar letter to Respondent requesting that respond to questions in screening letter	**Exhibit 19**
4.	8/11/17	Respondent's 2nd response	**Exhibit 20**
5.	1/2/18	Emails this date between Bar Counsel and Respondent's Counsel	**Exhibit 23**
6.	1/9/18	State Bar Dismissal letter	**Exhibit 24**

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Bar Counsel did not use any other investigative tools at its disposal to gather information from Respondent related to the allegations in the bar charge. Bar Counsel has a full staff of investigators, the power to issue subpoenas for records and the power to depose Respondent and any other witnesses it chooses. Bar Counsel did not notice Respondent's deposition, on this or any other issue.

Respondent's 1st response states that "the ethical rules do not regulate the private sexual lives of lawyers". **Exhibit 14** at page 1, ¶2. Respondent then implicitly admits the allegation that he had sexual affairs with one or both of these women, stating that the bar charge: "is seeking to publicly embarrass [Respondent] by **making his private sexual life available for public consumption.**" *Id.* at page 2, ¶2 (emphasis added). He goes on to state that his "private sexual life is no one's business but his own" (*Id.* at page 2, ¶2) and then once again implicitly admits the affairs by stating that all the State Bar needs to know is that his "private life … has not impacted his ethical and professional duties." (*Id.* at page 2, ¶3).[4]

Respondent's response is wrong on every count and completely misses the point.

Though Respondent's 1st response includes an implicit admission of his sexual affairs with these two media members during the midst of their coverage of this death penalty case, it is absolutely critical to keep this one thing in mind: **the sex is not the point**. The undisputable facts are that he engaged in improper, undisclosed relationships with these members of the media covering the case; provided them after-hours access to non-public areas of the MCAO offices and non-public information about the case; used them in many ways including by asking and allowing them to "help" him – with "the mail" or in any way whatsoever – with the prosecution of a death penalty case, and; provided confidential sealed information to one of them in order to disqualify the hold-out juror who denied him of the death sentence he so vigorously sought that are at the heart of this bar charge.

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[4] Respondent did not answer Bar Counsel's specific questions in the screening letter. Bar counsel had to write and remind Respondent that he was obligated to submit a "fully cooperative and complete response" and "fully and honestly respond" to the State Bar pursuant to ER 8.1(b) and Rule 54(d). **Exhibit 19.** Even then, Respondent's second response did not answer all of Bar Counsel's questions, and Bar Counsel did nothing more to get him to answer these question prior to dismissing the bar charge.

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Respondent does not deny any of these crucial facts. He does not deny that he gave these two members of the media – with whom he had close personal and/or sexual relationships – access to non-public areas of the MCAO offices. He does not deny that he met with them there, after hours. He does not even deny giving them confidential or sealed information: he merely states that he didn't provide it to anyone "not authorized to receive it". He never denies that he and/or MCAO authorized these two members of the media covering the trial to receive such information.[5]

Bar Counsel is completely wrong that Respondent's improper personal relationships with these members of the media "stands alone". The improper relationships exist within the context of voluminous other acts of misconduct, which taken together constitute a gross violation of Respondent's duties as a minister of justice, and a gross lapse of judgment in how he should conduct himself in the most serious case for which a prosecutor can be responsible: a capital murder case in which he seeks the death penalty.

ii. Beyond the fact that Respondent implicitly admits the essential elements of this allegation, Bar Counsel has clear and convincing evidence to prove it

There are numerous witnesses who have personal knowledge that Respondent had an improper personal and/or sexual relationship with these two members of the media covering this first-degree murder case. The witnesses are: (1) Sharee Ruiz; (2) Tammy Rose; (3) Clark Wood; (4) Melissa Garcia.

1. Sharee Ruiz

Sharee Ruiz was interviewed by Bar Counsel. Undersigned also interviewed her on May 16, 2017 (which was not recorded), and again on February 6, 2018. The latter interview was recorded with her permission, and attached is the transcript of that interview. **Exhibit 28.** Ruiz has expressed her willingness to cooperate as a witness for the State Bar. Ruiz will testify as follows.

Ruiz and Jennifer Wood were business partners during the first trial. They took on the name "@TrialDivas" for a blog, twitter feed and Facebook page. They made money off the case by selling ads on the blog page and also selling "podcasts" to subscribers. The TrialDivas sold Arias case "merchandise" and also asked for public "donations" to subsidize their "work" covering the case.

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[5] Bar Counsel has not asked Respondent the most basic question left hanging in the air by this 1st response: did Respondent or anyone else at MCAO authorize Katie Wick or Jennifer Wood to receive confidential or sealed information about the case? If so, it would be yet another grievous violation of the ethical rules for Respondent to provide, (or allow others at MCAO to provide) members of the media with access to such information. *See* discussion at Section II, *infra*.

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They worked together on a daily basis, and became close. They came to know a lot about each other's personal lives. Ruiz knew that Wood was having trouble with her husband Clark. Jennifer and Clark had a child, a son who was disabled. Wood began consistently going to the area of town where Respondent lives. One day, Wood saw Respondent give Ruiz his personal cell phone number. Wood became jealous. Ruiz, who was married and had no interest in dating respondent, then confronted Wood about her jealousy and demanded to know whether Wood was having an affair with Respondent. This occurred in March 2014. Wood admitted that her affair with Respondent had been going on since at least September 2013. After Wood's admission in March 2014, there are several occasions where **Ruiz was with Wood, and heard Respondent's voice on the phone talking with Wood.** On these occasions Ruiz heard Respondent telling Wood how much he cared about her, including telling her that he loved her.

Ruiz will testify that she observed Respondent and Wood interacting at the courthouse together during the time that Respondent was prosecuting *State v. Chrisman,* CR2010-153913-001, which is when Wood's affair with Respondent began. Ruiz will also testify about observing the behavior of Wood and Respondent at the courthouse during the first *Arias* trial. Respondent would take Wood and duck into non-public areas of the courthouse, so no one could see or hear them talking. Respondent took Wood into rooms reserved for attorneys or families of victims. He even took Wood into a closet once.

Ruiz will testify that Wood told her the first time Respondent asked her out on a date they went to lunch, and then afterwards went to a condo owned by a friend of Respondent – where they had sex. Wood knew details about Respondent's glaucoma surgery in January 2014, at the end of the *Chrisman* trial. He was out of work from month then, and Wood went to his house regularly during that time period. He read to Wood from his draft book, and said that he had wanted the *Arias* case from the beginning, because he knew it would be a big case like the Casey Anthony trial, that he wanted to write a book about it, and that he planned to have it done by the time the *Arias* case was over so he could release it when the case ended.

Ruiz will testify that Wood described details of her many visits to Respondent's home in the East Valley. He would read to Wood from the book he was writing about the *Arias* case. He would read to Wood from the drafts of his book as they laid in bed together at his house after sex. Wood told Ruiz about what these drafts of the book Respondent had written said, and the information about the case that was in them. Wood told Ruiz what the inside of Respondent's house looks like: Wood said it wasn't a fancy home, but nicely decorated and "homey". Wood said that he had a garden out back, and that he did the gardening himself. She said that the backyard was very green and lush because Respondent was a very good gardener. Wood told Ruiz that Respondent had a Mini-cooper and a Porsche.

Ruiz will testify that she and Jennifer Wood had rubber bracelets made during the *Arias* case that said "Juanalicious", and sold them on their website to make money. She will testify that these bracelets "sold out like crazy", and that Respondent brought many of them for his staff at MCAO. Ruiz will testify that someone made: "I slept with Juan"

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T-shirts, and that Jennifer Wood wore them, and photos of her and other women wearing the T-shirts were used on their blog and Twitter profiles. Jennifer Wood thought it was funny, but the profiles were only up for one week and then taken down.

Ruiz will testify that Respondent came on to her sexually. He constantly flirted with her to the point of harassment, even though he knew she was married. He told her that there was no way that she could be happily married, and that he could "change her opinion about marriage". He said that he would go on "The Bachelor" show, if Ruiz and Wood would go on as the Bachelorettes. Ruiz was happily married, was not at all attracted to Respondent, and rebuffed him and his constant flirtations.

Ruiz will testify that as she and Wood got to know Respondent, he began to ask the two of them for favors.

Ruiz will testify that on one particular occasion, she heard Respondent call Wood and read to her from a motion he had drafted that had not yet been filed. After giving this information to Wood, Respondent asked Ruiz and Wood for a favor. He asked them to interview Jodi Arias and told them the questions to ask. This is when Ruiz realized that Respondent was trying to use them in exchange for information. Respondent was in essence, proposing a quid pro quo, where he would give them information and expect their help in return. Ruiz told Wood "no", that they could not do this and be used in that way. She told Wood that Respondent wanted to use them as pawns in the criminal cases he was working on, and the he wanted to use them to get information for him. Respondent would help Wood with the *Arias* case by telling her what was happening and what to look for. Ruiz was uncomfortable and told Wood that this was wrong, that Respondent was very arrogant and trying to use them in his trials to get the upper hand. Ruiz told Wood that they should not help him, because it would put defendants' cases – and the entire criminal justice system - at risk.

Ruiz will testify that after she told Jennifer Wood that they should not help Respondent, he continued to ask Wood for help on his cases. Once Wood confessed the affair, Ruiz told her that they could no longer continue to "cover" Respondent's cases on social media. Ruiz was uncomfortable with the fact that she and Wood were receiving "donations" on their website for their coverage of the *Arias* case. Wood disagreed with Ruiz that the affair was anyone's concern, or that there was anything wrong with it. They engaged in a series of text messages on this topic, which were later posted to the Internet. These text messages are attached to the bar charge as Exhibit 4. **Exhibit 11** (at its attached Ex.4).

Ruiz has no reason to lie about the information she provided undersigned, or Bar Counsel. She ended her association with Wood years ago, but she has no personal animus towards Respondent whatsoever. Moreover, it has been personally damaging for Ruiz to share this information. She will testify that she has received death threats ever since she disassociated herself from Jennifer Wood. She and her family continue to receive threats to date. She will testify that Jennifer Wood is the person who continues to threaten and harass her, and does so via her various online personas - which Tammy Rose will testify Jennifer Wood admitted to creating. She will testify that she provided

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information to Bar Counsel because Respondent needs to be held to account for his conduct, and because "right is right, and wrong is wrong". **Exhibit 28.**

2. Tammy Rose

Undersigned spent many hours interviewing Tammy Rose as part of preparing the bar charge. Undersigned conducted only one recorded interview of her - on February 13, 2017. A transcript of that interview is attached as **Exhibit 9.** After this interview Tammy Rose flew in from out of state to review the bar charge, prior to its submission. After it was filed, Rose was interviewed twice by Bar Counsel. Rose will testify consistent with the facts set forth in the bar charge. The background facts concerning Rose's testimony are set forth in the bar charge, and will not be repeated here.

Rose will testify that she was not certain Wood was telling the truth when Wood first confessed her affair with Respondent to her on January 9, 2015. But Rose came to know it was the truth when **she thereafter personally heard Respondent's voice on Woods cell phone on multiple occasions**, as he and Wood were talking. She knew it was real **when she heard Respondent tell Wood "I love you".** She knew it was true when she heard Respondent's voice on the phone, as he **made plans with Wood to meet him at his MCAO office on three successive Sundays in February-March 2015.**

Rose has no reason to lie about these facts. She and Wood were good friends. They met within one week of the start of the retrial in October 2014. Rose was a freelance journalist for KFYI, CBS news and the show *24/7*, who had all hired her to cover the *Arias* sentencing retrial. She was an established mainstream journalist with a four-year journalism degree. She and Wood very quickly formed a close friendship. Rose was a little older, had a journalism degree, and had established for herself a successful career in the news business. She tried to be a mentor to Wood, and teach her the ropes of the business. They lived only five minutes away from each other, and by January 2015 they started carpooling together on a daily basis to attend the trial. They would send text and other electronic messages to each other throughout the day – before court, in the courtroom during trial, and into the evening after court. They started socializing after work and spending time together at each other's houses.

They were very close and this is abundantly clear from their text messages to each other during this time. **Exhibit 17.** It wasn't until after the trial was over that Rose confirmed for herself what she had suspected at the time of the mistrial: that Wood had conspired with Respondent to get juror 17 kicked off the jury during deliberations, and that Wood had used one of her multiple online false identities to out juror 17. A review of her text messages with Wood after the case was over reveals Rose's personal chagrin and remorse, once she discovered this and realized the seriousness of what Wood and Respondent had done concerning juror 17.

Once the case ended, Rose was informed that Juror 17 had retained attorney Tom Ryan. She approached Tom Ryan and offered her assistance, as a witness to what had occurred here. She did something few others would do: when asked by Tom Ryan she gave him

her cell phone. She didn't just allow the data in it to be downloaded: she actually gave him her phone. Tom Ryan hired an expert, who did a forensic report of the data in her cell phone. This report was provided by undersigned to Bar Counsel on May 17, 2017.

Rose is not proud of some of the things she said in her own text messages: in support of the *Arias* prosecution; being part of the circus-like media atmosphere surrounding it; the bad language she used; and other things, including highly personal matters, that she and Wood shared in their electronic messages. Rose knows that giving over the entire contents of her phone to Tom Ryan, and then the State Bar, does not paint a flattering portrait of her. But it goes well beyond that. Sharing this information with the State Bar has also caused Rose to receive death threats by Jodi Arias "haters" - including most especially Jennifer Wood. *See* discussion, *infra*.

All of this demonstrates Rose's complete and utter lack of bias as a witness in this State Bar case. Rose is no fan of Jodi Arias. She was no fan of the defense team in the criminal case. She was rooting for Respondent to convict Arias and get her sentenced to death, just as Jennifer Wood was. This is absolutely clear from Rose's text messages with Wood, and she will so testify if called as a witness. After Rose came to the conclusion that what Wood and Respondent were responsible for outing juror 17, she felt she had to do something about it. She believed that what Respondent did needed to be properly investigated, and that he needed to be held to account for his conduct. That was her only motivation in coming forward to juror 17's lawyer Tom Ryan, and in cooperating with Bar Counsel in its investigation, and in offering her testimony and full cooperation as a witness in this matter.

The Committee needs to know this: two days after undersigned submitted the bar charge to Bar Counsel, Tammy Rose began receiving death threats. How could that be? The only people who knew the bar charge had been filed were undersigned, Tammy Rose, Bar Counsel, and Respondent. Undersigned did not provide a copy of the bar charge to anyone other than Bar Counsel. Tammy Rose did not have a copy of it. It was not in any way made public, and State Bar files are confidential during the investigation stage. So how could this be?

There is one answer: Jennifer Wood. Respondent received the bar charge, and Rose will testify that two days later Wood began using her online aliases to harass and threaten Rose.[6] This, in itself, provides compelling evidence of the lengths Wood and Respondent will go, to cover up their affair and what they did in the *Arias* case.

Rose's testimony on these issues is free from bias - unlike that of either Respondent or Jennifer Wood. Rose's testimony is backed up by the contemporaneous text messages in her cell phone, and the highly reliable forensic evidence provided to Bar Counsel. This evidence is more than compelling - it is clear and convincing evidence of Respondent's misconduct as set forth in the bar charge. It is also corroborated by the testimony of two other witnesses: Sharee Ruiz and Clark Wood.

[6] Tammy Rose filed a police report in concerning these threats. She also emailed Bar Counsel about the threats, and provided Bar Counsel with the police report number.

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3. Clark Wood

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Undersigned interviewed Clark Wood on January 30, 2018 (which was not recorded), and again on February 3, 2018. The latter interview was recorded with his permission, and attached is the transcript of that interview. **Exhibit 27.** Undersigned included his name as a witness on the list provided to Bar Counsel on May 23, 2017. Bar Counsel told undersigned the State Bar would interview Clark Wood. That never happened.

Clark Wood will testify that Respondent had an affair with his wife Jennifer, and that it was the reason for their divorce. He will testify that he had evidence of their affair, and that the evidence was overwhelming. He will testify Jennifer was a good wife until she became involved with Respondent. He will testify that Respondent duped his wife into "helping" Respondent on the *Arias* case because he was a television star and Jennifer became obsessed with being associated with him and in the limelight with him. Clark Wood will testify that his wife became caught up in something she could not then control. He will testify to his belief she became "addicted" to her blogging on the internet about the case, and the idea that she would become famous like Respondent was as a result of the *Arias* case. His testimony in this regard is completely corroborated by Jennifer's text messages with Tammy Rose.

Clark Wood will testify to the activities Respondent and Jennifer were engaged in, and the kinds of "help" Jennifer was providing Respondent. He will testify that Jennifer told him she helped Respondent "all the time".

He will testify that Jennifer had a contact in her cell phone for Respondent which listed his identity as "Steff". Jennifer's close friends came to know that "Steff" was really Respondent. Over time, once Clark had confirmed his suspicions about his wife's affair with Respondent, he came to know that she was texting and calling with Respondent constantly. Once he knew of the affair, Jennifer's close friends confirmed to him that they knew about it as well.

He will testify that Jennifer went to Respondent's house many times, and that she freely admitted to him that she was meeting with Respondent at his home. Jennifer told him that she went to Respondent's house in the East Valley to "help" him, but that Respondent's girlfriend was always there when she went. He will testify that he came to know that Jennifer was lying about Respondent's girlfriend being there, and that Jennifer was actually meeting Respondent alone at his home so they could carry on their affair.

He will testify that Jennifer met with Respondent on Sundays, for a "couple of months" during the *Arias* retrial. He will testify that these Sunday meetings happened at least a half a dozen times. Jennifer told him that she was going to meet with Respondent on Sundays because he had asked for her help. Clark became very suspicious, because Jennifer would get dressed up for these Sunday meetings in a way that was completely out of character for her. He will testify that Jennifer told him the meetings occurred downtown, and that the purpose of the meetings was for her to "help" Respondent.

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He will testify that Jennifer went with Respondent on a trip to Las Vegas the very first weekend after the sentencing retrial was over. Jennifer had told him that she was flying back east to meet with reporter Jane Velez Mitchell, who was covering the *Arias* case. He will testify that he caught Jennifer in her lie about where she had traveled out of state that weekend, and confronted her about it. He will testify that money went missing from their joint accounts, and when he tracked it down he found receipts of Jennifer spending money in Las Vegas on that weekend.

He will testify that Jennifer got inside information about the case that no one else was getting. Jennifer thought she was being clever about where she had gotten it, by telling Clark: "No one can say that [Respondent] gave it to me." He will testify that she was bragging about she and Respondent being successful in covering their tracks about the fact that Respondent was sharing inside information with her, and that she was helping Respondent out in return. He will testify that there is no question in his mind about this. He will also testify that Jennifer also bragged about "being on the inside" of the case by working with Respondent the whole time.

He will testify concerning Jennifer's involvement with the issue of the holdout juror. He will testify that Respondent and Jennifer falsified evidence and were involved in lies and perjury during the investigation of how juror 17's name got leaked. He says they were involved in a cover up of the evidence of what they had done. He will testify that Jennifer stayed up late at night, and that she was on their son's laptop computer researching the holdout juror. Jennifer was bragging that she had helped Respondent with the holdout juror. He knew she was involved, and confronted her about it. He asked Jennifer what she would do if she had been successful in helping Respondent get juror 17 kicked off the jury, and confronted Jennifer by saying: "What would you have done if they voted to kill that girl [Arias]?" **Exhibit 27.**

Clark Wood will testify that upon learning that a bar charge had been filed against Respondent concerning these events, he had been expecting to hear from the State Bar. However, Bar Counsel never contacted him. On the other hand, his now ex-wife Jennifer did. After the bar charge was filed, Jennifer called and threatened Clark many times, telling him not to talk to anyone about this. He nonetheless agreed to a taped interview with undersigned, and said he was surprised no one else had ever called to talk to him about what happened with his ex-wife and Respondent during the *Arias* case.

4. Melissa Garcia

Melissa Garcia will also testify to Respondent's affair with Jennifer Wood. Her testimony is discussed *infra*, in response to issue #4 of Bar Counsel's dismissal letter

What's more, there is abundant documentary evidence of in support of the testimony of these four witnesses, that was created contemporaneous with the time of the events at issue here. Attached as Exhibit 4 to the bar charge are text messages between Jennifer Wood and her then-business partner Sharee Ruiz dating back to July 2014, in which Wood admits her sexual affair with Respondent and rationalizes it because she (a married woman) was "in love" with him. **Exhibit 3** (at its attached Ex. 4). Ruiz will

testify as to her personal knowledge about the sexual relationship between Respondent and Wood. **Exhibit 28.**

But beyond all of this, Complainant provided Bar Counsel with something highly unusual – the kind of hard evidence that rarely exists in cases of prosecutor misconduct. Complainant provided the State Bar with independent forensic evidence that proves not only that Respondent had a sexual affair with Jennifer Wood and another improper close relationship with Katie Wick, but also all the other acts of misconduct alleged in the bar charge: including leaking confidential and sealed information to Jennifer Wood in his effort to get Juror 17 removed from deliberations and clear the way for a death sentence.

This evidence consists of a forensic report of the contents of witness Tammy Rose's cellphone, which was provided to Bar Counsel on a thumb-drive on May 17, 2017. **Exhibit 5**; **Exhibit 17.**

This forensic report was prepared using a forensic imaging and analysis computer program that is commonly utilized by law enforcement including the FBI to perform these types of tasks and is highly reliable.[7] It provides contemporaneous, reliable and overwhelming evidence in support of the allegations in the bar charge – beyond clear and convincing evidence of Respondent's misconduct.

A sampling of the text messages between Tammy Rose and Jennifer Wood are attached as **Exhibit 17**. These contemporaneous records clearly prove that Respondent had improper personal and/or sexual relationships with Jennifer Wood and Katie Wick; that he repeatedly leaked confidential or sealed information to Wood; and that he used these women in other ways to help his with his prosecution of the case.

Bar Counsel has chosen to disregard this evidence. Bar Counsel told undersigned its reasoning for doing so, as follows: Jennifer Wood could have been lying all along - to Sharee Ruiz, Tammy Rose, Melissa Garcia and others - about her affair with Respondent, and lying when she said Respondent was the one who was disclosing confidential and sealed information to her. Here is how Bar Counsel's theory plays out:

- Jennifer Wood was not having an affair with Respondent. She decided to create an elaborate hoax about having an affair with him.
- She executed on this hoax by falsely confessing the affair to her business partner in the first trial Sharee Ruiz (even though what actually happened is that Ruiz confronted Wood in May 2014 about the affair based on what Ruiz had seen going on between Wood and Respondent with her own two eyes). Wood was lying when she confirmed the affair to Ruiz, and said it had been going on since at least September 2013.
- She was lying in the multiple text messages she exchanged with Sharee Ruiz, in which she admitted the affair and said that there was nothing wrong with it

[7] The name of the program is "Cellebrite". It is a tool used by law enforcement and private entities to capture and process the information contained on a cell phone. It is one of the primary, industry standard tools for cell phone extractions and examinations.

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because she was "in love" with Respondent. **Exhibit 11** (at its attached Ex.4).

- She continued to execute on this elaborate hoax during the sentencing retrial by falsely confessing a still-ongoing affair with Respondent to her close friend and mentor Tammy Rose. She was lying when she confessed the affair to Rose on January 9, 2015, and when she shared details of the relationship with Rose on countless occasions thereafter as they commuted day after day, week after week, to and from trial together; when they saw each other socially on numerous occasions; when they met for lunches and dinners at each other's houses, throughout the retrial; when they got together to socialize at bars and restaurants. On each and every one of these occasions Wood made up the details of her affair with Respondent.
- She was lying in each one of the thousands upon thousands of electronic communications she had with Tammy Rose about her affair with Respondent.
- She was lying about getting confidential and sealed information from Respondent in her text messages with Tammy Rose, from January 9 right on through the end of the retrial in March 2015. The information she got that she shared in her text messages with Rose is 100% accurate, and defense counsel Jennifer Willmott will testify to its accuracy, and the fact that the information was confidential and/or had been sealed by the court. But Bar Counsel takes the position that Wood wasn't getting this information from Respondent: she must have gotten it from someone else. She was lying about the affair, to look make it look like she had access to Respondent that she didn't really have.

Even if one takes it at face value that this is what Jennifer Wood is now telling Bar Counsel – that the affair never happened and all of this was an elaborate hoax that she came up with in advance and cleverly executed for more than one year – it flies completely in the face of the truthful, credible testimony available from four other witnesses, who - unlike Wood or Respondent – are unbiased and have no reason to lie: (1) Sharee Ruiz; (2) Tammy Rose; (3) Clark Wood; (4) dismissed juror #3, Melissa Garcia.

Jennifer Wood has every reason to lie about her affair with Respondent. She is loyal to him, and the attempts to intimidate Juror #17 to change her vote or get her kicked off the jury could be prosecuted as a crime in Arizona. ARS §13-2805; §13-2807. Attempting or conspiring with another to do so can also be considered a crime. ARS §13-1001; §13-1002; §13-1003; §13-1004.

But these other witnesses have no reason to lie about this. Their testimony is consistent, compelling, and more than clear and convincing evidence of the fact that Respondent was sleeping with Wood, using her for help with his cases (including but not limited to the *Arias* case) and in exchange leaking confidential and sealed information to her.

Of the four known witnesses to Respondent's affair with Jennifer Wood that were interviewed by undersigned and/or Bar Counsel, three (Ruiz, Rose and Clark Wood) stated that they had been harassed and received threats after the information in the bar charge was filed and/or reported on in the press, and said the threats and harassment had

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come either directly or indirectly from Jennifer Wood. Tammy Rose, Sharee Ruiz and Clark Wood continue to receive threats and harassment to this day, for having the temerity to share the truth of what happened with undersigned and the State Bar. Rose and Ruiz continue to receive death threats. All of these witnesses have absolutely no reason whatsoever to lie about the information they provided, and they did so knowing that their cooperation would cause them to be threatened and harassed online by the vast hordes of social media "Arias haters".

Despite the threats they have received, they still believe that Respondent needs to be held to account for what he did and are willing to testify concerning their personal knowledge of: (1) Respondent's sexual affair with Jennifer Wood (2) Respondent met with Wood repeatedly at his MCAO for help on the case; (3) Respondent shared confidential and sealed information with Wood on multiple occasions; (4) Respondent told Wood that juror 17 was the holdout juror, and asked Wood for help in getting this juror kicked off the panel while the jury was still deliberating.

Bar Counsel's dismissal letter acknowledges the inappropriateness of Respondent's conduct in this regard, stating that "a prosecutor engaging in personal relationships with media members during a highly publicized death penalty case is ill advised..." **Exhibit 1** at page 2, ¶2. Respondent's conduct here went way beyond that: it violated the ethical rules and Bar Counsel's dismissal of this misconduct is an abuse of discretion.

b. Bar Counsel's dismissal of this allegation is an abuse of discretion because it misapplies the ethical rules, which absolutely prohibit Respondent's conduct

As set forth *supra*, Respondent takes the position that there is nothing wrong with him having years-long sexual relationships with members of the media covering this death penalty case, and that the State Bar does not have the authority to even investigate – much less discipline – such conduct. Bar Counsel's dismissal letter reveals that the State Bar agrees with Respondent. Respondent's position is disturbing and shows his utter lack of understanding of the grossly wrongful nature of his misconduct. Bar Counsel's decision to adopt Respondent's position is a clear abuse of discretion.

The ethical rules most definitely regulate the conduct of lawyer's personal lives. This is clear from the Preamble to the ethical rules, which states:

> [1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. **Whether or not engaging in the practice of law, lawyers should conduct themselves honorably.**
>
> [5] **A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs**... A lawyer should demonstrate respect for the legal system...
>
> [10] These principles include the lawyer's obligation to protect and pursue a client's legitimate interests, within the bounds of the law, **while acting**

honorably and maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

Preamble (emphasis added).

Lawyers are indeed subject to disciplinary sanction for having improper personal relationships – including with others involved in court cases and trials. *See Florida Bar v. Gardner*, 183 So. 3d 240 (2014) (disbarment appropriate sanction for judge in capital first-degree murder case who had significant emotional relationship with the lead prosecutor in the case, intentionally chose not to disclose the relationship to the defense, and did not disclose the true nature of the relationship to the Judicial Qualifications Commission); *In re Geming*, 2017 La. LEXIS 2307 (2017) (attorney suspended for one year; while employed as an Assistant United States Attorney, she had a personal, intimate relationship with FBI agent; although agent's testimony was not influenced or colored in any way by their personal relationship, attorney admitted that she failed to disclose the relationship during prosecution of case); *In re McCree* 495 Mich. 51; 845 N.W.2d 458 (2014) (judge removed from office and conditionally suspended without pay for six years; engaged in misconduct in office and conduct clearly prejudicial to the administration of justice by having affair with complaining witness in a case pending before him); *In re Wilfong*; 234 W. Va. 394; 765 S.E.2d 283 (2014); (judge suspended without pay from her office for having affair with a local man for over two years, concealed the relationship from her husband and the man's wife, deliberately intertwined the affair with her judicial office and concealed the affair; judge's paramour and his subordinates routinely appeared in criminal cases on the prosecuting attorney's behalf in her courtroom; judge never revealed her relationship to any defendant or any other litigant even though she knew she was ethically bound to do so.); *In re Roberts*, 503 S.E.2d 160 (S.C. 1998) (prosecutor disciplined for, inter alia, accepting sexual favors in exchange for dismissing a charge of driving under the influence); *In re Kratz*, 353 Wis. 2d 696, 851 N.W.2d 219 (2014) (prosecutor suspended for four months for sending inappropriate text messages to domestic abuse crime victim in case where he was prosecuting the perpetrator; prosecutor made inappropriate verbal statements to two social workers; prosecutor conduct was sanctionable under Wisconsin Supreme Court Rule prohibiting lawyers from engaging in "offensive personality"[8]); *In re Peterson*, PDJ 2011-9083 and *In re Abrams* JC-11-0001 (Petersen, a defense attorney, and Abrams, a City Court Magistrate, engaged in undisclosed sexual relationship; Petersen's firm had approximately 61 misdemeanor cases pending during relevant timeframe; attorney received reprimand; judge agreed to judicial sanction of censure and to resign his judicial position and never again hold judicial office; judge subsequently received lawyer disciplinary sanction of two-year suspension); *In re Dean*, 212 Ariz. 221; 129 P.3d 943 (2006) (lawyer suspended for six months for engaging in an affair

[8] The Arizona Supreme Court rules previously included a similar prohibition against lawyers engaging in "offensive personality". Our rule was subsequently revised to prohibit lawyers from engaging in "unprofessional conduct". *See* Rule 31(a)(2)(E) and Rule 41(g).

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with a judge and misrepresenting the facts).

As a percentage, only a small fraction of criminal prosecutors ever receive a disciplinary sanction. Undersigned was unable to locate any authoritative case law (discipline or otherwise) involving a prosecutor – or even defense counsel – having sex with members of the media covering a criminal trial, much less a case involving the death penalty. The absence of such case law does not mean that Respondent's conduct conformed with the requirements of the ethical rules – it most certainly did not. It only means that either no criminal attorneys have engaged in such egregious conduct, or if they did they weren't caught. That is no reason to give a pass for Respondent's conduct here.

Respondent's un-denied and undeniable relationships with these two members of the media covering this death penalty case, whom he admittedly allowed special access to MCAO and from whom he admittedly received some types of help on the case – even "standing alone" (which it does not) – involves an outrageous appearance of impropriety which brings disrepute on lawyers, the prosecution of this case, prosecutors in general, the criminal justice system, and the self-regulation of our profession.

At a minimum, Respondent's conduct involves an appearance of impropriety. Although "appearance of impropriety" no longer is an explicit part of the ethical rules, the Arizona Supreme Court has held that it must still be part analyzing a lawyer's conduct. *Amparano v. Asarco*, 428 Ariz. Adv. Rep. 38 (2004); *Gomez v. Superior Ct.*, 149 Ariz. 223 (1986). The Court of Appeals explained in *Sellers v. Superior Ct.*, 154 Ariz. 281 (App. 1987) that an appearance of impropriety should cause a lawyer to scrutinize their conduct closely.

Moreover, our Supreme Court has specifically enforced the "appearance of impropriety" prohibition against prosecutors in criminal cases. *State v. Hursey*, 176 Ariz. 330; 861 P.2d 615 (1993). As the Court stated:

> Furthermore, the prosecutor's actions in this case created an appearance of impropriety. Prior to the adoption of the current Rules of Professional Conduct (the Ethical Rules), the Code of Professional Responsibility governed attorney conduct. Canon 9 of the code stated that "[a] lawyer should avoid even the appearance of impropriety." Although the Ethical Rules do not retain the "appearance of impropriety" language found in Canon 9, the "appearance of impropriety . . . still has a definite place in the balancing test the trial court must apply in resolving the question of disqualification." A prosecutor, who himself has a conflict, does not alleviate the "appearance of impropriety" by merely assigning part of the case to another prosecutor; he is still the prosecutor "handling" the case and "[p]ublic confidence in the criminal justice system . . . is eroded when a prosecutor has a conflict or personal interest in the criminal case which he is handling."

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State v. Hursey, 176 Ariz. 333-334; 861 P.2d 618-619 (1993) (citations and internal footnotes omitted).

In this case, Respondent's personal interest was his own self-aggrandizement, and his gratuitous interest in parrying the international stardom this case brought him into a way of meeting, pursuing and using a variety of women for his own ends: be they members of the media, jurors, trial watchers or others **Exhibit 3** at pages 5-6; *Phoenix Magazine* article: "An Army of Juan" dated July 2015 http://www.phoenixmag.com/people/an-army-of-juan.html. Respondent had good reason to cozy up to members of the media, as he told others at MCAO that he wanted to quit his job as a prosecutor and parlay his new-found fame from the *Arias* case into getting his own television show. *Ibid* at page 8.

Respondent is a seasoned, experienced prosecutor who must be held to the highest standards of conduct. It doesn't take an experienced lawyer to know that it is improper to have undisclosed romantic relationships with members of the media covering a death penalty case; that it is improper to allow them after-hours access to non-public areas of MCAO; that it is improper to allow them to "help" the state with the prosecution in any way whatsoever; and that it brings disrepute on our entire profession for a prosecutor in a death penalty case to behave in this manner.

Respondent's conduct here was highly unprofessional. The Rules of the Supreme Court prohibit a lawyer from engaging in "unprofessional conduct". Rule 41(g). This term is defined as "substantial and repeated violations of the lawyer's oath or creed." Rule 31(a)(2)(E). Respondent most definitely engaged in substantial and repeated violations of both. The Lawyer's Oath of Admission requires that Respondent:

> Treat the courts of justice and judicial officers with due respect; avoid engaging in unprofessional conduct; support the fair administration of justice and professionalism among lawyers, and; at all times faithfully and diligently adhere to the rules of professional responsibility;

The Lawyer's Creed of Professionalism required that he:

> [B]e an honorable advocate on behalf of [the State] recognizing, as an officer of the court, that unprofessional conduct is detrimental to the proper functioning of our system of justice; remember that, in addition to commitment to [the State's] cause, his responsibilities as a lawyer include a devotion to the public good; be mindful of the need to protect the integrity of the legal profession ...; be mindful that the law is a learned profession and that among its desirable goals are devotion to public service... [and] administration of justice.

Respondent's improper personal relationships with members of the media covering this death penalty case, and his sexual harassment of women including Sharee Ruiz and Melissa Garcia, clearly fell well below these requirements. The *Arias* trials began in December 2012 and ended in April 2015. **Exhibit 1** (at attached Ex.1).

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Respondent's relationships with these two women went on for years and spanned the course of all three trials. His extreme, gross lack of professionalism in how he conducted himself in this case as it concerns not just these two women, but many others during the arias case is described in the following *Phoenix Magazine* article: "An Army of Juan" dated July 2015 http://www.phoenixmag.com/people/an-army-of-juan.html). **Exhibit 1** at pages 4-5. His unprofessional conduct spanned the entire course of the case, and involves substantial and repeated violations of both the Lawyer's Oath and Creed. If his egregious and unprofessional conduct goes without disciplinary sanction, it will bring disrepute on our profession and the institutions entrusted with the self-regulation of it.

MCAO has disciplined Respondent in the past for improper sexual conduct. He was first given a warning and counseled by his superiors at MCAO for improper actions towards female staff. **Exhibit 1**. The warning involved "his judgment on matters relating to his conduct and personal relationships with other employees, particularly some females, has been called into question on a couple of occasions". He was counseled by MCAO management and told that his conduct with female employees was "inappropriate for a professional law office." He was told that his conduct "appeared unprofessional, and was inappropriate in the office". **Exhibit 1**.

The following year, Respondent repeated his misconduct by making "an inappropriate sexual remark toward a female attorney in this (MCAO) office." The conduct was reported to his supervisors, who determined that the warning given to him the previous year had not been sufficient. They took the next step by issuing him a formal written reprimand that was placed in his personnel file. In it, his MCAO supervisor flatly stated: "it is now time that this behavior cease once and for all." The supervisor concluded with the following language: "[t]here will always be the potential for future problems until [Respondent] is able to appreciate and exercise the proper judgment, attitude, and approach toward dealing with others, especially in a professional setting. When he understands why these things are not appropriate, he will no longer be in danger of doing them." **Exhibit 1**.

Bar counsel takes the position that even if Respondent was having an affair with Jennifer Wood, it is irrelevant to the State Bar and not worthy of a discipline sanction. In addition to being totally wrong, this position also completely ignores the effect that disclosure of the affair would have had in the *Arias* case, and also into the court's investigation into the outing of juror 17, if Respondent had been honest about it. Respondent should never have engaged in the conduct set forth in the bar charge. His conduct is clearly ethically improper and violates numerous ethical rules as well as the prohibition on engaging in unprofessional conduct set forth in Rule 41(g). He should indeed be sanctioned for it. More than that, at minimum Respondent had a duty to disclose his close personal and/or sexual relationships with these two media personalities to defense counsel during the *Arias* trials.

Arias' defense counsel has provided a declaration in support of this objection. **Exhibit 30**. This declaration provides information about the multiple motions the

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At that time of the trials, and during the superior court's investigation just after the trial ended, defense counsel had no solid proof of the affair. However, that proof has now come to light in this bar charge, and defense counsel has reviewed it. Defense counsel has provided a declaration concerning what would have happened had Respondent's un-denied and undeniable affair with Jennifer Wood been disclosed during the *Arias* case. **Exhibit 30.**

Defense counsel would have filed the following: a motion to dismiss; a motion to dismiss the notice of death; a motion to dismiss the MCAO from representing the state; a motion to dismiss Respondent from representing the state; a motion to terminate live media coverage; a motion for discovery of Respondent's file; motions for discovery of Jennifer Wood's text messages, emails, and any other form of communication between her and Respondent. **Exhibit 30.**

Respondent's conduct in having sexual relationships with one or more members of the media covering this *Arias* death penalty case - even "standing alone" (which it most certainly does not) - violated ER 1.7(a), 8.4(d) and Rule 41(g). He was absolutely ethically obligated to disclose the affair to Judge Stephens as she investigated the horrific outing of juror 17, and to the defense as it sought to stem the tide of the corrosive effect the out-of-control media coverage had on the case. His failure to disclose it involved dishonesty by omission, and thereby violated ER 3.3, 3.4(a), 4.1, 8.4(c) - and conduct prejudicial to the administration of justice in violation of ER 8.4(d).

Bar Counsel's dismissal of the irrefutable evidence of Respondent's improper and undisclosed sexual conduct in this matter involved a misapplication of the law as it concerns these ethical rule violations, and therefore an abuse of discretion which must be corrected by the Committee.

2. Respondent provided these two female media members with access to non-public areas of the MCAO, after normal business hours - and also provided them with confidential information about the case

Respondent's 2nd response describes meetings he had with these two women inside non-public areas of the MCAO. He admits to meeting with Katie Wick at his MCAO office, and admits that he allowed her access to MCAO "mail" about the case. **Exhibit 9** at page 1, ¶4 – page 2, ¶2. However, he does not indicate what type of "mail" it was or whether it involved any evidence in the case - nor does he deny that it included confidential or non-public information[9] about the case. He claims that this only

[9] In nearly every criminal case, information gets withheld from the public. Some of it remains the files of the state and defense attorneys, is never introduced as evidence in the case and remains "non-public". Other information is confidential for one reason or another, and though it may be discussed by the parties in court it remains confidential and is not revealed to the public. Other information is highly sensitive enough that the

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happened once, after the first trial – but before the second and **nearly two years before the case was over.**

As to Jennifer Wood, Respondent 2nd response states as follows:

> After the jury rendered their verdict in the second *Arias* trial, [Respondent] met with Ms. Wood in his MCAO office to discuss her request that he appear on her blog. These meetings occurred after the case was over. She was given no access to, and did not receive, any confidential or sealed information regarding the Arias areas case. **Respondent does not recall Ms. Wick or Ms. Wood making any other after-hours visits to the MCAO offices.**

Exhibit 9 at page 2, ¶2 (emphasis added).

Bar Counsel appears to tie its dismissal of the allegation about Respondent giving members the media access to his MCAO office and MCAO "mail" about the case to its finding that there is "no clear and convincing evidence that [Respondent] provided either woman with confidential information during those visits". **Exhibit 1** at page 2, ¶1. However, Bar Counsel never delved any deeper on this issue by asking Respondent exactly what documents and/or information these women were given access to, nor whether they were "authorized" by him or MCAO to receive more.

What's more, Bar Counsel's determination, based on incomplete information, completely ignores how grossly improper it was for a prosecutor in a death penalty case to allow his favorite chosen female members of the media access to nonpublic areas of MCAO, access to MCAO "mail" about the case, or any kind of other nonpublic access to his office and potentially his case file. Bar Counsel did not even ask Respondent how or why he needed help from Katie Wick with "the mail". Bar counsel's dismissal of this allegation is yet another example of how Bar Counsel exceeded its authority in making a finding that no clear and convincing evidence exists – that is for the Committee to decide. *See* discussion, *supra*.

But beyond all of this, the Committee needs to know this: **Respondent's response is absolutely and provably false.** Respondent did more than give these two women access inside MCAO and access to "the mail" - there is clear and convincing evidence that he gave them confidential and sealed information about the case.

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state, the defense, and sometimes both together ask the court for an order "sealing" it from the public. If sealed by court order, the information cannot be released in the absence of a court order unsealing it - otherwise, the person who reveals the information is guilty of violating a court order. If an attorney does that not only have they violated a court order, they have also violated the ethical rules governing lawyer conduct. Vast amounts of information in the Arias case was not public, confidential, and/or subject to court order sealing it. *See* **Exhibit 3** page 4-5.

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What's more: a careful reading, word by word, of this response reveals that it is glaring in what it omits as well as the essential facts Respondent does not actually deny. His response is a cleverly-crafted attempt to deflect attention away from what actually occurred between him and Wood, and thereby obfuscate the truth. But the true facts of what occurred are very real, and can be proven by clear and convincing evidence.

As an initial matter, **Respondent admits to meeting with Wood at his MCAO office on multiple occasions.**[10] Next, his response provides details of certain meetings that happened after the case was over. However: he does **not specifically deny that any number of his multiple meetings with Wood took place before the case was over**: he simply states that the meetings after the trial ended were about appearing on Wood's blog.

Beyond this, his non-denials and partial admissions are all subject to this qualification: **Respondent says he "does not recall" additional after-hours meetings at his MCAO office with Wick or Wood** beyond those he briefly describes. Of course – this does not mean they didn't happen. It only means that Respondent would have to testify that he does not recall them when asked. In fact, such additional meetings did take place: there are other witnesses who will testify to their personal knowledge of them under oath, and there is contemporaneous forensic evidence to support that testimony. Stated another way – there is clear and convincing evidence not only of this misconduct as set forth in the bar charge, but also which proves that Respondent intentionally mislead the State Bar about it.

Witness Tammy Rose will testify that no less than three times she personally heard Respondent's voice on the phone, as he arranged to meet Jennifer Wood at his MCAO office on three successive Sundays, so Wood could "help him" with the case and he could "help her" with her coverage – and they could have sex there. *See* **Exhibit 3** at page 16-18. The dates of these three **known** meetings are February 8, February 15, and March 1, 2015 – all fall on Sundays. The dates are during the midst of the *Arias* sentencing retrial **before** jury deliberations even began; **before** the case was over, and contrary to the information Respondent provided to Bar Counsel.

Witness Clark Wood was married to Jennifer Wood at the time of these events. Clark Wood will testify that his wife was having an affair with Respondent; that it ended their marriage; that she was "helping" Respondent; that she regularly met with Respondent downtown; and that she met with Respondent on Sundays for several weeks on end during the middle of the retrial. **Exhibit 27.**

What's more, hard forensic evidence was given to Bar Counsel that completely and 100% corroborates these two witnesses on this issue – date by exact date.

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[10] It is unknown to Complainant what the two women admit to as far as their access to non-public areas of MCAO, or whether they would testify to other dates they went there during non-business hours to meet with Respondent. If this information is not included in Bar Counsel's Report of Investigation (which was not provided to Complainant) then it will remain unknown to the Committee as well.

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- **Sunday February 8, 2015**

Rose will testify that Respondent met with Wood at MCAO on this date. Rose and Wood also sent each other the following text messages that evening:

[redacted]

Forty-one minutes later, Wood texted Rose again:

[redacted]

Exhibit 17 at page 1668.

Rose will testify that she heard Wood and Respondent talking on the phone and agreeing to meet on February 8 at his MCAO office. She personally heard both of their voices talking on the phone in advance of this date, to arrange the meeting. Wood told Rose that she was meeting with Respondent to help him prepare for court the following week.

The background concerning the "oct 30 tape" is as follows: in the sentencing retrial, the court no longer allowed live-streaming of video of the court proceedings. The court ordered that the media could not air any video until the retrial was over. The court produced this video tape on a DVD that is also sometimes referred to as an FTR "For the Record" video of the proceeding. In order for the media to obtain it, they have to make a request of the court's public information officer, and pay for it. The videotape is very expensive.

During retrial proceedings held on the record on October 30, 2014, a secret witness testified for the defense. Defense counsel successfully moved for an order sealing the testimony. The court then issued a minute entry order on October 30, 2014, **sealing the proceedings** regarding this issue. **Exhibit 2.** There was video tape of the sealed proceedings on October 30.

As the retrial was winding down, everyone wanted to know whether Arias would address the jurors herself at the close of the case – called an allocution. Whether she would do so was becoming hugely important to trial watchers, as the retrial was coming to a close. What Arias would say to the jurors herself was red hot-selling scoop for bloggers and social media journalists like Rose and Wood, who made money selling such information online and otherwise. No one knew who the secret witness had been on October 30 or what they had said, because the record had been sealed.

However, as of February 8, 2018, Rose and Wood had come to believe that Arias was the secret witness who testified on October 30. They wanted to get their hands on the video tape of that proceeding first, and "scoop" the other journalists about what Arias had said – before her "allocution", if she made one. When Rose and Wood were texting

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each other on February 8 about Wood asking Respondent to help her to get the "oct 30 tape", **they were referring to the video tape of the sealed proceedings on October 30.** These texts confirm that Wood had previously asked Respondent if he could get her the "tape" of the October 30 proceedings - which were at that point still sealed by the court. Wood had obviously shared with Rose that she had previously asked Respondent to help her get this item, had told Rose that she did, and Rose was following up on it. Wood responded by telling Rose that Respondent had already "put in" a request for the tape.

Keep in mind: as of February 8, 2015, the proceedings on October 30 about the allocution **remained sealed by court order**. Wood's texts on that date show that she knew what to ask Respondent for; that she was asking him for help in her coverage of the case - and the **Wood did indeed ask Respondent's help in getting her the DVD of proceedings which at that point were still confidential and sealed by court order.**[11] What's more: they reveal that Respondent agreed to help her with this, and give her an advantage over her competitors by virtue of her personal, sexual relationship with him.

- **Sunday February 15, 2015**

Rose will testify that Respondent met with Wood at MCAO on this date, and that during this meeting Wood asked him for helping getting the "DVD" of the sealed proceedings on October 30 that she could still not otherwise get on her own. Rose and Wood texted about this the next day, February 16, 2015, as follows:

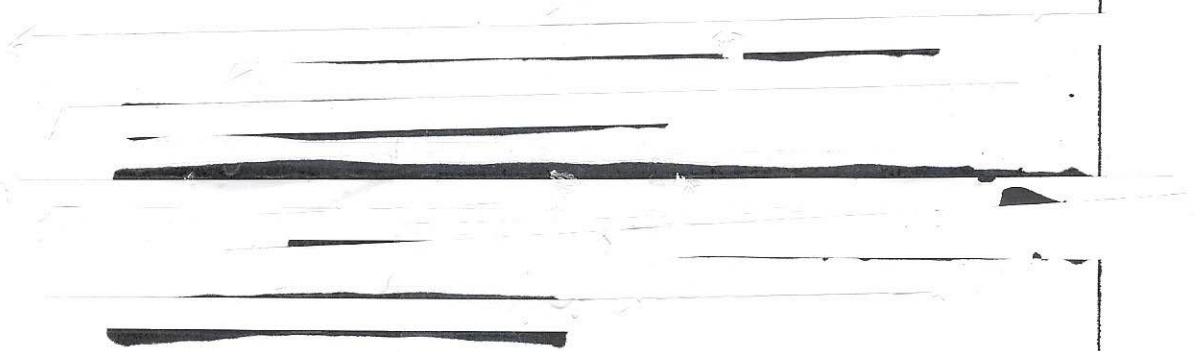

Exhibit 17 at pages 1692-1693.

Again, this forensic evidence fully corroborates Rose's testimony that Wood met with Respondent at MCAO on Sunday February 15, 2015 – and that he had agreed to "help" Wood out by asking for the DVD of the proceedings on October 30, 2014.

Rose was telling Wood that Respondent could get this faster than she or Wood could as members of the media, and that it would be to Woods' benefit to ask him

[11] It was not until three days later, on February 18, 2015, that the court issued a minute entry order, unsealing the proceedings on October 30, 2014. **Exhibit 5.**

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for it, rather than go through regular media channels to obtain it. Once again: as of February 15, the proceedings on October 30 about the allocution **remained sealed by court order**. Wood's texts with Rose reveal that Respondent agreed to help her with this.

- **Sunday March 1, 2015**

Rose will testify that she personally heard Respondent and Wood talking on the phone on the Thursday or Friday prior to March 1, 2015. She heard them talking about setting up the meeting on March 1. Respondent met with Wood at MCAO on this date: and the text messages Rose exchanged with Wood that morning confirm it:

[redacted]

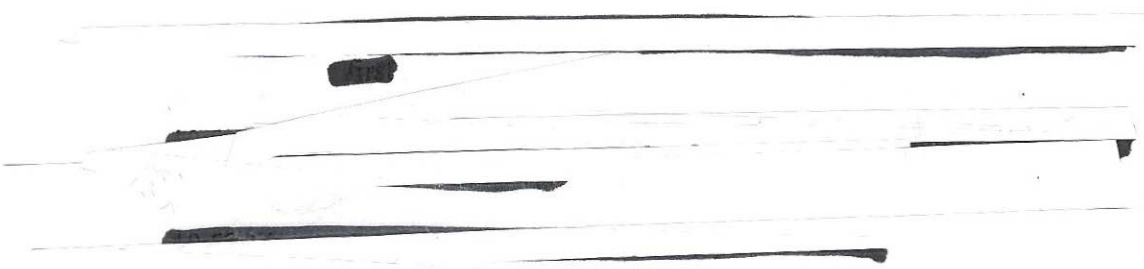
Wood then spent time with Respondent at MCAO. At the end of the day, she texted her friend Rose:

[redacted]

Exhibit 17 at page 1719 (emphasis added).

Rose will testify that Wood did indeed stop by Rose's house on March 1, after Wood met up with Respondent at his MCAO office. Wood told Rose that she and Respondent had sex at his office, on his desk; she said it was quick and fast, and hurt because it was on his desk. They met there because they had problems meeting up for sex, as Wood was married and Respondent had a live-in girlfriend. Wood told Rose that during their meeting on March 1, Respondent promised to take Wood to Las Vegas as a "thank you" for all her hard work helping him with the case. Wood said that she helped prepare Respondent for court. Wood said that she and Respondent talked about what was coming up in trial for the next week so Wood would know what was going on with the trial – in advance, so she could scoop her competitors. At their meeting on March 1, Respondent told Wood when a witness named "Dr. Demarte" was going to take the stand and testify. When Rose learned that Wood and Respondent had sex at his office, Rose cautioned her friend Wood that they could be found out, as there were cameras at MCAO. Wood did not seem too concerned, and told Rose that she and Respondent were "being careful" to avoid detection.

After stopping by Rose's home, Wood went to her own home and later texted Rose again.



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As set forth *supra*, the media covering the *Arias* case – including Jennifer Wood and CNN reporter Beth Karas – had to make a request of the court's public information officer for video. Wood wanted to make money by selling the footage of the entire *Arias* trial on her website, but she didn't have the money to pay for the video as it was very expensive. Rose will testify that Wood asking Respondent to get her the video for free, including **the sealed video of the "Oct 30" proceedings**. Wood learned that Beth Karas had asked the court for all of the video of the retrial, and Karas was going to air the video on-line for free. That angered Wood. In her text that "Juan should know media company" Rose was saying that Respondent should know the procedures the media were supposed to follow to get video. Wood was saying that she had been counting on getting the video for free from Respondent, and then selling it on her website, and that it hadn't occurred to her that someone (Karas) would buy it and then air it for free.

Rose's testimony on these issues will be completely and 100% corroborated by the detailed text messages between her and Wood. Rose will testify that Respondent was helping Wood, and the text messages between her and Wood provide hard evidence to support her testimony. These are but a few of many examples of how Bar Counsel abused its discretion in dismissing the bar charge. The proven close personal relationship Respondent had with Wick and the proven, undeniable sexual affair he had with Wood most definitely do not "stand alone" - as Bar Counsel states in the dismissal letter. Far from it: Respondent was using Wood and Wick, giving them access to the MCAO office and clandestinely sharing non-public, confidential and sealed information. In exchange, he allowed them – members of the media – to help him with his prosecution of this death penalty case.

What's more, the evidence of this is clear and convincing. As to this specific allegation, if this case goes to a Formal Hearing, Respondent (who had a duty to be fully truthful in his responses to the State Bar) will presumably testify consistent with the 2nd response he submitted to the State Bar. When asked if he met at MCAO with Wood on the dates set forth above – which occurred "**after hours**" on three successive Sundays and before the case was over - his answer must be either an admission, or "I do not recall". On the other hand, Tammy Rose will testify to the phone calls she personally heard, in which Respondent arranged meetings with Jennifer Wood for sex and her "help" with his case on these three specific dates. Clark Wood will testify that his wife Jennifer was meeting Respondent downtown on Sundays for weeks on end to "help" him during the trial. The text messages between Rose and Wood will corroborate the testimony of these witnesses concerning these Sunday meetings at Respondent's office: including what

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their purpose was. Contrary to Respondent's only admission – that Wood asked him about being on her blog – these witnesses and the text messages that corroborate their testimony provides specific, factual, detailed information about exactly what Wood and Respondent were doing. They show that he was using her, she was using him, and they were both using each other in the incestuous media circus that the *Arias* trial had become. They also show, once again, that his responses to the State Bar on these issues were intentionally false and misleading and therefore violate ER 3.3, 4.1, 8.1, 8.4(b), and Rule 54.

Again, the hard, forensic evidence contained in the thumb-drive provided to Bar Counsel includes more than 21,000KB of data, and thousands upon thousands of electronic messages between Rose and Wood. **Exhibit 17**. This evidence is reliable, contemporaneous, and compelling. It provides clear and convincing evidence of the truth of what Sharee Ruiz, Tammy Rose, Clark Wood, Melissa Garcia – and other witnesses - will personally testify to about these issues.[12]

What's more, Bar Counsel never put Respondent to the test by deposing him and asking him under oath about the information provided to the State Bar on this issue. Instead, Bar Counsel gave Respondent a pass, by deciding that Respondent's relationships with the female members of the media "stands alone" and does not violate the ethical rules. But this allegation does not stand alone. Sharee Ruiz, Tammy Rose, Clark Wood and Melissa Garcia will all testify in detail about how Respondent used Jennifer Wood for help with his case, and how she used him for inside information to "scoop" her competitors. What's more, Jennifer Wood talks about it repeatedly in her text messages with Rose: how Respondent needed her help; that he wasn't good with computers or social media; that she met with him multiple times after hours and on Sundays at his office. In her text messages, Jennifer Wood states over and over again how much help she was both receiving from and providing to Respondent, leading to this exchange with Rose:

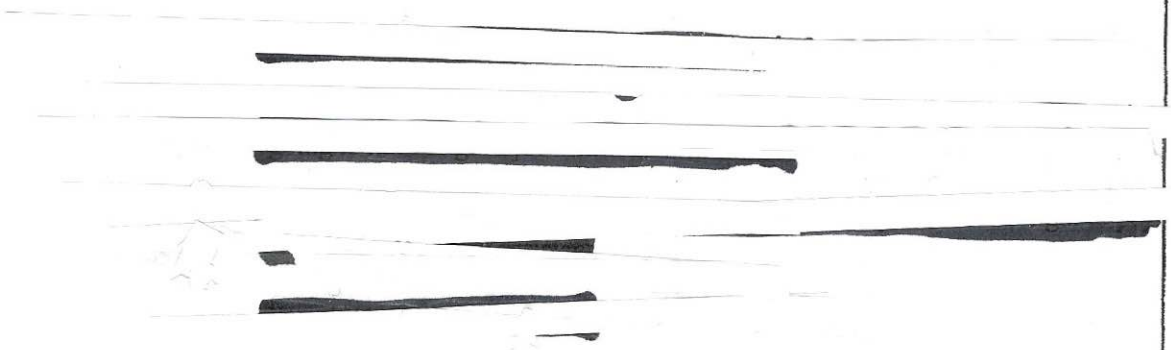

Exhibit 17 at page 1868.

[12] Defense Counsel Jennifer Willmott is willing to testify and her testimony will confirm the facts provided by Rose on many of these issues. Undersigned provided her name as a witness to Bar Counsel – who never contacted or interviewed her concerning this matter.

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This is but a small sample of the overwhelming evidence provided to Bar Counsel in support of this one allegation. It is only one example of so very many that demonstrate Bar Counsel has all the clear and convincing evidence it needs in support of the misconduct set forth in the bar charge - but has chosen to disregard it. This constitutes an abuse of discretion, which this Committee must correct.

The text messages Tammy Rose exchanged with Jennifer Wood provide hard, contemporaneous evidence that "proves up" the testimony of the many witnesses who will truthfully testify about Respondent's affair with Jennifer Wood; that he met with her multiple times at MCAO on weekends and after hours while the trial was still underway to decide whether Arias would be sentenced to death; that he provided her with one-on-one access to him and his MCAO office; that he leaked confidential and sealed information to her; that he used her for help with the case and she in turn used him for inside information about the case. The evidence of these facts goes well beyond clear and convincing. It not only proves the misconduct contained in the bar charge: it also proves that Respondent provided false and misleading information about it to the State Bar during this investigation, in violation of ER 3.3, 4.1, 8.1, 8.4(b), and Rule 54.

3. **Respondent secretly and repeatedly leaked confidential and sealed information about the case to Jennifer Wood, and also told her the identity of juror 17 to enlist her help in getting juror 17 off the panel.**

There are numerous citations in the bar charge to specific instances where it can be proven that Respondent leaked confidential or sealed information to his lover Jennifer Wood. Wood was texting her friend Tammy Rose about it, in real time. She was telling Rose that it was Respondent who gave her this information. During its investigation prior to dismissing this case, Bar Counsel never even asked Respondent about the specific instances of leaking contained in the bar charge. Nonetheless, the forensic evidence in the bar charge is compelling: it is also corroborated by the testimony of a numerous witnesses, including but not limited to Sharee Ruiz, Tammy Rose, Clark Wood and dismissed juror #3 Melissa Garcia. All of these witnesses will testify to their personal knowledge of Respondent's willingness to trade inside information in exchange for help from Jennifer Wood. Tammy Rose and Clark Wood will testify that Jennifer was helping Respondent, and meeting him at his MCAO office downtown on Sundays to do so.

Tammy Rose was not covering the *Arias* case as a reporter until the sentencing retrial. Jennifer Wood quickly became her close friend, and on January 9, 2015 Wood confessed that she was having an affair with Respondent. After that date, Rose and Wood exchanged literally thousands upon thousands of electronic messages about Wood's affair with Respondent: and numerous instances in which he shared with Wood information that was either confidential, or had been sealed by court order.

The bar charge (at pages 20-21) describes one particular instance of Respondent leaking information to Jennifer Wood that had been sealed by court order. **Exhibit 3** at pages 20-21. Tammy Rose will testify to the truth of the information memorialized in these text messages.

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But by far the most serious misconduct in the bar charge involves Respondent's effort to use Jennifer Wood to get holdout Juror #17 kicked off the jury, while it was deliberating whether to sentence Arias to death.

The evidence of this is fully described in the bar charge at pages 21 to 27. As soon as Respondent learned there was a holdout juror on March 3, 2015, he asked Jennifer Wood to help him find dirt about juror 17 on-line so he could get the juror kicked off the panel. The evidence of this provided to Bar Counsel is dramatic and compelling, clear and convincing. Once again, very rarely does such forensic evidence exist to prove prosecutorial misconduct much less conduct as egregious as that involved here.

The contemporaneous text messages between Tammy Rose and Jennifer Wood reveal that Respondent leaked confidential and sealed information to Wood about the identity of the holdout juror 17, including that it was a woman, what she looked like, that she was often late for court, and her name. **Exhibit 11** at pages 21 to 27. These text messages provide clear and convincing evidence of Respondent's misconduct. They are also corroborated by Tammy Rose, who will testify that Jennifer Wood called her on the night of March 3, 2015. Wood told Rose that Respondent had "asked her to find some dirt on this woman to get her kicked off the jury". Wood confirmed that it was a female juror, describing her to Rose as "the one who came in late every day with curly hair". Wood told Rose that she knew the name of the holdout juror, because Respondent gave it to her. Rose's testimony will corroborate the information contained in the forensic evidence provided to Bar Counsel.

Undersigned consulted with Tom Ryan numerous times in preparing the bar charge. He requested and paid for the forensic report attached as Exhibit 4 to the bar charge. Tom Ryan has provided a letter in support of this objection. **Exhibit 29.** Tom Ryan will testify that in his opinion: "There was sufficient evidence for a jury to conclude that [Respondent] provided the social media pages of Juror #17 in retribution for being the lone holdout on the retrial of the sentencing phase of *State v. Arias*." Tom Ryan is a highly respected and long-time Arizona attorney. He will testify that in his professional opinion, a complaint against Respondent would have satisfied the requirements of Rule 11. However, his client did not want to move forward with a lawsuit, as she had been "terrorized by the cyber-bullying that resulted from her being outed" and wanted nothing more to do with this matter. **Exhibit 29.**

Bar Counsel takes the position that it cannot be proven that Respondent was responsible for the outing of juror 17. Bar counsel takes the position that juror 17's identity could have been learned by family members, court personnel, or others who were authorized to and did attend the sealed proceedings on March 3-5, 2015, where the holdout juror was discussed. Bar Counsel therefore takes the position that these persons could have provided juror 17's name to Jennifer Wood, and that the State Bar therefore cannot prove Respondent leaked this sealed information to Jennifer Wood. Once again, Bar Counsel decision to dismiss this allegation completely misses the mark.

In order to prosecute Respondent for leaking the name of juror 17 to Jennifer Wood,

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Bar Counsel does not need to prove that Respondent was responsible for the outing of juror 17. Bar Counsel need only prove that Respondent was responsible for leaking the identity of juror 17 to Jennifer Wood. It does not matter if others could have provided Jennifer Wood with juror 17's name. It only matters whether Respondent did. And the evidence that he did, which has been provided to Bar Counsel, is overwhelming, and beyond clear and convincing.

Once again, understanding Bar Counsel's position here requires a return to its improbable and unsupportable theory about Jennifer Wood and her years-long scheme, set forth *supra*. Bar Counsel takes the position that Jennifer Wood was lying when she told Tammy Rose on the night of March 3 that Respondent had asked her for help. Bar counsel takes the position that Jennifer Wood was lying that it was Respondent who asked her for help in digging up dirt on juror 17. Bar Counsel takes the position that Jennifer Wood had actually received the sealed information about juror 17's identity from someone else, not Respondent. Bar Counsel takes the position Jennifer Wood may very well have been trying to enlist the help of Tammy Rose in digging up dirt on this juror to get her removed from the panel. But Bar Counsel believes that Jennifer Wood could have been lying in her text messages to Tammy Rose when she said that the person who asked her to do this was Respondent.

Once again, Bar Counsel's position flies in the face of the overwhelming evidence to the contrary that is available in the contemporaneous text messages between Rose and Jennifer Wood. What's more – it is directly contradicted by the unbiased testimony of not one but two witnesses to what happened on the night of March 3 and in the days that followed: Tammy Rose and Jennifer's husband Clark Wood.

Rose will testify that it was Respondent who on the night of March 3 leaked the name of juror 17 to Jennifer Wood and asked for her help, as he had done so many times before. Rose will testify that this was completely in keeping with the repeated pattern of conduct by both Respondent and Wood, as discussed throughout the bar charge and at length in this objection. The text messages between Rose and Wood throughout that date will corroborate Rose's testimony.[13]

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[13] Although it is not a necessary part of this allegation in the bar charge, nor anything that Bar Counsel need ever prove, Tammy Rose has compelling testimony to offer that Respondent and Jennifer Wood were in fact responsible for the outing of juror 17. Wood claimed to the press that a person named "Samantha Williams" posted Juror 17's name and a link to her Facebook profile on Wood's own Facebook page. Rose will testify that "Samantha Williams" was in fact a fake persona created by Jennifer Wood. **Exhibit 11** at pages 30-32. Rose spent months investigating this issue once the trial was over, and has compelling personal testimony to offer about it. The information she has to offer has never been investigated by a tribunal. It was not provided to Judge Stephens as part of the court's investigation into the outing of juror 17. Rose is convinced that the information Martinez leaked to Wood on the night of March 3rd directly resulted in the outing of Juror 17 on March 5th. Once again, such evidence is not needed in order for Bar Counsel to prove that Respondent unethically leaked sealed information about juror 17 to Jennifer Wood.

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What's more, Rose's testimony about what happened on the night of March 3 will also be corroborated by that of Clark Wood, Jennifer's husband. Clark Wood will testify that his wife was involved in investigating juror 17 for Respondent. He will testify that his wife was up late at night working on their son's laptop to help Respondent investigate the holdout juror. He will testify that this occurred on the nights during the sentencing retrial that the press was reporting there was a holdout juror and that a mistrial might be called. He will testify that his wife bragged to him that she had helped Respondent with holdout juror 17. He will testify that Jennifer and Respondent covered up for each other concerning the investigation into the leak of juror 17's name to the press.

Bar Counsel never even interviewed Clark Wood.

There is a mountain of evidence that proves that Respondent leaked the identity of juror 17 to Jennifer Wood. That evidence is overwhelming, and clear and convincing: Bar Counsel's failure to gather that evidence, to follow up on it, to take it seriously, and to hold Respondent to account for his misconduct concerning this issue is a gross abuse of discretion, that must be corrected by this committee.

4. **Respondent engaged in an unprofessional relationship with a discharged juror while the case was ongoing and asked her for insight into the minds of the still-empaneled jurors deliberating a possible death sentence for Arias.**

Bar Counsel's dismissal letter states:

> [T]he fourth allegation is that you communicated with the discharged juror while the case was ongoing and the communications may have discussed information about other sitting jurors and their deliberations. If true, such conversations would violate your ethical obligations and jeopardize the sanctity of the jury system. See Rule 42, Ariz. R. Sup. Ct., ER 3.5(c), comments 3.

Exhibit 24.

The bar charge included the following information about this person. She was juror 3 in the sentencing retrial. She was dismissed from the panel on December 2, 2014, for reasons that have nothing to do with this State Bar matter. Shortly thereafter, the juror obtained Respondent's personal cell phone number from Jennifer Wood. The juror later texted a naked photograph of herself to Respondent's cell phone. Wood learned about this from Respondent, and Wood then became very jealous of this juror. Wood exchanged a series of text messages about it with Tammy Rose. Wood wrote in a text dated February 13, 2015 that "Juror 3 has the hots for Juan". Wood wrote a text on February 18 that said by then, Respondent was telling her this juror 3 (referred to in the texts by her first name "Melissa") was "blowing up" his cell phone. Wood said Respondent had promised her he would stop all communication with Juror 3 after the retrial was over. **Exhibit 17.** After the retrial ended, the names of all the retrial jurors were leaked and publicized on mainstream and social media, and this juror was publicly

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identified as Melissa Garcia.[14]

The information set forth above is all contained in the bar charge.

However, Garcia was ultimately interviewed by Bar Counsel during its investigation, and expressed her willingness to cooperate as a witness for the State Bar. During her interview with Bar Counsel, Garcia fully corroborated the information in the bar charge. More than that – she provided Bar Counsel with explosive new information.

Garcia told Bar Counsel that she spoke with Respondent numerous times after she was removed from the panel. During their conversations, Respondent yet again asked a woman for help with his case - but this time, the woman happened to be a dismissed juror. Garcia told Bar Counsel that during these conversations Respondent asked her for insight on what the still-empaneled jurors were thinking about the case.

Undersigned was unaware of this information at the time the bar charge was submitted.[15] After being informed of this information by Bar counsel, undersigned reached out to Garcia, who willingly agreed to be interviewed by undersigned. The interview took place on February 1, 2018. The interview was recorded with Garcia's permission, and attached is the transcript of that interview. **Exhibit 26.**

After her dismissal, Garcia began reading Jennifer Wood's blogs about the case. Wood had posted "Juror 3 - I would love to speak to you." Garcia and Wood then got in touch. Garcia will testify that it quickly became evident to her that Wood and Respondent were having a sexual affair. Wood provided Garcia with Respondent's personal cell phone number. Garcia asked Wood "how did you get this?" Wood's response was "I have connections".

Garcia called Respondent on his personal cell phone, and left a message. Respondent then called her back. Garcia will testify that they had several conversations on the phone, and exchanged many text messages. Bar Counsel told Garcia that Respondent told the State Bar he and Garcia only spoke on the phone one time. Garcia will testify that this is "unequivocally untrue" and that they had at least five to six phone conversations.

Garcia will testify that her text messages with Respondent quickly turned flirtatious. He told Garcia that he is "a breast man". Garcia admits that she texted a couple of new

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[14] Rose interviewed Garcia for KFYI and CBS News. During that meeting, Juror 3 asked Rose if Wood was still dating Martinez. Juror 3 told Rose that even if Wood and Martinez were still involved, she considered Martinez "fair game". Rose will testify to these events.

[15] Garcia reached out to undersigned, after the bar charge was filed. She did so because she had been emailing and calling Bar Counsel, who had ignored her for weeks and not followed up and responded to her. Bar Counsel eventually did so, and undersigned did not contact Garcia. Undersigned was therefore unaware of Garcia's additional allegations (beyond those in the bar charge) until being informed of them by Bar Counsel.

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photos of herself. She is not proud of this. She will testify that at some point, Respondent began referring to her as "Deep Throat". Garcia thought Respondent was talking about the pornographic film by that same name. Respondent told her no: he was talking about Watergate. Respondent clearly wanted Garcia to be his "Deep Throat", and provide her with secret information about the jury and what they were thinking.

Garcia will testify that Respondent asked her questions about what she thought as a member of the jury, and "where the jury was leaning". She will testify that Respondent asked her about two jurors in particular: one juror's mother was a psychiatrist, the other was an attractive woman. Respondent told Garcia that he did not know how to read juror #1. Garcia will testify unequivocally that Respondent was trying to use her to get information about what the jurors were thinking.

Garcia will testify that Jennifer Wood was also using her to get information, so Wood could relay it to Respondent. Wood asked Garcia questions about the jury, which Wood then provided to Respondent.

Garcia told Respondent that when the trial was over, she would love to get together with him for dinner and "pick his brains". Garcia says that this information very quickly got back to Jennifer Wood, who became extremely upset and quit communicating with Garcia. Garcia's testimony about this will be completely corroborated by the text messages between Tammy Rose and Jennifer Wood referenced *supra*. In fact, Garcia has reviewed the text messages between Rose and Wood and will testify that they are 100% accurate as they concern her. Garcia will testify that when she asked Respondent out to dinner, it quickly got back to Wood and there is only one way that could have happened - Respondent told Wood about it.

Garcia will testify that Respondent nonetheless kept communicating with her, and that it did not stop until March 5, 2015 -- the day the mistrial was declared due to the holdout juror. Garcia will testify that Respondent was clearly using her, and that he was clever about it, and went to great lengths to cover his tracks. Garcia will testify that Respondent did not use a smart phone, and all of their communications were either by phone call or text. Unfortunately, Garcia uses "Cricket", which does not keep text or voice call records. Bar Counsel asked her for these records, but she was unable to produce them.

Garcia was extremely disappointed by Bar Counsel's dismissal of this bar charge. She will testify that she believes it is due to a "boys club". She will testify that Bar Counsel did not do enough to investigate this matter. She will testify unequivocally that Respondent lied to bar counsel about his interactions with her, and is not telling the truth. She will testify that once Respondent lied to bar counsel about speaking with Garcia on only one occasion, that should have been enough for Bar counsel to ask Respondent to produce his phone records. After all, Bar Counsel had made that request of her. She knows that Bar Counsel can do more than just "ask" Respondent for his records – they have the power to subpoena them. Given that Bar Counsel did nothing to follow up on this, Garcia wonders what else Respondent has been able to "get away with" during his career as an attorney.

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Garcia will testify that Respondent "chose her" to try and get information about what the jurors were thinking. She will testify that Respondent was using her. She will testify that she is willing to be a witness in this matter against Respondent for no other reason than "right is right and wrong is wrong".

Respondent's contacts with Garcia are particularly egregious, in light of what the court ordered when it dismissed Garcia from the panel. The court stated:

> The Court: I am going to dismiss you from further participation as a juror in this case... I'll ask you not to talk about the facts. The admonition no longer applies to you. However, for a variety of reasons, I'm going to ask you not to talk to anybody about the evidence you've heard.
>
> Garcia: Understood.
>
> The Court: Okay?
>
> Garcia: Absolutely.
>
> The Court: Thank you very much.

Exhibit 3; Excerpt of Transcript of Proceedings on December 2, 2014. Respondent was there during the court's discussion with Garcia. He heard the court ask her not to talk about the evidence she'd heard with anyone. But that is exactly what Respondent tried to do when he got in touch with her, just a few days after she was dismissed.

Bar Counsel's dismissal letter explains its reasons for dismissing this allegation:

> While you admit communicating with the discharged juror in this case, the State Bar cannot prove an ethical violation by clear and convincing evidence as we were unable to independently verify the content of the text messages or phone conversation between you and the discharged juror.

Bar counsel was provided was sufficient information to prove up what Melissa Garcia had to say. Her testimony is corroborated by the repeated, persistent, overwhelming pattern of conduct respondent has exhibited throughout this entire matter. Her testimony will be corroborated by that of Sharee Ruiz, Tammy Rose, and Clark Wood. It is 100% corroborated by the text messages exchanged between Rose and Jennifer Wood, which she has reviewed. Bar counsel has all the evidence it needed to prove the allegation that respondent improperly contacted this dismiss juror, to use her for information about the jurors who were still on the panel and deliberating a death case.

Bar Counsel needed no further evidence to prove Respondent's misconduct concerning Melissa Garcia. But if Bar Counsel believed that further evidence was necessary, it could have gotten it. For example, Bar Counsel could have, at a minimum, obtained Respondent's phone records. The failure of Bar Counsel to move forward on this allegation, or gather that additional evidence, is a clear abuse of discretion warranting

correction by this Committee.

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II. Bar Counsel is Mistaken Concerning the Available Evidence in this case, Its Role in Determining Whether the Evidence is "Clear and Convincing", and of the Admissibility of the Evidence that will Prove Respondent's Misconduct in a Formal Disciplinary Proceeding.

Bar Counsel has informed undersigned that the forensic report of the text messages between Tammy Rose and Jennifer Wood will not be admissible because they involve "hearsay". Bar Counsel has informed undersigned that much of the testimony and evidence in this case is hearsay and therefore inadmissible. Bar Counsel has informed undersigned that Jennifer Wood currently resides in another state, not Arizona, and that the State Bar will therefore have difficulty enforcing a subpoena on her out of state, and that she will therefore be unavailable for trial. Bar Counsel is demonstrably wrong on every count.

Several exceptions to the hearsay rule, as set forth in the Rules of Evidence, apply to the evidence and testimony set forth herein concerning this case. The exceptions contained in the Rules of Evidence which apply here are as follows:

- Rule 801(d)(1). The evidence is not hearsay if the declarant testifies and the statement is inconsistent with the testimony;
- Rule 803(1). The evidence is not hearsay if it involves a "present sense impression" - a statement describing the event or condition while happening or shortly after the event;
- Rule 803(2). The evidence is not hearsay if it involves an "exited utterance";
- Rule 803(3). The evidence is not hearsay if it involves a then-existing mental/emotional condition.

All of these arguably apply to the various statements in the text messages, as well as to the testimony of the witnesses set forth herein concerning their interactions with Respondent, and what he said to them.

Jennifer Wood most definitely continues to reside in Arizona. Undersigned has her current address, phone number, email address, and other contact information. Bar Counsel can just as easily obtain this information, or undersigned will provide it to the State Bar. Jennifer's ex-husband Clark Wood has her current contact information. She is living in the greater Metro Phoenix area. She works at the marina at Lake Pleasant Parkway. She has custody of her son, who attends high school in Phoenix. She is collecting state health insurance for her son. Her vehicle has an Arizona license plate and is registered to her hoe address in the Metro Phoenix area.

There are plenty of ways that Bar Counsel can serve Jennifer Wood with a subpoena. There is a mountain of evidence with which to cross-examine and impeach Jennifer Wood, if she testifies contrary to the clear and convincing evidence provided in support of the bar charge and/or the information provided herein. That same mountain of

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evidence exists should Respondent testify contrary to the clear and convincing evidence provided in support of the bar charge and/or the information provided herein in support of this objection.

III. In the Alternative, the Committee Should Direct Bar Counsel to Conduct Further Investigation of This Matter.

Respondent failed and refused to answer Bar Counsel's specific questions in the screening letter. Bar Counsel had to write Respondent and remind him that he was obligated to submit a "fully cooperative and complete response" and "fully and honestly respond" to the State Bar pursuant to ER 8.1(b) and Rule 54(d). **Exhibit 19**. Even then, a cursory review of Respondent's 2nd response reveals he still failed and refused to answer all of Bar Counsel's questions. **Exhibit 20**. Yet, Bar Counsel did nothing to get him to answer these questions, prior to dismissing the bar charge.

Undersigned provided a list of 25 witnesses to Bar Counsel. **Exhibit 18.** Undersigned had a lengthy telephone conversation with Bar Counsel, discussing the personal knowledge each of these witnesses has about the allegations contained in the bar charge. Of the 25 witnesses identified, Bar Counsel only interviewed 4 of them. Bar Counsel did not interview Clark Wood, who has compelling testimony to offer, despite saying he would. Bar Counsel did not interview Jennifer Willmott, who also has powerful testimony to offer, despite saying he would. And of course, Bar Counsel did not interview, or depose, Respondent.

In its screening letter to Respondent, Bar Counsel did the equivalent of a "litigation hold", stating:

> [T]his letter should also serve as a formal demand that [] you preserve any and all traditional paper, telephonic, electronic, audio and video materials directly or indirectly related to any of the claims contained in the bar charge, regardless of claims of confidentiality or privilege, including, but not limited to:
>
> 1. Any and all letters, correspondence, information, memoranda, files, emails, photographs and documents of all forms which relates in any way to this bar charge; and
> 2. any and all voice messages, recordings, phone notes, phone data, data files, discs or messages of all forms which relates in any way to this bar charge.

Exhibit 12.

Undersigned has reviewed the public portion of the State Bar's file. It is evident that Bar Counsel did absolutely nothing to follow up on this demand, or request that Respondent actually produce this evidence. At a minimum, rather than dismiss the bar charge this Committee should direct Bar Counsel to conduct further investigation, to include demanding the evidence set forth above in its screening letter sent to Respondent.

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Undersigned has made several public records requests on MCAO, for the same type of information referenced in Bar Counsel's screening letter. **Exhibit 8.** These public records requests are still pending with Maricopa County. Undersigned advised Bar Counsel in writing that the public records requests had been submitted, and are still pending. Undersigned requested that Bar Counsel hold off on finalizing its investigation, until this information was received. Bar Counsel refused to do so. **Exhibit 22.**

It is more than evident from the information provided herein that Bar Counsel could have done more, much more, to investigate Respondent's conduct in this matter. Bar Counsel simply chose not to do more. Moreover, Bar Counsel ignored the overwhelming evidence provided. The numerous, unbiased, independent witnesses interviewed by undersigned – some of whom were also interviewed by Bar Counsel - are uniformly disheartened, disappointed and upset that Bar Counsel would choose to disregard the information they provided to the State Bar - and at the same time give Respondent a "pass" by dismissing this matter without subpoenaing records from him or deposing him.

The additional work Bar Counsel could do is obvious from a review of the information provided herein. At a minimum, rather than sustain the dismissal the Committee should direct Bar Counsel to conduct further investigation. However, that effort would lead to only one result: an Order of Probable Cause authorizing a formal complaint.

IV. Conclusion

Undersigned urges that in fact, no further investigation by Bar Counsel is needed. The information and evidence provided in the bar charge, and herein, proves that Bar Counsel abused its discretion in dismissing the bar charge, based on its finding that there is not "clear and convincing evidence" of Respondent misconduct, as that decision is the Committee's to make. Rule 49(b)(6); Rule 55(c)(2)(A). The information and evidence provided in the bar charge, and herein, proves beyond any doubt that Bar Counsel's dismissal is an abuse of discretion that must be overturned, and that this matter warrants nothing less than an Order of Probable Cause, authorizing Bar Counsel to file a formal complaint against Respondent. Rule 55(c)(1)(D). Undersigned thanks the Committee for its time and consideration of this information.

Sincerely,
ADAMS & CLARK, PC

Karen Clark

KC:dc
cc: Senior Bar Counsel Craig Henley