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BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, DAVID S. GINGRAS, Bar Number 021097	**PDJ 2026-9010** **REPLY OF HARRY L. HOWE TO RESPONDENT'S RESPONSE TO MOTION TO QUASH**

This Reply is filed by Harry L. Howe, *pro per* (hereinafter "undersigned") a third-party to the ongoing disciplinary action. Respondent filed a pleading entitled "Motion to Compel (Second) on March 23, 2026. Then on March 24, 2026, Respondent filed a pleading entitled "Response to Motion to Quash Filed By: Harry Howe, Julie A Mata." The Response to Motion to Quash refers to the Motion to Compel (second), which makes clear and concise reply somewhat difficult. Most judges prefer that a Motion deal with one discrete subject. However, in this Reply, undersigned will address the Response to Motion to Quash, as it is dispositive of the previously filed Motion to Compel. Respondent does not even address the indisputable fact that his Subpoena Duces Tecum was invalid and unenforceable. Indeed, he appears to be trying to compel enforcement of a subpoena that is clearly defective, without addressing the objection. He has put the cart before the horse.

As stated in undersigned's Objection to and Motion to Quash Subpoena Duces Tecum, your undersigned was served with a Subpoena Duces Tecum on Monday, March 9, 2026, at approximately 8:30 p.m. A true and correct copy of that Subpoena was attached to the original Objection. The Subpoena called for your undersigned to appear to testify and produce documents on the same date, March 9, with no time specified for the appearance, at 4802 E. Ray Road, #23-271, in Phoenix. It should be pointed out that 4802 East Ray Rd., #23-271, is a UPS Post Office box. There would be absolutely no way for undersigned to have appeared on March 9, at a time unspecified, and at a no doubt closed UPS mailing store, to testify or produce documents.

Arizona Civil Rule 30(b), which is incorporated into the disciplinary rules, requires a party or his/her lawyer to give ten (10) business days advance notice before a deposition may be held. That indisputably did not occur here.

More importantly, Rule 47(h)(3) of the Rules of the Supreme Court of Arizona provides that a nonparty may file an objection to the Subpoena. No limitation, be it relevance, overly broad, insufficient time to comply, or otherwise, is set forth in Rule 47. Any objection is therefore allowable. Rule 45, Arizona Rules of Civil Procedure, which of course is not incorporated into the disciplinary rules, can serve as an illustration. Rule 45 (e)(2) provides that the Court must quash a Subpoena if it fails to allow a reasonable time to comply. It certainly goes without saying that a Subpoena served at 8:30 p.m. on March 9 for appearance to testify and produce documents on the same date, time not specified, at a commercial P.O. Box establishment, fails to allow a reasonable time to comply.

There is no need to belabor this point. The Subpoena Duces Tecum served upon undersigned was facially defective, incapable of being complied with, and must be quashed.

Respondent has seen fit to file a Motion to Compel a clearly deficient and improper Subpoena. Should the Presiding Disciplinary Judge determine that a response to the prematurely filed Motion to Compel is necessary, the undersigned respectfully requests the Court provide undersigned an additional five (5) business days following ruling on the Motion to Quash to respond. Further, in an abundance of caution, undersigned points out that the factual basis and analysis of Respondent on the ability of a nonparty to object to the relevance of requested documents is flawed. Factually, Respondent's Motion is improperly based upon hearsay, and out-of-court statements without any foundation. Respondent's legal analysis cites only *Blair v. U.S. 250 U. S. 273 (1919)*, and *Sameshima v. Yamashiro* 642 P.2d 544 (Ha. App. 1982) in support of his position. Neither case is apposite, as both cases dealt with the ability of a witness who is testifying to raise relevance objections while

testifying. No such prohibition exists against objecting to the production of irrelevant documents by a non-party. A non-party has the ability to raise any objection, including relevance, to production of documents by Subpoena. *See* Rules of the Supreme Ct. of Arizona, Rule 47 (h)(3); ARCP 45 (c)(6); 9 *Moore's Federal Practice: Civil* § 45.41[1][c] (2022); *Trusted Sci. & Tech. Inc. v. Evancich*, 262 Md. App. 621, 320 A.3d 474 (Md. App. 2024).

Respondent would have this Court believe that he could subpoena undersigned's family photo albums, utility bills, vehicle titles, or the like, without any showing of relevance, and undersigned would have absolutely no ability or right to object. That is silly. During sworn testimony or a trial, presumably attorneys are present who will make appropriate relevance objections. But in the subpoena for documents of a nonparty, no such guardrail exists to protect the nonparty, and thus neither the rules nor case law prevent a relevance objection.

Therefore, undersigned respectfully moves this Court for an Order quashing the Subpoena Duces Tecum served on March 9, 2026. In the event the subpoena is not quashed, undersigned respectfully moves this Court for an Order that he have five (5) business days from the date of the Order to serve a supplemental Response to the Motion to Compel, fully researched and analyzed.

Respectfully submitted this 27th day of March, 2026.

Harry L. Howe, *pro per*

Original/Copy E-filed through [redacted]
this 27 day of March, 2026

Copy mailed and emailed this
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