

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,

DAVID S. GINGRAS

Bar No. 021097

Respondent.

No. PDJ 2026-9010

**MOTION IN LIMINE RE:
JUDGE MATA TESTIMONY**

Respondent David S. Gingras respectfully moves the court for an immediate ruling on the following evidentiary issue: is Respondent entitled to obtain and present testimony from Judge Julie Mata for purposes of mitigation?

To be clear – based on the PDJ’s prior rulings, Respondent assumes this request will be denied. Still, because the denial of that request would be appealable error and because Respondent cannot raise issues for the first time on appeal, this request is made simply to preserve the issue.

The discussion will be brief. As the Court knows, the State Bar charged Respondent with violating “ER 8.2(a) by making a statement with reckless disregard as to its truth or falsity concerning Judge Mata’s qualifications or integrity” Amended Complaint ¶ 108. Respondent’s Answer denied that allegation and asserted that every statement he made regarding Judge Mata was either completely true as a matter of fact, or was made without reckless disregard as to its truth or falsity, or otherwise contained constitutionally protected opinions.

Even though the facts were disputed, the State Bar moved for partial judgment on the pleadings as to that issue, arguing that the First Amendment does

not apply to lawyers, and thus truth is not a defense to an ER 8.2(a) claim. The PDJ agreed with that argument over Respondent's vigorous objection.

So, the issue of liability has been resolved as it relates to Respondent's comments about Judge Mata. This Court held truth is not a defense, and therefore a lawyer can be punished for making *any* negative statement about a judge, even if that statement is entirely true.

Respondent respectfully disagrees with this ruling and will appeal it at the conclusion of this proceeding. Respondent understands the PDJ does not agree, and that issue will not be re-litigated here.

However, the fact that liability has been established does not end the inquiry. To complete the process, the PDJ is required to consider both mitigating and aggravating evidence. On that point, Respondent asserts he is entitled to offer Judge Mata's testimony for the purpose of mitigation.

As the PDJ knows, before a lawyer may be punished, the Court must consider *what* punishment to impose. That question involves: "four factors for courts to examine in deciding an appropriate sanction: '(a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors.'" *In re Witt*, 257 Ariz. 39, 49 at ¶ 39 (Ariz. 2024) (quoting ABA Standard 3.0). By extension, ABA Standards 9.22(b) and 9.32(b) both allow for the presence or absence "of a dishonest or selfish motive" to be considered.

Here, Respondent's position is simple – if a lawyer makes knowingly false statements attacking the integrity of a judge, that lawyer is acting with a “dishonest motive”. This is an aggravated violation of the rule which would justify a higher degree of punishment. That conclusion is consistent with Comment 1 to ER 8.2 which warns: “**false statements** by a lawyer [regarding a judge] can unfairly undermine public confidence in the administration of justice.” (emphasis added).

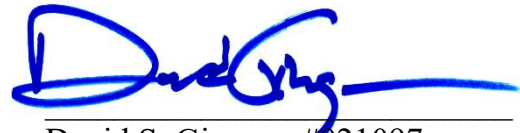
On the other hand, if a lawyer employs only truthful statements to criticize a judge, that lawyer is *not* acting with a dishonest motive (and, in Respondent's view, truthful non-threatening statements regarding the integrity of a judge are, *per se*, both constitutionally protected and are simply not prohibited by ER 8.2). That conclusion is also supported by Comment 1 which notes: “Expressing **honest and candid opinions** on ... [the integrity of a judge] contributes to improving the administration of justice.” (emphasis added).

For these reasons, Respondent wishes to obtain and present testimony from Judge Mata which conclusively proves every statement he made regarding her conduct and integrity was either completely true or was an expression of opinion based on fully disclosed and accurate facts. This evidence will be offered **not** for the purpose of contesting liability (since the PDJ has already ruled on that issue). Instead, this evidence will be offered in mitigation to show that Respondent did not act with a dishonest motive.

Again, based on the PDJ's prior rulings, Respondent expects this request will likely be denied. In that case, in addition to preserving this issue for later appeal

Respondent informs the State Bar and the PDJ that among all other defenses already raised, Respondent will separately assert a new defense – that by denying Respondent the right to offer evidence in mitigation without a lawful basis for doing so, this court violated Respondent’s right to due process of law as protected by the 14th Amendment to the United States Constitution, Article II, Section 4 of the Arizona Constitution, and Arizona Supreme Court Rule 58 (allowing both parties to offer evidence in aggravation or mitigation). That defense will not be asserted if the Court grants this motion and finds Respondent is entitled to offer Judge Mata’s testimony as mitigation evidence.

Respectfully submitted Sept. 29, 2026.



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Respondent

CERTIFICATE OF SERVICE

Original filed and COPY of the foregoing emailed
September 29, 2026 to:

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Senior Bar Counsel

A handwritten signature in blue ink, appearing to read "Dudley", is written over a horizontal line.