



Law Office of the
PUBLIC DEFENDER
Seventeenth Judicial Circuit

Howard Finkelstein • Public Defender

Broward County Courthouse • 201 S.E. 6th Street • Suite 3872 • Fort Lauderdale, Florida 33301
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February 5, 2015

Kevin P. Tynan
Chair
17th Circuit JNC
Richardson & Tynan, PLC
8142 North University Drive
Tamarac, FL 33312

Re: Application of Nina Weatherly DiPietro

Dear Mr. Tynan,

It has come to my attention that Attorney Nina Weatherly DiPietro has applied for appointment as a County Court Judge in the 17th Judicial Circuit. Because Attorney Weatherly was terminated as an assistant public defender in 2008 for what I consider to be gross violations of her ethical duties to her clients, I find it necessary to advise you of the events culminating in her termination. Although I have had no contact with Ms. DiPietro since 2008 and have no idea who she is today, I firmly believe that the attorney I fired in 2008 should not be a judge. I have attached the memorandums from her personnel file for your consideration.

Sincerely,


Howard Finkelstein
Public Defender

Public Defender

Howard Finkelstein

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Executive

Chief Assistants:

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Public Defender
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March 18, 2008

Executive
Chief Assistants:

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Catherine A. Keuthan
954.831.8665

The Florida Bar
651 Jefferson Street
Tallahassee, FL. 32399-2300

Re: Nina Weatherly
Broward County, Florida

Dear Sirs,

Please accept this letter as a notification of our termination of assistant public defender Nina Weatherly for what we determined to be ethical transgressions.

Because of the appearance of impropriety and violation of attorney-client privilege, coupled with other issues we have had with Ms. Weatherly, we terminated her employment and since the most egregious reason for termination involves Florida Bar jurisdictional matters, specifically possible violation of Rules Regulating the Florida Bar 4-1.6, we are notifying you of this termination pursuant to Rules Regulating the Florida Bar Rule 4-8.3.

Enclosed please find all memos that pertain to her termination.

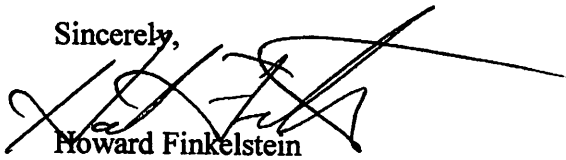
People with information on this issue are listed below.

The following are all currently employed at the Broward Public Defender's Office:

Catherine Keuthan, Executive Chief Assistant Public Defender
Frank Dela Torre, Chief Assistant Public Defender for Felony Divisions
Renee Dadowski, Chief Assistant Public Defender for Early Representation Division

Mindy Solomon, Chief Assistant Public Defender for County Court Divisions
Susan Porter, Chief Assistant Public Defender for Training
Lynn DeSanti, Assistant Public Defender, Trainer

Sincerely,


Howard Finkelstein
Public Defender

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March 10, 2008

To: Memo to Personnel File
From: Catherine Keuthan, Executive Chief Assistant Public Defender

RE: Nina Weatherly

Nina Weatherly, an assistant public defender assigned to Judge Levenson's division in Broward County was terminated Friday, March 7, 2008 at about 1 pm by Frank Dela Torre and me. The ultimate and immediate reason for the termination was grave ethical violations that came to our attention earlier that day coupled with a number of issues that have arisen during her employment and caused concern.

Earlier Friday, Frank Dela Torre, Chief of Felony, Susan Porter, Chief of Training, Lynn DeSanti, trainer and I met. Lynn DeSanti had been assigned as a trainer for Ms. Weatherly at my request, after I had occasion to review a file and her handling of that case. Ms. DeSanti brought to our attention some real concerns she had about Ms Weatherly especially as they related to a client Smith, who was due to have a motion to suppress hearing at 3 pm that afternoon. She was going thru Ms. Weatherly's cases with her and in the course of their discussions about the cases and the prep, she learned from Ms Weatherly that no depositions had been taken because Ms Weatherly did not see them as relevant and believed the motion hearing could be used to gather any information needed. She also indicated that she had discussed at length this case with her boyfriend, a currently practicing state attorney, including the facts and circumstances of the case and the defendant's background. She further shared that her boyfriend remembered this defendant because he had in fact been the prosecutor who handled his initial case where he got a probationary sentence which was now the subject of a violation of probation to which this motion to suppress was relevant! Ms DeSanti related that she was alarmed and stated something to the effect of "what are you doing?" To which Ms. Weatherly said something like "I talk to him about all my cases, or I go over all my cases with him." When Ms. Desanti voiced astonishment, Ms. Weatherly's response was "Oh, I guess I shouldn't say that out loud" to which Ms. Desanti stated "No, you shouldn't be doing that at all!" Ms Desanti felt that Ms. Weatherly was dismissive and did not really accept nor acknowledge the gravity of this. Ms. DeSanti also related the concerns she had with a lack of compassion for the clients on the part of Ms Weatherly, using the example of a homeless client who Ms. DeSanti was interviewing when he came in to see Ms. Weatherly. Ms. DeSanti

talked about how it was obvious from the police reports that the defendant was homeless but when Ms. Weatherly came in she interrupted to chastise the defendant for not calling or coming to see her and then proceeded to tell the defendant that she was going to concede the state facts and argue that there was still no charge. This was a problem according to Ms. DeSanti, first because conceding would be admitting guilt of a crime and more importantly, the client was maintaining that he was not guilty and did not agree to the facts as written. Ms. DeSanti stated that Ms. Weatherly was rude and short with the defendant and did not realize his personal circumstances or care.

The concerns with Ms. Weatherly's attitude towards clients and her thoroughness in her representation came to my attention in a case that I became involved in at Howard Finkelstein's request. On 2/19/08, Mr. Finkelstein received an email from an out of state attorney who voiced concern about the handling of a case of a friend of his. The defendant's name in that case was Katz and he was charged with practicing medicine without a license. He was troubled by the lack of attention and misapplication of law as he saw it on Ms. Weatherly's part. I looked into the case by reviewing Stac and then requesting the file from Ms. Weatherly on 2/20. I then had a lengthy discussion with her about the file that afternoon after I had read all documentation on hand. The client had a status conference set for the next day. What alarmed me was a lack of defensive preparation but more importantly a total lack of compassion for the defendant and lack of preparation of a viable defense.

During the course of our conversation, she stated a variety of things that alarmed me. She said at one point that she did not need to take a deposition in this case because the agent from the Department of Health did such a great and thorough job that it would be a waste of her time. She did not see the need for a Statement of Particulars because in criminal cases they are not necessary and the state supplies the entire discovery so there are no questions about the allegations of the charge. When I suggested that this was a great defense case and could be full of motions to give the state a run for their money and really get them going she stated she doesn't need to do that because she has a great relationship with her state attorneys and wouldn't want to harass or upset them. When I suggested this case could be fun, it had all kinds of issues and motions, she stated she does not consider this job fun; it is a job and she just does her job. She was irritated and dismissive about the client's strong profession of innocence and his desire to involve the press to generate outrage at the charges. When I agree with her client that this could potentially be a great case for the press she became agitated and told me that she would not do that, that she does not practice law like that and that she is not about to be a spokesperson for this issue that she does not even agree with. She also stated that she had to go to school and take a test for a license and that this law was a good law and not unreasonable and how did the client think he was entitled to practice medicine without a license. She on more than one occasion talked about how she is conservative in her personal views of things. I had no doubt after my conversation with Ms. Weatherly, that she did not have the client's interests at heart, that she did not like the client, that she did not feel the need nor the desire to fight the law and the state attorneys as would be required to zealously represent this client, that she

did not see her role as a advocate when the client's position did not fall in line with her own personal views and that she had not done the work necessary to adequately represent this defendant. I was so distressed by my conversation with Ms. Weatherly that I spoke at length with Ms. Cuddihy, a fellow Executive Chief Assistant Public Defender and Susan Porter, Chief of Training. My initial reaction was that she was not a defense attorney, let alone a Public Defender and that she should be dismissed. After thinking about it and speaking again to Ms. Cuddihy, Ms Porter and Howard Finkelstein, the decision was to have a trainer work with Ms. Weatherly for a period of time to assess whether she should remain with the office. There had been several previous issues with Ms. Weatherly and her attitude which were also factored in this decision. She had had attitudinal issues with Ms Mindy Solomon, Chief of County Court and Renee Dadowski, Chief of our Early Representation Unit. As for the case of Mr. Katz, I took the file from Ms. Weatherly, to which she stated that was a good idea because she did not believe she could represent him adequately, and I reassigned it to a more experienced attorney, Dennis McHugh.

When Frank Dela Torre, Susan Porter, Lynn DeSanti and I met and discussed this problem, we came to the conclusion that termination was necessary. I then called and spoke at length to Diane Cuddihy and Howard Finkelstein about this matter. They both agreed that termination was warranted. Ms. Cuddihy and I decided that Ms. Weatherly needed to be terminated and leave the premises today. We did not believe she could have any further contact with client files and information. Additionally, we decided that the defendant Smith would need to be apprised of her ethical transgression and given the opportunity to ask for appointed counsel outside the office due to the potential conflict situation. Additionally, a continuance of his hearing was needed.

When Frank Dela Torre and I met with Ms. Weatherly later that Friday, she at first denied she spoke to her boyfriend/state attorney about the Smith case. She then said she spoke to him but only in general legal terms, later she stated she showed him the file but only the PC, at another time it was parts of the discovery. She stated she knew he was the prior prosecutor because she recognized his handwriting on the sentencing scoresheet. She then later denied knowing he was the prosecutor and talking about the scoresheet with him, but then still later admitted that she spoke of it and that he remembered the defendant and the case in the course of their conversation about this case. The client was scoring high with an enhanced sentence. She still further later went back to stating she did not talk about the client but only trial tactics with these specific issues and this particular judge. The gist of the conversation was that she changed her responses numerous times during the course of the conversation to which I have every reason to believe that she had in fact discussed a client's particular case with a current state attorney in the very office currently prosecuting the defendant and this state attorney was very familiar with this case having prosecuted the defendant previously. Ms. Weatherly insisted she never told him anything the defendant specifically said, as if one could believe any exculpatory statements she made after her vacillating back and forth on other specifics and as if that somehow avoided the issue of an ethical violation and the

appearance of impropriety on this case. While she denied speaking to her boyfriend about any other cases, I have serious concerns about that based on the statement she made to Ms. DeSanti.

At quarter to 3 pm, Frank Dela Torre and I went to Judge Levenson's courtroom to handle this matter. Already present was State Attorney Office appellate attorney Scott Raft who had been contact about this matter by someone, presumably the state attorney boyfriend of Ms. Weatherly. We spoke to the defendant about what was happening and asked that the judge allow us to discuss the issue in the jury room with the defendant present. We all, Judge, State Attorney Raft, Frank Dela Torre, the defendant and the court reporter and myself, then went into the jury room on the record and Mr. Dela Torre briefly sketched out the issue and what had happened. Mr. Raft agreed to a continuance and also put on the record that he had limited knowledge but did confirm that the state attorney who might have been privy to the conversation with the attorney representing the defendant was not currently an assigned attorney to this courtroom and that he would take steps to ensure that the state attorney in question did not have conversations with the currently assigned state attorney on the case nor with any of the state attorneys assigned to this courtroom. The defendant was present and indicated that at this point in time he wanted to keep the Public Defender's office on his case and get a new attorney assigned. We told him that if the new attorney thought there were issues that needed to be addressed and that they could not adequately address them for him, he would be told and a motion to withdraw would be filed on his behalf. The judge indicated that the issue of counsel could be raised at a later date if the defendant changed his mind and wanted appointed counsel outside the Public Defender's Office. The defendant's case was continued.

Ms Weatherly removed her belongings and returned some items that are requested upon leaving the office before we came back from the hearing. Frank Dela Torre handed me a hand written signed and notarized request from Ms. Weatherly for her full and complete copy of her personnel file and written reasons for her termination. While we do not normally in the regular course of business write up reasons for termination and put them in personnel files, we will when the matter is egregious in nature or when a specific request is made. Thus, in this case, because both conditions are present, I have prepared and requested preparation of memos that will be part of Ms. Weatherly's personnel file.

Ms Cuddihy, Mr. Finkelstein and I have also discussed and are reviewing the legal requirements we have as far as Florida Bar notification of this termination and the reasons since they relate to Florida Bar supervised matters.



Catherine Keuthan
Executive Chief Assistant Public Defender

Lawyer Regulation

Rules Regulating The Florida Bar

4 RULES OF PROFESSIONAL CONDUCT

4-8 MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 4-8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) Reporting Misconduct of Other Lawyers. A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate professional authority.

(b) Reporting Misconduct of Judges. A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) Confidences Preserved. This rule does not require disclosure of information otherwise protected by rule 4-1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program. Provided further, however, that if a lawyer's participation in an approved lawyers assistance program is part of a disciplinary sanction this limitation shall not be applicable and a report about the lawyer who is participating as part of a disciplinary sanction shall be made to the appropriate disciplinary agency.

(d) Limited Exception for LOMAS Counsel. A lawyer employed by or acting on behalf of the Law Office Management Assistance Service (LOMAS) shall not have an obligation to disclose knowledge of the conduct of another member of The Florida Bar that raises a substantial question as to the other lawyer's fitness to practice, if the lawyer employed by or acting on behalf of LOMAS acquired the knowledge while engaged in a LOMAS review of the other lawyer's practice. Provided further,

To: Memo to Personnel File
From: Frank de la Torre
Date: 3/12/08
Re: Termination of Nina Weatherly

Nina Weatherly was terminated from employment by Catherine Keuthan and me on Friday March 7 2008. The main reason for releasing Ms. Weatherly was the intentional disclosure of attorney client communications by Ms. Weatherly to an Assistant State Attorney.

Earlier in the day I met with Susan Porter the Chief Assistant in charge of training, and Lynn DeSanti who was the trainer assigned to assist Ms. Weatherly. The purpose of the meeting was to discuss several remarks made by Ms. Weatherly to Lynn DeSanti. Lynn reported that she was very concerned with Ms. Weatherly. While reviewing Ms. Weatherly's files, Weatherly revealed that she "discusses all her cases with her boyfriend" who is an Assistant State Attorney in the 17th Judicial Circuit. Ms. Weatherly went on to state that she had a final violation of probation hearing later that afternoon and that she had discussed that case with her boyfriend. Lynn DeSanti discovered that Ms. Weatherly's boyfriend was the A.S.A. in charge of the defendants case when he was first placed on probation. Lynn DeSanti cautioned Ms. Weatherly about revealing attorney client communication to a prosecutor. Ms. Weatherly's response was that she "shouldn't be saying those things out loud."

I was shocked by this report and we immediately called Catherine Keuthan to let her know about the situation. Susan Porter, Lynn DeSanti Catherine Keuthan and I went over the entire matter. We decided to recommend that Ms. Weatherly be terminated. Ms. Keuthan then conferred with the Public Defender and Diane Cuddihy who agreed with our recommendation.

Catherine Keuthan and I then met with Ms. Weatherly in my office. I revealed to Ms. Weatherly my concerns regarding her actions. Weatherly initially denied any of the allegations. She then admitted that she talked to her boyfriend about the final violation of probation case but that she only showed him the probable cause affidavit. Weatherly acknowledged knowing that her boyfriend was the prior prosecutor on the case because she recognized his handwriting on the score sheet. I was amazed that she still couldn't recognize how inappropriate her actions were. She finally agreed that at the minimum she had created an appearance of impropriate conduct. We informed Ms. Weatherly that she was terminated. I requested that she bring us the final violation of probation file so that Ms. Keuthan and I could address the situation with the client and the court.

Ms. Keuthan and I appeared before Judge Levenson at 3pm to explain the situation to our client and to the court. We explained the controversy to our client who decided to continue having our office represent him. All the parties including A.S.A. Scott Raft, the defendant, and the court reporter went into the jury room. At this time I briefly described to the judge what had occurred. I then with the consent of the defendant requested a continuance. The State had no objection and the court granted the defense motion.

After the hearing, I consulted with the defendant's fiancée. I explained to her what had just happened. I reassigned the case to A.P.D. Melisa Manganelli and I had the defendant's file brought to her office. I was able to reach Ms. Manganelli who assured me that she would visit the defendant in jail during the weekend.

Ms. Weatherly came to my office prior to leaving on Friday afternoon. She handed me a hand written note requesting that the office put in writing the reasons for her termination. Pursuant to Ms. Weatherly's request I'm writing this memo and placing it in her personnel file.



Frank de la Torre
Chief Assistant Public Defender

To: Catherine Keuthan

From: Lynn DeSanti



Re: Nina Weatherly

I was assigned to mentor Nina Weatherly on Friday, February 22, 2008.

During the week of February 25th, Nina advised me that she had a trial scheduled before Judge Jeffrey Levenson, *State of Florida vs. James Daniels*, case number 07-17623CF10A. Mr. Daniels was charged with Possession of Burglary Tools and Trespassing and his trial was scheduled for Monday, March 3rd. I asked Nina to contact Mr. Daniels and schedule an appointment with him so that we could discuss the case and trial strategy prior to Monday, March 3rd.

Prior to meeting with Mr. Daniels, I met with Nina in her office. She began by telling me about Mr. Daniels' criminal history and the fact that he was habitual offender qualified. She told me that she believed that Mr. Daniels would get "maxed" if he lost at trial and that she had told Mr. Daniels the same. She also relayed to me that Mr. Daniels didn't get along with her. When I asked her what the problem was, she indicated that he was just a difficult client and that he hadn't met with her outside of the courtroom to discuss his case.

Nina told me that she didn't think Mr. Daniels had a very good case but that he was insistent on going to trial. She thought they had him "cold" because he was found trespassing in the building and he'd been told not to go there in the past. I told her that I had reviewed the police reports and that I thought that there were a lot of inconsistencies. I told her that it appeared as though the client was just homeless and living in an abandoned building with no electricity or running water. I told her that it seemed like the police were just harassing the client and that I thought a jury would pity our client.

When I first met Mr. Daniels in the lobby, he seemed guarded and confused. I explained to him that I worked with Nina and that I would be trying the case with her on Monday. I brought him into my office and just chatted with him about his work and his family in order to put him at ease. We soon began discussing the case and he asked me for my impressions. I told him that I felt that the police were harassing him and that the charge with bogus. I told him that it did not appear as if the key piece of evidence, his inmate release card, was in evidence and that was the only evidence tying him to the burglary tools. Mr. Daniels smiled, opened his wallet and pulled out his Florida inmate release card.

After going over the entire trial process, Nina came into my office. Almost immediately, Nina began discussing her views on the case and told Mr. Daniels that she planned on arguing to the jury that everything the State Attorney and the witnesses said was true. Mr. Daniels, who was sitting next to me on my couch, immediately said that

what the witnesses said in their police reports was not true and that was not how it happened. He became defensive and upset with Nina. Nina also became defensive and tried to explain another defense to the case—that even if the State said that the tools belonged to Mr. Daniels it didn't matter because the State couldn't prove that he used them to enter the building. Mr. Daniels became upset and said that the tools weren't his and that he would not say that what the State was saying was the truth.

During the meeting, Nina essentially scolded Mr. Daniels for not meeting with her prior to this day. She told him that she had to come up with a defense on her own without the benefit of his input because he could not make the time to meet with her until the last minute. Mr. Daniels replied that he had bonded out of jail and had been working and that she had not made contact with him. I interceded and told Nina that Mr. Daniels had come here today to discuss his case and that there was no harm done. I tried to convey that we should continue discussing the case as opposed to bickering with the client.

On Monday, I received a text message from Nina that the case had been rolled over to the next day. She came to my office later in the day and advised me that the State Attorney was in trial on another matter and that he was looking into dropping the count of Possession of Burglary Tools. She told me that the case was set for trial on Tuesday but, if it did not resolve, then it would be rolled over once again for Wednesday. When I asked her why Mr. Daniels had to come to court every day, she indicated that she had no direct way of making contact with him and so the Judge decided that he would have to check in every morning during the trial period. I expressed to her that this was unfair and I asked her if there was another alternative to requiring a daily court appearance. She did not seem bothered by this and said that's what the judge required.

The next day, March 4th, Mr. Daniels resolved his case. The State dismissed the charge of Possession of Burglary Tools and Mr. Daniels received credit for time served on the Trespassing Count.

On Friday March 7th, Nina had a motion to suppress that was scheduled to be heard at 3pm, *State of Florida vs. Duane L. Smith*, case numbers 07-22876CF10A & 06-22810CF10A. Mr. Smith was charged with violating his felony probation with a new charge of Felony Possession of Cannabis. Nina left a copy of the motion on my desk for my review. We met to review the motion on Thursday March 6th. At the onset of the meeting, Nina began by telling me about the client's horrendous criminal history and that David, her boyfriend, had prosecuted the case originally. She referred to the client with inappropriate names and kept repeating how bad the client's record was. She told me that David "felt sorry" for the client and that's why he departed from the Sentencing Guidelines and offered the client habitual offender probation. She said that David told her that the client was "pathetic" and had been in trouble most of his life. She referred to the client as a white guy who just wanted to be a gangster.

She then indicated that she and David had discussed the client and the case with one another. She made reference to the fact that her client had told her that he had

collected a large amount of "stems and seeds" (the residue of cannabis) as a trophy of his "pot use" and that she and David both agreed that the client was an "idiot" for saving such a large amount of residue. She told me that the client deserved to get in trouble for stashing such a large amount of residue. When I asked her outright if she and David had talked about the case, she lightheartedly stated that she talked to David about all of her cases and then she said, "I shouldn't say that out loud around here." I told her that it was inappropriate to discuss the case with David and that it would look bad if a client knew that not only was she dating the person who prosecuted him but also discussed the case in depth with the prosecutor. Nina quickly changed the topic and questioned me about the procedure for a motion to suppress and her argument on the motion.

Prior to the conclusion of the meeting, I asked Nina if she had ordered copies of the depositions that were taken and she indicated that she was not allowed to take depositions. Confused, I explained to her that on a felony charge, unlike a misdemeanor, depositions are permitted by statute. I explained to her that this right extended to violation of probation charges and that she did not need to seek leave of court. She explained to me that she meant that the Court would not give her time to take depositions and that she would use the hearing on the motion to suppress as her "deposition." I explained to her that this wasn't always the best strategy, as her client was facing many years in prison if he were to be found guilty. She indicated that that is how she practiced law.

The next morning, I met with Chief Assistant Susan Porter and relayed the foregoing to her. Sue indicated that we should meet with Frank DelaTorre and Catherine Keuthan to discuss the matter further. During the meeting in Frank's office, I informed them of my observations of Nina's performance during the two-week period that I mentored her. I relayed to them my shock and surprise to Nina's response about her conversations about her cases with her boyfriend. I told them that I felt that Nina was very dismissive about her actions and did not realize, or care about, the seriousness of them. I told them that it appeared that she knew that it was wrong to discuss the cases with her boyfriend based on the quickness of her response, "I shouldn't say that out loud around here."

Memo: Reference Nina Weatherly
To: Howard Finkelstein
Cathy Keuthan
Diane Cuddihy
From: Mindy Solomon

Nina Weatherly was initially hired and placed in the misdemeanor division. She gave the impression she knew more than the other new hires since she had interned here in a felony division. That proved to be untrue. From the beginning Nina had an unwillingness to accept constructive criticism and was very defensive.

Her initial direct supervisor was Jackie Powell. As procedure we started doing calendar calls for all misdemeanor attorneys and their direct supervisor once a month which was the first time we began to encounter her unprofessional behavior. When Nina was questioned about her files it was not unusual for her to roll her eyes and say she was doing the best she could. It appeared to me that there might be a personality conflict so I switched her supervisor to Ani Porter. That did not seem to help. She questioned Jackie's and Ani's judgment. I. When I questioned her about motions, pleas, or tactical decisions she would roll her eyes or leave crying. She accused Jackie of setting her up by having her do a calendar call in front of me that she was not prepared for. I told her to calm down and we would finish the following day when she was fully prepared. The following day wasn't much better. She continued to make excuses and did not have answers to my questions. She felt she was being put on the spot and made very inappropriate comments in the hallway. In effect she was.

During this same period of time, she was accustomed to shout offers to the client across the courtroom, risking attorney client confidentiality. After several attempts to correct her behavior, she would not shout offers any longer.

It is very difficult to explain Nina fully without giving examples. To put it bluntly she had a horrible attitude. In my Friday meetings she would roll her eyes. She at one point after a meeting was at the copy machine and was saying loud enough for me to hear in my office "this is bullshit and a waste of my fucking time." When I called her on it she said "just forget it and walked away."

During trial prep she would play on her phone and during one session she was asked to do a voir dire. She said it was a waste of her time but "I guess the supervisors needed something to do."

Her jail visits were consistently low. When I questioned her on it, it was always a mistake in my count or an excuse. She wouldn't take responsibility for her mistakes.

At one point she asked me if Randy Haas could try a case with her. I tried to explain to her he didn't work here and the answer was no. Additionally I later found out Randy spent quite a bit of time in her office discussing the case. She was not happy with that because she felt she could learn more from him than anyone here. Again she stomped away.

After she was transferred to ERU I had very little contact with her. She would walk past me and not even acknowledge I was there. She was blatantly rude.

On one occasion I remember being told she handed a note to an ASA during Brian Reidy and Jackie Powell's trial. When she was questioned about it she said she was just helping by releasing a state witness from a subpoena. I know she was spoken to about the appearance of impropriety. I know she had great difficulty understanding that if we needed to call that witness she in effect by telling the witness to leave barred us from doing that.

Finally I was told that after she went to ERU she was seen with her boyfriend (an assistant state attorney who was supervising in county court) going from courtroom to courtroom. I informed Diane of this. Since misdemeanor does their own ERU cases she surely wasn't there acting on behalf of our clients.

Although her files look good, I think her client contact skills were unsatisfactory. She lacks compassion and common courtesy.



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Seventeenth Judicial Circuit

Howard Finkelstein • Public Defender

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MEMO

To: Howard Finkelstein, Public Defender
Catherine Keuthan, Executive Chief Assistant Public Defender
Diane Cuddihy, Executive Chief Assistant Public Defender

From: Renee T. Dadowski, Chief Assistant Public Defender

RTD

Re: Nina Weatherly

On October 23, 2007, I was approached by Ed Abare, who at the time was the Head Attorney in the Vero Beach Office of the 19th Judicial Circuit Public Defender's Office and Nina's Group Leader for the 2007 Fall Defender College. Ed was very upset when he spoke with me about Nina and he was to the point that he wanted to have Nina kicked out of Defender College. At that time, I had been teaching with Ed for approximately 7 years and over 10 Defender Colleges and I had never known him to have an issue with a student that would cause him to want to have the student removed not only from his group but from Defender College.

Ed advised me that Nina, and another female student from Brevard County, were being very disrespectful to their instructors and the other students in his group. Nina in particular was rolling her eyes and making inappropriate comments. When the instructors would make procedural suggestions, Nina would state they were wrong, without any supporting authority, and tell them they didn't know what they were talking about. Ed's co-group leader reads lips and told Ed that Nina kept mouthing inappropriate and disrespectful comments to the other student behind Ed's back. Ed told me that she was very disruptive to his group. He also told me that she doodled and made circles on her paper for hours while he was trying to instruct his group.

When Ed told me that he wanted to have Nina kicked out of Defender College, I called and spoke with Cathy and she advised me to sit down and have a talk with Nina about Ed's comments and concerns. After classes were over for the day, I called Nina aside and spoke with her privately in a classroom. I advised her of Ed's comments and Nina immediately became very defensive. Nina disagreed with Ed and his co-group leader's observations. I told Nina about my history teaching with Ed and how he had a wonderful reputation as an instructor. I also explained to her that he had never approached me about this extreme of a problem with any of his past students, and certainly never about anyone from our office. I explained to her that she is a representative of our office and that her behavior and attitude were a reflection on our entire office and that she is there to learn. I told her that it's ok to disagree with what the instructors say but that she needs to do it in a respectful and constructive way. At that time it was also discussed with her about her lack of ability to get along with others. I reminded her that she has had similar issues with not being able to get along with others in our own office and this seemed to be a recurring problem with her. Nina got emotionally upset during our talk and it was discussed that the Public Defender's Office may not be the place for her to be. At the end of our meeting I suggested to her that she might want to apologize to Ed for the way she behaved in his group and that if she wished to remain at Defender College she needs to behave respectfully and not be a distraction to others for the remainder of the College. When I spoke with Ed at the end of Defender College he told me that she never apologized.

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Re: Nina Weatherly

I had an issue with Nina in November 2007 where she spoke about a co-worker in a degrading and inappropriate way in front of other staff. She referred to Dwayne Buckner, a fellow ERU attorney, as "Retard Boy" in front of other attorneys and support staff. When I heard her say this I immediately called her aside and told her it was inappropriate to call her co-workers names in the work place, especially in front of other co-workers. Her comment to me was well he is. I told her she had a 1st Amendment right to her opinions however it is not appropriate and it is degrading to name call a fellow co-worker in the office. We work in a professional office and require employees to remain civil and respectful of each other. After I discussed the inappropriateness of her disparaging comment about Dwayne she again referred to him as "Retard Boy" to me, but it was done privately. I again asked her not to refer to him in that manner and stressed to her the inappropriateness and insensitivity of her comment. That was the last I heard of her saying that about him.

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To: Personnel File, Nina Weatherly

From: Susan Porter



Date: March 11, 2008

On Thursday, February 21, 2008, Catherine Keuthan inquired as to which trainer had been assigned as Nina Weatherly's mentor. I advised her that since we were spread thin, we were waiting to assign her mentor after both Jessica Weinberg and Jeanne Rowlee had left Judge Levenson's division, given their leadership and experience in the courtroom. Catherine described a situation that had occurred with Nina that suggested, to me, that Nina might be deficient in the "zealous" aspect of our advocacy obligations to our clients. My impression was that she was competent for her experience level, but that she was generally unwilling to challenge law enforcement's versions of events or take the view of our clients. I advised Catherine that I would assign Lynn Desanti to be her mentor.

I had known Nina since she was a CLI, but in terms of her work as an assistant public defender, my knowledge was largely what had been reported to me by my trainers in our meetings, coupled with some anecdotal incidents I learned from other chiefs or supervisors. It was:

- Her files were in good order

- She was a technically competent attorney for her experience level

- Trainers had complained that she was rude in Trial Prep, talking while others were practicing, rolling her eyes when a supervisor or trainer would make suggestions

- She was rude in meetings with both Mindy Solomon and Renee Dadowski

- She was known to accompany her boyfriend, a prosecutor who was a misdemeanor supervisor, to court

- She spoke rudely to our clients

I later spoke to Lynn and we agreed that she would be mentoring Nina starting on Monday, February 25th. Lynn's office is around the corner from Nina's and she mentioned that Nina generally speaks to her clients on speaker phone, is easily overheard, and that she, generally, appears to have contempt for them.

On Friday, March 7, I met with Lynn to discuss how the previous two weeks had gone with Nina. She reported that, generally, Nina's files are organized and worked up. She reads discovery, reads police reports, does research, writes well and documents her files. On the negative side, she has very poor interaction with clients, doesn't seem to like them, and is rude and abrupt with them. She is not a strong advocate for indigent defendants. To the contrary, she seems to consistently be in line with the state's position. Finally, she doesn't listen to or hear her clients.

As an example, Lynn described a client set for trial earlier in the week that Lynn and Nina had met with together. The client was clearly relieved to speak to Lynn (Lynn had

started the interview while Nina was on her way back from lunch). He described his defense to Lynn which disputed the officer's version and he had some evidence to back up what he said. When Nina arrived she announced that the defense they would be proceeding under was that, assuming that everything that the officer said was true, so what? The client said no, it's not true. Nina persisted. Eventually, Lynn stepped in and explained to Nina that the client's version was a more viable defense, legally. All new attorneys need guidance on spotting issues, the law, finding inconsistencies and strategies, but Nina was uninterested in examining the client's version and seemed indifferent to his personal circumstances.

Lynn also shared that one of Nina's trial partners had complained that Nina would openly engage in conversations off the record with the judge about clients, in their absence, while other public defender clients were sitting in the courtroom. The conversations apparently looked, to the trial partner, too cozy and casual to take place in a courtroom; especially one full of clients who already fear that their attorneys 'work for the state' as is oft stated by some clients. Lynn herself had not observed this.

Lynn went on to tell me that she was very disturbed by a conversation that had occurred the previous day. Nina's boyfriend, prior to Nina's assignment, had worked as a prosecutor in Judge Levenson's division. On Thursday, March 6th, Nina discussed with Lynn a motion to suppress set the next day at 3:00 for a client she was representing on a substantive charge, along with a vop. Nina told Lynn that her boyfriend had prosecuted the original charge (the case that placed him on probation). Further, she had spoken to her boyfriend about the client and the case. She referred to our client disrespectfully, citing his lengthy criminal history and her belief that he deserved to be in trouble. Lynn challenged her for discussing the case with the boyfriend, a prosecutor, and Nina said something along the lines of, "I shouldn't have told you." Lynn corrected her and said that telling her was not the problem; the problem was discussing her case with a member of the office of her adversary. She was not able to see that there was an appearance of impropriety.

I was alarmed that Nina had discussed this case with a member of the State Attorneys Office. Lynn advised me that Nina's frequent response to comments or suggestions made to her was, "David said..." suggesting that she spoke regularly with David about public defender cases.

Given the above information, I felt her supervisor, Frank Delatorre, should be immediately apprised. Lynn and I went to Frank's office and told him about the above issues. We discussed the option of moving Nina to a division where she would have no contact with any files that the boyfriend had been involved with. In her conversations with Lynn it was apparent that Nina could not understand the error of discussing her files, in these circumstances, with a member of the State Attorneys Office. This office has no control over the boyfriend speaking to other attorneys in his office about information obtained in these conversations and it was, therefore, felt that our clients could not be protected if she were to continue representation.

I then went next door and got Catherine Keuthan to include her in the discussion and Lynn shared with her the specifics.

The motion to suppress hearing was scheduled for 3:00 Friday afternoon, so it was agreed that something needed to be done immediately. We briefly discussed whether we should apprise the State Attorneys Office or just go to court and advise the judge. It was decided that Frank would call Nina to his office after lunch. Frank and Catherine would go to see Judge Levenson at 3:00 and advise the client of the situation.