

Nov 27 2018

Disciplinary Board

Docket # 018

BEFORE THE DISCIPLINARY BOARD OF THE WASHINGTON SUPREME COURT

In re

MARK EVANS LINDQUIST,

Lawyer (Bar No. 25076).

Proceeding No. 17#00087

ODC File No. 16-00748

STIPULATION TO ADMONITION

Following settlement conference under ELC 10.12(h)

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), following a settlement conference conducted under ELC 10.12(h), the following Stipulation to Admonition is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through Disciplinary Counsel Scott G. Busby and Kathy Jo Blake, Respondent's Counsel Steven W. Fogg, and Respondent lawyer Mark Evans Lindquist.

Respondent understands that he is entitled under the ELC to a hearing, to present exhibits and witnesses on his behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that he is entitled under the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the

1 Washington Supreme Court. Respondent further understands that a hearing and appeal could  
2 result in an outcome more favorable or less favorable to him. Respondent chooses to resolve  
3 this proceeding now by entering into the following stipulation to facts, misconduct, and sanction  
4 to avoid the risk, time, and expense attendant to further proceedings.

### 5 I. ADMISSION TO PRACTICE

6 1. Respondent was admitted to practice law in the State of Washington on October 19,  
7 1995.

### 8 II. STIPULATED FACTS

9 2. Respondent has been the Pierce County Prosecuting Attorney since 2009.

#### 10 *State v. Nemetz*

11 3. On October 22, 2014, Skylar Nemetz was charged in the Pierce County Superior  
12 Court with murder in the first degree. The information, filed in Respondent's name, alleged that  
13 Mr. Nemetz, with premeditated intent, caused the death of his wife, Danielle Nemetz, while  
14 armed with a rifle.

15 4. *State v. Nemetz* was assigned to Pierce County Superior Court Judge Jack Nevin.  
16 Pierce County Deputy Prosecuting Attorneys (DPAs) Gregory Greer and Jared Ausserer  
17 represented the State of Washington. Lawyer Michael Stewart represented Mr. Nemetz.

#### 18 *The First Nancy Grace Interview*

19 5. On December 3, 2014, Respondent gave an interview about *State v. Nemetz* on  
20 *Nancy Grace*, a nationally broadcast television show on the CNN Headline News (HLN)  
21 network.

22 6. At the time of the interview, *State v. Nemetz* was set for a jury trial on May 4,  
23

1 2015.

2 7. Prior to the interview, Respondent reviewed the Information and the Declaration  
3 for Determination of Probable Cause in *State v. Nemetz* in an effort to limit his statements to  
4 facts contained in the public record.

5 8. During the interview, Respondent made the following statements, among others:

6 a. "He [Mr. Nemetz] gave basically three different stories, which obviously  
7 undercuts his claim that this was an accident."

8 b. "I think the motive of jealousy makes it more clear that this was  
9 intentional."

10 c. "He's angry for whatever reason, whether it's an actual affair or imagined  
11 affair, and his multiple claims that it was an accident just don't make sense."

12 d. "I look at the evidence, and the fact that he may have imagined that she  
13 was doing something, cheating on him, to me that just gives him motive to murder her."

14 e. I don't think there's a jury out there that will say, maybe she was cheating  
15 and therefore this is manslaughter. On the contrary, they will say that's motive for  
16 murder."

17 9. An accurate transcript of that portion of the December 3, 2014 *Nancy Grace*  
18 episode devoted to *State v. Nemetz* is attached as Appendix A.

19 **The Trial**

20 10. The trial of *State v. Nemetz* began on January 4, 2016.

21 11. After six days of pretrial hearings, jury selection began on January 14, 2016.

22 12. After three days of jury selection, a jury was sworn on January 20, 2016.

1 13. After 12 days of trial testimony, including the testimony of Skylar Nemetz on  
2 February 10-11, 2016, the trial recessed on February 11, 2016 due to a pre-planned vacation.

3 14. The jurors were released until February 22, 2016.

4 **The Second Nancy Grace Interview**

5 15. On February 16, 2016, while the trial was recessed and the jurors were released,  
6 Respondent gave a second telephonic interview about *State v. Nemetz on Nancy Grace*.

7 16. Prior to the interview, Respondent requested and reviewed the questions he would  
8 be asked and, with input from DPA Ausserer, rejected some of those questions on the ground  
9 that they exceeded the scope of permissible comment under the Rules of Professional Conduct  
10 governing prosecutorial trial publicity.

11 17. Prior to the interview, Respondent also asked DPA Ausserer to provide him  
12 pertinent portions of the public record in *State v. Nemetz* in an effort to limit his statements to  
13 facts contained in the public record.

14 18. During the interview, Respondent made the following statements, among others:

15 a. "And the motive in this case was jealousy. The evidence suggests the  
16 defendant thought Danielle was fooling around with another soldier."

17 b. "And at this point in the trial, the defense is arguing not that she shot  
18 herself, but rather that it was an accident. That's the whole defense. And that's the  
19 whole question. Was this an accident? Was it intentional? And that's why the  
20 defendant's experience with firearms is critical to the case."

21 c. "And it's his actions combined with his statements and his experience  
22 with firearms that add up to murder, rather than an accident."  
23

1 19. Respondent's interview on *Nancy Grace* was broadcasted nationally on February  
2 16, 2016, the same day it was recorded.

3 20. An accurate transcript of that portion of the February 16, 2016 *Nancy Grace*  
4 episode devoted to *State v. Nemetz* is attached as Appendix B.

5 **The Motion for Mistrial and the Verdict**

6 21. Mr. Stewart filed a motion for mistrial based on Respondent's appearance on  
7 *Nancy Grace*.

8 22. The trial resumed on February 22, 2016.

9 23. Before taking testimony, Judge Nevin reminded the jurors – as he had routinely  
10 done throughout the trial -- that they should inform his judicial assistant if they had “any  
11 exposure whatsoever, directly or indirectly, to anything about this case that's been in any form  
12 of media.”

13 24. None of the jurors informed Judge Nevin's judicial assistant of any such exposure.

14 25. Following a hearing, Judge Nevin denied the motion for mistrial.

15 26. After seven days of deliberation beginning February 24, 2016, the jury reached a  
16 verdict on March 3, 2016.

17 27. The jury found Mr. Nemetz guilty of manslaughter in the first degree.

18 **III. STIPULATION TO MISCONDUCT**

19 28. Although Respondent did not intend to violate the Rules of Professional Conduct,  
20 Respondent recognizes that the statements and comments he made on *Nancy Grace* contained  
21 inferences he made that went beyond facts contained in the public record. For that reason,  
22 Respondent stipulates that he violated RPC 3.6 and 3.8(f).

1 **IV. PRIOR DISCIPLINE**

2 29. Respondent has no prior discipline.

3 **V. APPLICATION OF ABA STANDARDS**

4 30. Standard 5.2 of the American Bar Association *Standards for Imposing Lawyer*  
5 *Sanctions* (1991 ed. & Feb. 1992 Supp.) applies to this case. ABA *Standards* std. 5.2 is  
6 attached as Appendix C.

7 31. Respondent negligently failed to follow proper procedures and rules.

8 32. Respondent caused potential injury to a party and potential injury to the integrity of  
9 the legal process.

10 33. Reprimand is the presumptive sanction under ABA *Standards* std. 5.23.

11 34. The following aggravating factor applies under ABA *Standards* std. 9.22: substantial  
12 experience in the practice of law (std. 9.22(i)).

13 35. The following mitigating factors apply under ABA *Standards* std. 9.32: absence of a  
14 prior disciplinary record (std. 9.32(a)); and remorse (std. 9.32(l)).

15 36. The following additional mitigating factors also apply: Respondent's 23 years of  
16 public service; and Respondent's good faith efforts to confine his statements on the *Nancy*  
17 *Grace* show to facts contained in the public record.

18 37. On balance, the aggravating and mitigating factors merit a reduction from the  
19 presumptive sanction of reprimand to admonition.

20 **VI. STIPULATED DISCIPLINE**

21 38. The parties stipulate that Respondent shall receive an admonition for his conduct.

1 **VII. COSTS AND EXPENSES**

2 39. Respondent shall pay attorney fees and administrative costs of \$750 in accordance  
3 with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these  
4 costs are not paid within 30 days of approval of this stipulation.

5 **VIII. VOLUNTARY AGREEMENT**

6 40. Respondent states that prior to entering into this Stipulation he consulted  
7 independent legal counsel regarding this Stipulation, that he is entering into this Stipulation  
8 voluntarily, and that no promises or threats have been made by ODC, the Association, or any  
9 representative thereof, to induce the Respondent to enter into this Stipulation except as provided  
10 herein.

11 41. Once fully executed, this stipulation is a contract governed by the legal principles  
12 applicable to contracts, and may not be unilaterally revoked or modified by either party.

13 **IX. LIMITATIONS**

14 42. This Stipulation is a compromise agreement intended to resolve this matter in  
15 accordance with the purposes of lawyer discipline while avoiding further proceedings and the  
16 expenditure of additional resources by Respondent and ODC. Both Respondent and ODC  
17 acknowledge that the result after further proceedings in this matter might differ from the result  
18 agreed to herein.

19 43. This Stipulation is not binding on ODC or Respondent as a statement of all existing  
20 facts relating to the Respondent’s professional conduct, and any additional existing facts may be  
21 proven in any subsequent disciplinary proceeding.

22 44. This Stipulation results from the consideration of various factors by both parties,  
23

1 including the benefits to both by promptly resolving this matter without the time and expense of  
2 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As  
3 such, approval of this Stipulation will not constitute precedent in determining the appropriate  
4 sanction to be imposed in other cases. But if approved, this Stipulation will be admissible in  
5 subsequent proceedings against Respondent to the same extent as any other approved  
6 Stipulation.

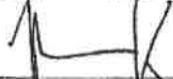
7 45. Under ELC 3.1(b), all documents that form the record before the hearing officer for  
8 his or her review become public information on approval of the Stipulation by the hearing  
9 officer, unless disclosure is restricted by order or rule of law.

10 46. If this Stipulation is approved by the hearing officer, it will be followed by the  
11 disciplinary action agreed to in this Stipulation. All notices required in the Rules for  
12 Enforcement of Lawyer Conduct will be made.

13 47. If this Stipulation is not approved by the hearing officer, this Stipulation will have no  
14 force or effect, and neither it nor the fact of its execution will be admissible as evidence in the  
15 pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil or  
16 criminal action.



1 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation  
2 to Discipline as set forth above.

3   
4 \_\_\_\_\_  
5 Mark Evans Lindquist, Bar No. 25076  
6 Respondent

Dated: 11/20/18

7   
8 \_\_\_\_\_  
9 Steven W. Kopp, Bar No. 23528  
10 Counsel for Respondent

Dated: 11/20/18

11 \_\_\_\_\_  
12 Scott G. Busby, Bar No. 17522  
13 Disciplinary Counsel

Dated: \_\_\_\_\_

14 \_\_\_\_\_  
15 Kathy Jo Blake, Bar No. 29235  
16 Disciplinary Counsel

Dated: \_\_\_\_\_

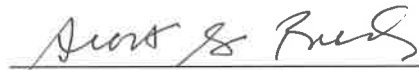
1 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation  
2 to Discipline as set forth above.

3  
4 Mark Evans Lindquist, Bar No. 25076  
Respondent


Dated: \_\_\_\_\_

5  
6 Steven W. Fogg, Bar No. 23528  
Counsel for Respondent

Dated: \_\_\_\_\_

7  
8   
9 Scott G. Busby, Bar No. 17522  
Disciplinary Counsel

Dated: 11/26/2018

10  
11   
12 Kathy Jo Blake, Bar No. 29235  
Disciplinary Counsel

Dated: 11/26/18

# APPENDIX A

APPENDIX A

**Transcript of December 3, 2014 Nancy Grace Episode re *State v. Nemetz***

[02:35] And tonight, live, Lakewood, Washington. Friends, family, relatives in shock as her husband, Skylar Nemetz, walks free, police honing in on Nemetz when his young wife, Danielle, found seated at her home computer, shot dead in the back of the head after police say a neighbor buys her alcohol while Nemetz away on a military training ops.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: She was found slumped over, dead from a single gunshot wound.

UNIDENTIFIED MALE: The defendant shot his wife because he believed she was cheating on him.

UNIDENTIFIED MALE: Investigators say he found out someone had purchased alcohol for his wife, Danielle. Enraged, prosecutors say, Nemetz shot her as she sat at the computer.

\* \* \* \* \*

[37:53] GRACE: And now we go live, Lakewood, Washington, friends, family, relatives in shock after husband, Skylar Nemetz walks free. Police hone in on Nemetz when his young wife, Danielle, found, seated at her home computer, shot dead in the back of the head, after police say a neighbor buys her alcohol while Nemetz away on a military training op.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Prosecutors say after Skylar Nemetz shot his 19-year-old wife in the back of a head with an AR-15...

UNIDENTIFIED MALE: They had his and her AR-15 rifles. This was apparently her rifle.

UNIDENTIFIED MALE: ...He made up several stories, first saying she shot herself then claiming that her death was an accident.

UNIDENTIFIED FEMALE: The male told you that his wife was dead?

UNIDENTIFIED MALE: Yes.

(END VIDEO CLIP)

## APPENDIX A

[38:38] GRACE: Straight out to Juniper Rose, a reporter with "Eureka Times-Standard," thanks for being with us. I don't quite understand this scenario. So the husband has been away on training operations for the military. He comes home, I don't understand what the -- the situation was for him to come home, his wife is seated at her home computer. She's shot in the back of the head. What do we know?

[39:06] JUNIPER ROSE, REPORTER, "EUREKA TIMES-STANDARD" (via telephone): So what we've been told and what prosecutors have stated in charging papers is that he returns home from his training, found a bottle of whiskey at his house, learned from a co-worker that this whiskey had been purchased for his wife by another man. And Skylar Nemetz became visibly angry at this time, uh, about two hours later is when he allegedly shot her in the back of the head, while she was at her computer.

[39:37] GRACE: To Matt Zarrell, also joining us on the story. Matt, what do we know about the crime scene itself? What can we learn?

[39:44] MATT ZARRELL, NANCY GRACE PRODUCER (via telephone): Okay, so we know that the path of the bullet specifically, the bullet within the completely through Danielle's head. It went through the back of the head, exited through her left eye, and went through the computer screen that she was facing. When police arrived on the scene, they found Danielle in a chair at the computer with her head slumped forward and a pool of blood at her feet.

[40:06] GRACE: Okay. When police arrive, Matt Zarrell, was there any indication of a struggle, of a fight, of marital discord, anything at all?

[40:16] ZARRELL: No, but police made note immediately, Nancy, that he, the husband, was not the person that called 911. The police were called when neighbors heard a gunshot and called for help.

[40:28] GRACE: Okay, Matt, let's take it from the top. What do we know about the day that Danielle was shot?

[40:34] ZARRELL: Well, we know that the husband was at a training op, and when he got home, apparently there was this whole issue about this bottle of alcohol, that a co-worker was there with the husband and the wife in the house, and when the husband discovered that another man, not the co-worker, had bought his wife alcohol, he became, quote, "furious, and visually upset, clenching his fists and unclenching it, like he was very, very angry."

[41:01] GRACE: So how does he find out about the booze?

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[41:03] ZARRELL: Well, apparently he is in the house and he sees this bottle of cinnamon whiskey. And he asks the coworker about it, and says, thank you - he actually tells the coworker, thank you for buying my wife this bottle of alcohol. And the coworker says, well, I didn't buy it, this person bought it. And as soon as the husband heard that it wasn't this coworker, that's when he allegedly became furious.

[41:25] GRACE: Whoa. Okay, what was the caliber of the weapon, Matt Zarrell?

[41:29] ZARRELL: It was an AR-15, which is an assault rifle commonly used in the military.

[41:33] GRACE: Hold on. Juniper Rose joining me, "Eureka Times-Standard" -- he shot her with an assault rifle?

[41:40] ROSE: Yes. So the assault rifle, he had left it at home for his wife, for protection while he was away at training, was actually her rifle and he said that he was going to put the rifle away when he returned home. Um, and one of his original stories, which he went through several different accounts after while he was talking to the police, one of the original accounts was that he was actually trying to put the rifle on safety when he accidentally shot her in the back of the head.

[42:14] GRACE: Okay. Let me get this straight. He says the assault rifle was his wife's. Why? Because he bought it -- he says he bought it for her? Just what every woman wants, an assault rifle. Okay, so, who buys the gun to start with?

[42:33] ROSE: He had. He had 11 guns -- he had grown up with guns his entire life, he was in the military, he had training uh, both, of course, including, you know, how to put a rifle on safety. So that was one of the reasons why it was kind of a fishy aspect of the story, when he was he was attempting to put it on safety when it went off.

[42:56] GRACE: Okay, because I've never heard of trying to put your assault rifle on safety, as you're holding it pointed at the back of your wife's head. Hold on, Matt Zarrell and Juniper Rose, I'm being joined right now by James Peltier, a close family friend of Danielle's. He says that Danielle was like a daughter to him. Mr. Peltier, thank you for being with us.

[43:21] JAMES PELTIER, CLOSE FAMILY FRIEND OF VICTIM (via telephone): Thank you, Nancy.

[43:22] GRACE: I've heard a lot of stories, Mr. Peltier, but I've never heard one like this. That the husband actually says he's trying to put his assault rifle on safety, as he's pointing it at the back of his wife's head, never heard that one. What do you make of the fact that he has walked free on bond?

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[43:46] PELTIER: We just can't believe that uh, that somehow they let him out on bond, let him return back to the military base under armed guard. We're really confused by that and the lowering of his bond. And as far as what you're talking about there, his story of, you know, of it being an accident. We don't believe it's an accident and I believe forensic evidence will come out to prove that that's not, that wasn't an accident. And he's had so many stories that he's told and uh, five of them, I believe. And every single story has a lie in it.

[44:22] GRACE: I don't understand why his bond, why a judge lowered his bond, Mr. Peltier? What's your understanding of that? Why is he walking free?

[44:34] PELTIER: Um, well, at the time there was a court date and we're all down here in the Eureka area, the rest of Danielle's family, and none of us were notified that there was a court date for a bail hearing for him. And apparently he had a couple of days' time to rally some letters from his family members and friends and uh, some of his, uh, superiors in the military wrote some letters too, and there was, I think, there was 30-some letters that were wrote. And somehow, the commissioner decided that it was okay or just, justice, I guess, to lower the bail from \$1 million down to \$350,000. So once it was lowered to \$350,000, they made terms to, uh, you know, require him to be on base in a secured barracks under armed guard, and return back to the base. Couldn't be just walking the streets, but for \$350,000 bail, that's \$35,000 that someone has to have to get out. And to me, that's just ridiculous.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

[49:49] DISPATCH: 911, what are you reporting?

UNIDENTIFIED CALLER: I think somebody's just been shot in my neighborhood.

DISPATCH: The male told you that his wife was dead?

UNIDENTIFIED CALLER: Yes.

DISPATCH: Is she breathing?

HUSBAND: No. (INAUDIBLE) Danielle?

DISPATCH: Danielle was the one shot and he accidentally shot her?

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UNIDENTIFIED CALLER: I don't know that part. We just heard the gun go off and he said there's an accident.

(END VIDEO CLIP)

[50:08] GRACE: It is not fitting together for me. What we have is a young wife, Danielle Nemetz, found shot dead in the back of the head, sitting at her home computer. Her husband has given several different stories about what happened. But one of them is as he was trying to put his assault rifle on safety and accidentally did that as he was pointing at the back of her head. I'm hearing in my ear, I'm just now being joined by special guest, Pierce County prosecuting attorney, Mark Lindquist. Mark, thanks so much for being with us.

[50:48] MARK LINDQUIST, PIERCE COUNTY PROSECUTING ATTORNEY (via telephone): Happy to be here, Nancy. Thank you.

[50:50] GRACE: Man, you've got a tough job. I remember the ten years that I prosecuted felonies, every day, I would think, well, I've seen it all now, until the next day. How many stories, Mark Lindquist, do we know that Skylar Nemetz gave about the shooting death of his wife?

[51:07] LINDQUIST: He gave basically three different stories, which obviously undercuts his claim that this was an accident. Initially, he claimed his wife shot herself. Second, he claimed the weapon went off accidentally when the stock bumped against his leg. And third, he admitted that he pointed the gun at the back of her head, and took off the safety and pulled the trigger, but claimed he didn't know the gun was loaded.

[51:32] GRACE: Now this is the problem, Mark Lindquist, as you probably already know. Some people out there will think, if he thought his wife was having an affair, whether she was or wasn't, that that will somehow lower the charge or nullify the charge. But as I have told many, many juries, the "I was mad" argument is not a legal defense under the law, Mark.

[52:02] LINDQUIST: Right. And actually I think the motive of jealousy makes it more clear that this was intentional.

[52:09] GRACE: Now, why do you say that, Mark?

[52:11] LINDQUIST: Well, first, let me step back a little and note that this defendant is highly trained in the use of firearms and it doesn't make any sense that he would point a loaded gun at the back of his wife's head, click the safety off, and pull the trigger. Because we all know the number one rule of gun safety is assume all guns are loaded. So given his expertise, given his motive...



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GRACE: (Overlapping) You know what, Mark? Even when I was, even when I would bring a gun in as evidence, number one, I hate handling guns because I'm the victim of gun violence. But always, even after my investigator would hand me the gun in open court, I would turn it away from the jury and down to the ground if I wanted to demonstrate anything because of the number one rule of gun safety is assume it's loaded. Go ahead, Mark Lindquist.

[52:58] LINDQUIST: And always point the gun in a safe direction. So, he knows what he's doing with guns. He's angry at her for whatever reason, whether it's an actual affair or imagined affair, and he's claimed that it was an accident, actually I should say, his multiple claims that it was an accident just don't make sense.

[53:17] GRACE: An accident. Was there actually a point where he said his wife shot herself?

[53:22] LINDQUIST: Yes, that's what he told the neighbor initially.

[53:27] GRACE: Okay. Why is it that the neighbor -- you know what? Unleash the lawyers. In addition to the prosecuting attorney, Mark Lindquist, with me, Randy Kessler, Alex Sanchez, also with me, Dr. Ish Major, board certified psychiatrist out of New York. Doctor Ish Major, first to you, then I'll get to the lawyers. When does jealousy take over your body so somehow it makes sense to you to murder your wife?

[53:53] DR. ISH MAJOR, BOARD CERTIFIED PSYCHIATRIST: You know what? It sounds like he was building up and gotten to a point where he was in a jealous rage. The question I have, Nancy, is what's the history here? Guys just don't come home and get jealous and shoot their wife in the back of the head. So I'm betting you, I'm betting you, there's a history of violence, maybe abuse or the very at least intimidation going on.

[54:11] GRACE: You know, uh, Randy Kessler, Alex Sanchez, taking that into account what Ish Major has just told us, give me your best defense, Alex Sanchez, I'm braced.

[54:22] ALEX SANCHEZ, DEFENSE ATTORNEY: Yeah. The best defense is that he's going to be ending up pleading manslaughter in this case on the grounds of extreme emotional disturbance. The guy was in the military, he was under some type of stress. He comes home, he finds out his wife may be having an affair with somebody. Somebody is giving alcohol -- why are they giving alcohol?

GRACE: (Overlapping) It was a bottle of liquor.

SANCHEZ: Yes, a bottle of liquor, but what is that for? What do you think is going on there? I mean it's terrible but--

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GRACE: (Overlapping) Are you, are you asking me to speculate that because a family friend gives this family a bottle of liquor - let me ask you something, when you go to a Christmas party or a dinner, I bet you carry people a bottle of wine. Does that mean you're sleeping with the lady?

SANCHEZ: The first thing you need to do is get real. If a next door neighbor--

GRACE: (Overlapping) No you need to get real!

SANCHEZ: -- a man is giving a bottle of alcohol to a man's wife while this guy is away. That doesn't look good and he has intentions that are inconsistent with the marital vows.

[55:15] GRACE: Okay, to Mark Lindquist, Pierce County prosecuting attorney. Mark Lindquist, that's a perfect argument to a jury when some defense attorney tries this, is how many people on a jury, whether they drink or not, how many times when they go to a party or a dinner or get together, do they take a bottle of wine? Does that mean you're sleeping with the lady that lives there? No, it does not. I guess you're ready for that, Mark.

[55:41] LINDQUIST: I'm a prosecutor, not a psychiatrist, so I look at the evidence, which adds up to murder, and the fact that he may have imagined that she was doing something, cheating on him, to me that just gives him motive to murder her. I don't think there's a jury out there that will say, ah, maybe she was cheating and therefore this is manslaughter. On the contrary, I think they will look at that and say that's motive for murder.

(COMMERCIAL BREAK)

[1:00:43] GRACE: Randy Kessler, did you know there was also a cover up at the scene?

[1:00:49] RANDY KESSLER, DIVORCE/DEFENSE ATTORNEY: No, I didn't know there was a cover up at the scene. But what I do know is the prosecution has a tough case because they've got to get inside his head and prove intent. He was a military guy, used to weapons, and he might have been acting out. They've got to prove that it was not an accident, that his finger didn't slip, that he intended to kill his wife who he loved and there's no reason to think that he wanted her dead.

[1:01:05] NANCY GRACE: Well it also adds to intent to point an assault rifle at the back of her head before he pulled the trigger. Uh, everyone we're talking about Skylar Nemetz and the death of his wife, Danielle.

[END OF SEGMENT]

# APPENDIX B

APPENDIX B

**Transcript of February 16, 2016 Nancy Grace Episode re *State v. Nemetz***

[2:00] NANCY GRACE, HLN HOST: Breaking news tonight. Friends, family, relatives in shock after husband Skylar Nemetz walks free. Police hone in on Nemetz when his young wife, Danielle, found seated at her home computer, shot dead in the back of the head after police say a neighbor buys her alcohol at her request while Nemetz was away on military training. And it infuriates Nemetz to the point he was, quote, "shaking with anger."

(END VIDEO CLIP)

[2:34] UNIDENTIFIED MALE: Enraged, prosecutors say, Nemetz shot her as she sat at a computer at the couple's Lakewood apartment.

911 OPERATOR: Is she breathing?

UNIDENTIFIED MALE: No. (INAUDIBLE) Danielle?

911 OPERATOR: Danielle was the one shot and he accidentally shot her?

UNIDENTIFIED MALE: He made up several stories, first saying she shot herself, then claiming her death was an accident.

(END VIDEO CLIP)

[4:08] GRACE: Good evening. I'm Nancy Grace. I want to thank you for being with us. Bombshell tonight. Friends, family, relatives in shock after husband Skylar Nemetz walks free. Police hone in on Nemetz when his young wife, Danielle, is found still seated at her home computer but shot dead in the back of the head, blowing off her face. Police say a neighbor had bought Danielle alcohol at her request. He stopped by the liquor store while Nemetz away on military training. And when he found out the neighbor had done that favor, it infuriated Nemetz so much, he was to the point he was, quote, "shaking with anger."

Straight out to Candace Trunzo, senior news editor, Dailymail.com. Candace Trunzo, I know that this episode apparently infuriated Nemetz, the husband. He was away for about two weeks on some military training op. And he was the one that told his wife to go to the liquor store and have it there when he got home. He had been dry for two weeks. He wanted X, whatever liquor -- oh, it was, like, cinnamon vodka or cinnamon whiskey...

[5:21] CANDACE TRUNZO, DAILYMAIL.COM (via telephone): Cinnamon whiskey, yes.

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[5:22] GRACE: Whiskey, that's right, cinnamon whiskey. I never heard of it. It's got, like, a devil on the side with a pitchfork. But long story short, he asked her to go get the liquor. And she then mentions it to a neighbor, who stops by the liquor store, brings it, drops it at the house. And he gets furious. But I don't see that as enough of a motive. So what I want to talk about, Candace Trunzo, is the physical evidence. I want to start with the physical evidence. What do we know, Candace?

[5:53] TRUNZO: Well, we know that when they, when the police arrived, they found, they found her sitting at her computer. She was shot through her left eye. She was shot in the back with an AR-15 assault weapon, through the back, went through the eye, into the computer.

[6:08] GRACE: Wait, wait, wait! Did you say an assault weapon?

[6:12] TRUNZO: Yes. AR-15 assault weapon.

[6:15] GRACE: Guys, I'm being joined right now -- hold on, Candace Trunzo from Dailymail.com. In my ear, I'm hearing we have special guest joining us, Mark Lindquist, the Pierce County elected prosecutor. Mark, thank you so much for being with us.

[6:31] MARK LINDQUIST, PIERCE COUNTY PROSECUTOR (via telephone): Thank you, Nancy.

[6:34] GRACE: Mark, I know that you are on a break from court, so I want to ask you a couple of quick questions. I know all about the amendments to the Constitution that gives us the right to bear arms. I'm fine with bearing arms. But an assault weapon at home? Why did he have an assault weapon at home, Mark?

[6:52] LINDQUIST: The defendant was highly experienced with firearms. He actually had 15 different weapons in his apartment. He'd been handling guns since he was 4 years old. He actually builds AR-15s. He buys the parts and puts them together. And he customized the weapon in this case for Danielle. So he is-

[7:13] GRACE: What does that mean? I think I know my way around a weapon from being a prosecutor for so many years, but what do you mean he customized an AR -- an assault weapon for his wife?

[7:25] LINDQUIST: He put together the parts and he balanced the weapon in a way that it would be ambidextrous, so it could be used on either shoulder.

[7:33] GRACE: You're seeing the scene of the shooting. We've heard everything from an accident to she was the one holding the weapon, to a mistake. I'm trying to get a line on what exactly the defense is going to be. And there you see Danielle Nemetz and Skylar in their happy

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times. And as a matter of fact, it was stated in evidence that there had been no argument leading up to the shooting. But it's only him and her in the room, isn't that right, Mark Lindquist?

[8:04] LINDQUIST: Right. But we can look at what happened before they were alone together in the room. Initially, as you pointed out, the defendant said Danielle shot herself. Later he said that he shot her accidentally. And now at trial, he's saying that he doesn't remember pulling the trigger.

[8:21] GRACE: Well, you know what? You just brought up something really interesting, Mark Lindquist. I'm just getting it straight out of the courtroom. Listen to this.

(BEGIN VIDEO CLIP)

[8:30] UNIDENTIFIED MALE: Skylar, did you point the weapon at your wife?

[8:33] SKYLAR NEMETZ, CHARGED WITH MURDER: No, I didn't!

[8:36] UNIDENTIFIED MALE: Did you intend to hurt your wife?

[8:37] NEMETZ: I did not. I did not intend to hurt my wife. I never did. I wanted her to be with me forever. I wanted her to be the mother of my child.

(END VIDEO CLIP)

[8:50] GRACE: [Crying sounds] Okay, straight to you, Ryan Schwartz, defense attorney out of the Atlanta jurisdiction. Why is he crying now? Because from what I understand, the day of the shooting, Ryan Schwartz, he wasn't crying. After his wife accidentally shot herself in the head as she was sitting at her home computer, uh, it's my understanding he actually kicked some evidence under the bed and hid some other evidence. But in court, it's wah, wah.

[9:21] RYAN SCHWARTZ, DEFENSE ATTORNEY: Well, again, Nancy, this is an accident. Accidents happen every day. He's obviously upset because he didn't intend to kill his wife.

[9:28] GRACE: Okay, you know what? I hear you. I hear you. But I want to analyze what this guy says on the stand again. Oh, yeah, he's crying now! Run it again, Liz.

(BEGIN VIDEO CLIP)

[9:39] UNIDENTIFIED MALE: Skylar, did you point the weapon at your wife?

[9:44] NEMETZ: No, I didn't.

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[9:45] UNIDENTIFIED MALE: Did you intend to hurt your wife?

[9:49] NEMETZ: I did not. I did not intend to hurt my wife. I never did. I wanted her to be with me forever. I wanted her to be the mother of my child.

(END VIDEO CLIP)

[9:59] GRACE: Mark Lindquist joining me, the elected prosecutor in Pierce County. Mark, has he been crying like that the whole time?

[10:06] LINDQUIST: No, he hasn't. But -- and as you know, Nancy, prosecutors don't have to prove motive, but jurors always want to know the motive, right? And the motive in this case was jealousy. The evidence suggests the defendant thought Danielle was fooling around with another soldier. Even if that's not true, the point is the defendant suspected that.

[10:27] GRACE: Unleash the lawyers. Joining me out of Atlanta, Ryan Schwartz, and out of New York, family law attorney and victims' rights advocate, Susan Moss. Susan Moss, did you see him turning on those waterworks? You know, he wasn't crying that day.

[10:40] SUSAN MOSS, VICTIMS' RIGHTS ATTORNEY: No, I actually didn't see any tears at all. Apparently, he didn't go to the Jodi Arias school of learning how to cry! But domestic violence is violence, and domestic violence that leads to murder is murder! More women die at the hands of their partner than any other disease or any other reason! The facts here is that this was a man who was intense on control! And when he thought that his wife was receiving gifts, in this case alcohol from the neighbor, that's when he went crazy! That's what happened in this case, and that's what I believe they'll prove!

[11:17] GRACE: But isn't it true, Candace Trunzo, senior news editor, Dailymail.com, he's the one that asked for the liquor? He started the whole thing.

[11:23] TRUNZO: He did. He was texting -- I mean, he couldn't wait to get his hands on that bottle of cinnamon whiskey. He was texting her, please get me the whiskey, please get me the whiskey. And for one reason or another, she didn't get it. She got a neighbor to get it, and the neighbor was a man. The neighbor was a man, and he suspected that something was going on between this man and Danielle, that she was cheating on him.

[11:45] GRACE: With me right now, renowned forensic pathologist Dr. William Morrone joining me out of Madison Heights. Dr. Morrone, thank you for being with us. It's my contention, and I think the district attorney agrees with me -- I've got him right here with me, Mark Lindquist -- Dr. Morrone, this is absolutely impossible to have been self-inflicted. Yes, no.

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[12:06] DR. WILLIAM MORRONE, FORENSIC PATHOLOGIST: Absolutely. You can't shoot yourself in the back of the head with a rifle. Absolutely.

[12:13] GRACE: Now, why do you say that?

[12:15] MORRONE: Well, it's going to take holding it in such a way that you can pull the trigger, and you can't put that far enough behind you, even with a short barrel. And this is a small, petite woman, and the legal distance between the chamber and the tip of the barrel is mandated by the state, and it has to be certain distance. She would have had to been reaching three feet behind her head...

GRACE: (Overlapping) Ridiculous!

MORRONE: ... to get to the trigger to shoot herself in the head so it would come out the eye. And that round is going over a thousand feet a second. That's why it penetrates bone twice.

[12:57] GRACE: Uh, joining us on a break is Mark Lindquist, the Pierce County elected prosecutor. Again, Mr. Lindquist, thank you for being with us, joining us out of Tacoma. Mark, I want to look at the facts. I mean, as you said, the state doesn't have to prove motive, although the jury likes to think they know the motive because it helps them put together the puzzle, like we all want to do...

LINDQUIST: Right.

GRACE: ...But what you've got to rely on, as you accurately pointed out, is the hard forensics. What can you tell me about what was found in that room? How do we know she had been sitting at her computer at the time she was shot in the head?

[13:33] LINDQUIST: There's really no dispute that she was sitting at the computer when she was shot in the head. And at this point in the trial, the defense is arguing not that she shot herself, but rather that it was an accident. That's the whole defense. And that's the whole question. Was this an accident? Was it intentional? And that's why the defendant's experience with firearms is critical to the case. But it's not just that physical evidence, it's the behavior afterwards.

GRACE: (Overlapping) Right.

[13:56] LINDQUIST: The defendant never called 911. He never called for help. He seemed more focused on cleaning up the scene, disposing of the liquor bottles...

GRACE: (Overlapping) Oh!

LINDQUIST: ... than getting help. And it's his actions combined with his statements...



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GRACE: (Overlapping) Behavioral evidence.

LINDQUIST: ... and his experience with firearms that add up to murder, rather than an accident.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

[17:53] 911 OPERATOR: So the male told you that his wife is dead?

UNIDENTIFIED MALE: Yes.

UNIDENTIFIED MALE: Prosecutors say after Skylar Nemetz shot his wife in the back of the head with an AR-15, he made up several stories.

NEMETZ: I did not intend to hurt my wife. I never did.

(END VIDEO CLIP)

[18:07] GRACE: There you see Skylar Nemetz on the stand defending himself and claims that he, in cold blood, shot down his young wife. Apparently, motive, he had been away for about two weeks on a training op with the military and demanded over and over, texting and calling, that she have a certain kind of liquor at the house when he got home. Well, a neighbor stopped by the liquor store and got it for her, and when he found out this neighbor was actually a man, he allegedly goes berserk to the point that he was actually shaking. With me right now, special guest, in addition to Mark Lindquist, the elected prosecutor in that jurisdiction, James Peltier, friend and neighbor of the victim, Danielle Nemetz. James, thank you for being with us.

[18:54] JAMES PELTIER, FRIEND AND NEIGHBOR (via telephone): Thank you, Nancy.

[18:55] GRACE: I'm just so stunned that this situation escalated to the point where she is gunned down dead sitting at her home computer. What can you tell us about their relationship? What did you ever observe?

[19:10] PELTIER: Um, well, there was some red flags on one occasion that really stood out to us the last time she came down to Humboldt County to visit us, and uh, he was fighting with her and ended up smashing her cell phone to the ground. And I had conversations with Danielle. He just basically dumped her at our house, didn't even come in and say hi or anything. And I talked to Danielle and asked her if she was afraid of him or in fear, and her response was, only when he's been drinking.

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[19:49] GRACE: "Only when he's been drinking." Everybody, that's home video of Danielle from YouTube. Let's listen to it.

(BEGIN VIDEO CLIP)

DANIELLE NEMETZ, VICTIM: I'm so excited! Okay, is there a card? Okay. I'm gonna read your card first. I'm so excited! Okay.

(END VIDEO CLIP)

[20:14] GRACE: There you see Danielle apparently reading a gift and a card from her husband, clearly deeply, deeply in love with him. I want to go through the physical evidence. Matt Zarrell, I want to walk through the blood evidence and why we know his story is a lie. But first, listen to him. We just got this from the courtroom.

(BEGIN VIDEO CLIP)

NEMETZ: And I was trying to clear the weapon, and um, I didn't do it correctly and I made a terrible mistake. And the weapon went off in my hands and it struck the back of my wife. It hit her in the head. And she died.

(END VIDEO CLIP)

[20:55] GRACE: Christopher Robinson, firearms expert with Chris Robinson Forensics, former crime lab director out of Orlando -- Chris, that is a crock of BS, what I just heard. I'm not a gun expert like you, but I know that, what he just said, is a lie. I mean, really? I was cleaning my shotgun? How old is that?

[21:16] CHRIS ROBINSON, FIREARMS EXPERT (via telephone): Absolutely, Nancy. The first rule of any gun is to keep it pointed in a safe direction. So it's pointed at the back of her head, when he's supposedly trying to clear the weapon. Well, why is his finger on the trigger of the weapon? When you're trying to clear the weapon, you just pull the bolt to the rear and eject the cartridge case. So why would he be having his finger on the trigger? He had to fire the weapon, so he had to pull the trigger.

[21:39] GRACE: Matt, what do we know about the blood evidence and the physical evidence at the scene?

[21:44] MATT ZARRELL, NANCY GRACE PRODUCER (via telephone): Okay, so when officers found Danielle, she was in a chair at the computer, with her head slumped forward and a pool of blood at her feet. The bullet actually went through the computer screen she was facing. Cops also discovered that there was a magazine under the bed. The AR-15 was in the closet. The

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cinnamon whiskey was flushed down the toilet, and the liquor bottles were thrown into some brush underneath the apartment building.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

[26:11] UNIDENTIFIED FEMALE: Prosecutors claim Nemetz became enraged after learning another man bought his wife liquor.

911 OPERATOR: Danielle was the one shot and he accidentally shot her?

UNIDENTIFIED FEMALE: I don't know that part. We just heard the gun go off, and he said there was an accident.

UNIDENTIFIED FEMALE: Nemetz contends the shooting was an accident.

(END VIDEO CLIP)

[26:29] GRACE: For those of you just joining us, a young wife found dead, clearly sitting at her own home computer when she's shot in the head. Now, theories abound as to what really happened, but her husband, the only one at home at the time of the shooting beside her -- and they had been very happy up until this point, by all accounts -- was that first, she did it herself. Second, it was an accident, that he was cleaning his gun, and third, a variation on accident. Can those stories all be true? Well, not according to the physical evidence. But look at what we're hearing in court right now.

(BEGIN VIDEO CLIP)

[27:10] UNIDENTIFIED MALE: The woman that means the rest of your life to you, you didn't go to her aid, did you?

NEMETZ: No, I did not.

UNIDENTIFIED MALE: Mr. Foss says that you were shaking with anger because he told you someone else got the alcohol.

NEMETZ: That did not happen, sir.

(END VIDEO CLIP)

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[27:31] GRACE: Straight out to Dr. Daniel Bober, forensic psychiatrist joining me out of Miami. Dr. Bober, uh, it's too difficult for me to believe this guy. He's told several stories. Now he's saying he was not shaking with anger. According to one witness, he was. What do you make of it? Now, you've heard from the friend, joining us today, James Peltier, that said the wife said, I was never afraid of him except when he was drinking.

[27:59] DANIEL BOBER, FORENSIC PSYCHIATRIST: Nancy, there's a lot of aspects of this story that are very troubling -- the multiple versions that he told about how she died, the attempts to conceal evidence after the crime. We're never really going to know what happened leading up to the moments before her death. But certainly, there is a motive there. And a lot of times it's when people are saying that they weren't thinking what they were doing, that they were doing what they were thinking. So I think that he was desperate and he was scared at the last minute and he probably knew that he was going to get caught, and so he attempted to sanitize the scene, if you will. But it just doesn't really add up. His version just doesn't make sense.

[28:35] GRACE: The changing stories. Unleash the lawyers, Sue Moss out of New York, Ryan Schwartz out of Atlanta, Danny Cevallos joining us out of Philadelphia. First to you, Danny Cevallos. Why didn't he call 911? If this were an accident, as he's saying, cleaning his assault rifle, then why didn't he call 911?

[28:58] DANNY CEVALLOS, DEFENSE ATTORNEY: He's got a lot of things to explain away. But I think the difference between not calling 911 and bringing in all this evidence that maybe they had arguments and maybe they didn't get along -- you see this all the time in murder cases, and it really is unfair to demonstrate that somebody maybe didn't get along with his wife, and therefore, that's the reason he may not have been cleaning his gun by accident.

GRACE: What's unfair about that?

CEVALLOS: Still it doesn't change the fact -- it's unfair because it goes -- you know as well as I do, Nancy, that yes, it's admissible...

GRACE: Well, first of all...

CEVALLOS: ... but it's really about...

GRACE: ... don't tell me what...

CEVALLOS: It's tainting the jury.

GRACE: ... I know or don't know, number one. I don't need you...

CEVALLOS: Well, I'm pretty sure you know that, Nancy.

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GRACE: ... to school me in the law, but thank you. And I'm asking you a direct question. Are you saying it's unfair that behavioral evidence comes in before the jury?

[29:44] CEVALLOS: It's -- look, we've decided as a society that it's admissible, but it is problematic because you'd be hard-pressed to find a marriage that doesn't have some disagreement, some strife. And to use that to demonstrate to a jury that that's why somebody really wasn't cleaning his gun by accident seems a little unfair. But to, to be frank...

GRACE: Well, of course, the question that I asked you...

CEVALLOS: ... we have another rule, so...

GRACE: ... was why...

CEVALLOS: ... what can I tell you.

GRACE: ... didn't he call 911. That was the question. And to Mark Lindquist joining us, the elected prosecutor in Pierce County there in Tacoma. Mark, the reality is, it's highly, highly probative when you are at home, you're the only other person in the home, and you were in the middle of a fast and furious fight with your wife over something that has just happened. I think it's highly probative.

[30:34] LINDQUIST: Right. And the jury wants to know what happened before the shooting and after the shooting because it helps them appraise the defendant's mental state. What was he doing and why?

[30:44] GRACE: Candace Trunzo, senior news editor, Dailymail.com, do you really think a jury is going to buy all this waterworks in the courtroom, the crying, the snotting, the sniveling? And he only does that at certain points, for instance, when he's asked a tough question that he doesn't want to answer.

[31:02] TRUNZO: Well, it's true, but you know, this guy -- he has no record. He has nothing to blemish, you know, a military man, nothing, nothing to take away from the fact that he was an upstanding citizen and a good soldier. So I think the jury could be possibly swayed by this. But what would drive him to shoot this wonderful young wife that he seemed to love? Anybody's guess.

[31:26] GRACE: Okay, are these real or are these crocodile tears?

(BEGIN VIDEO CLIP)

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UNIDENTIFIED MALE: Skylar, did you point the weapon at your wife?

NEMETZ: No, I didn't.

UNIDENTIFIED MALE: Did you intend to hurt your wife?

NEMETZ: I did not. I did not intend to hurt my wife. I never did. I wanted her to be with me forever. I wanted her to be the mother of my child.

(COMMERCIAL BREAK)

[END OF SEGMENT]

# APPENDIX C

## APPENDIX C

### **American Bar Association *Standards for Imposing Lawyer Sanctions* Standard 5.2**

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving public officials who engage in conduct that is prejudicial to the administration of justice or who state or imply an ability to influence improperly a government agency or official:

- 5.21 Disbarment is generally appropriate when a lawyer in an official or governmental position knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself or another, or with the intent to cause serious or potentially serious injury to a party or to the integrity of the legal process.
- 5.22 Suspension is generally appropriate when a lawyer in an official or governmental position knowingly fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.
- 5.23 Reprimand is generally appropriate when a lawyer in an official or governmental position negligently fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.
- 5.24 Admonition is generally appropriate when a lawyer in an official or governmental position engages in an isolated instance of negligence in not following proper procedures or rules, and causes little or no actual or potential injury to a party or to the integrity of the legal process.