

BEFORE THE PRESIDING DISCIPLINARY JUDGE

C.LOPEZ

DISCIPLINARY CLERK

No. PDJ 2026-9010

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

**DAVID S. GINGRAS
Bar No. 021097
Respondent.**

**RESPONSE TO STATE BAR'S
BRIEF RE: APPLICABILITY OF
A.R.S. § 12-751 TO LAWYER
DISCIPLINE PROCEEDINGS**

On April 30, 2026, this Court asked the parties to brief the issue of “whether the Court’s supremacy precludes [A.R.S. § 12-751’s] application in discipline proceedings.”

On May 4, 2026, Respondent submitted his brief addressing the PDJ’s question. The State Bar’s brief was filed on May 15, 2026.

Although the PDJ did not request further *responses* from either party, the Bar’s pleading raises points which require a short response, if only to ensure a complete appellate record. For that purpose, Respondent offers the following comments.

I. The State Bar’s “Procedural vs. Substantive” Argument Is Incorrect

The State Bar’s argument can be boiled down to a single sentence – “If the anti-SLAPP law creates *substantive* legal rights, it may apply here, but if it creates *procedural* rights, it can be ignored by the PDJ, because only the Supreme Court may create rules regulating the practice of law.”

After presenting this as the controlling “rule”, the Bar suggests: “It is unclear whether Arizona’s anti-SLAPP law is simply procedural, or also substantive. However, any application of the statute to lawyer discipline proceedings would be inappropriate because it invades the authority of the Supreme Court and may be prejudicial to the Court’s administration of the practice of law” Bar’s Brief at 9.

This argument is flawed in at least two respects.

First, the issue is *not* whether A.R.S. § 12–751 is *procedural* or *substantive*. That is one part of the analysis, but it is not all of it.

Rather, the issue is – assuming the anti-SLAPP law contains *any* procedural aspects, do those procedural aspects **directly conflict with an existing Supreme Court rule**? If the answer is no, the anti-SLAPP *does not* directly conflict with any existing Supreme Court procedural rule. Thus, this Court is bound to apply the law as-written; “[The Court’s] task in interpreting the meaning of a statute is to fulfill the intent of the legislature that wrote it.” *State v. Williams*, 175 Ariz. 98, 100, 854 P.2d 131, 133 (Ariz. 1993).

There is no existing Supreme Court rule directly dealing with the procedural aspects of A.R.S. § 12–751. Therefore, it does not matter whether the law is entirely procedural, entirely substantive, or a blend. As noted in Respondent’s brief (and as conceded by the State Bar), the Supreme Court *does not possess exclusive authority to create procedural rules*, whether in discipline cases or any other type of case. The authority to promulgate procedural rules does not belong exclusively to the Supreme Court; rather, “it is more accurate to say that the legislature and [the supreme court] both have rulemaking power, but that in the event of irreconcilable conflict between a procedural statute and a rule, the rule prevails.” *Seisinger v. Siebel*, 220 Ariz. 85, 203 P.3d 483, 486 (Ariz. 2009).

This Court recently faced the same issue in *In Re Matter of Parker & Olsen*, PDJ File Nos. 2024-9002 & 9003. In that case, on September 25, 2025, this Court issued a lengthy decision, a copy of which is attached hereto as Exhibit A, analyzing the same separation of powers problem applied to a different statute: A.R.S. § 12–353.

The problem in *Parker* was that A.R.S. § 12–353 (which makes an award of attorney’s fees **mandatory** to a prevailing respondent in a bar discipline matter) **directly conflicted with** an existing Supreme Court Rule on the same subject – Rule 60(d) (which makes fee awards *discretionary* to a prevailing respondent). Faced with a law that *directly conflicted* with a rule promulgated by the Supreme Court, the PDJ applied a separation of powers analysis and concluded the rule prevailed:

While the legislature “may, by statute, regulate the practice of law, such regulation cannot be inconsistent with the mandates of the Court.” “To put the matter in simpler language, the rule-making power rests in both the courts and the legislature. When the legislature enters that field, the courts will bow to its judgment so long as these rules accord with the proper administration of justice. When, however, it appears that the legislative rule unduly hampers the court in the performance of the duties imposed upon it by the Constitution, **the rule adopted by the court will prevail.**”

Parker at 4–5 (cleaned up) (emphasis in original) (quoting *Scheehle v. Justs. of the Sup. Ct.*, 211 Ariz. 282, 289, ¶23, 290, ¶29 (Ariz. 2005)).

Here, unlike in *Parker*, there is no conflict between A.R.S. § 12–751 and any existing Supreme Court rule. That is hardly surprising given that the anti-SLAPP law protects existing constitutional rights *which the Arizona Supreme Court has no power to override or disregard*. See *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977) (holding ethical rule prohibiting attorney advertising violated First Amendment and was unenforceable); see also *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1053 (1991) (“At the very least, our cases recognize that disciplinary rules governing the legal profession cannot punish activity protected by the First Amendment, and that First Amendment protection survives even when the attorney violates a disciplinary rule he swore to obey when admitted to the practice of law.”)

The State Bar may find this situation to require it to adapt to the new paradigm the legislature created. But the State Bar is like any other party in Arizona's courts. If it attacks protected conduct, it must face the Anti-SLAPP law. And while the State Bar is a mighty creature, it is still bound by the U.S. and Arizona Constitutions. It does not enjoy special censorious power simply by virtue of its status. The Arizona legislature made it clear when it wrote the Anti-SLAPP law, neither litigant nor prosecutor nor any other power has the privilege of operating outside the limits that it created in A.R.S. § 12-751.

Unlike *Parker*, A.R.S. § 12-751 does not conflict with any existing Supreme Court rule. At best, the anti-SLAPP law supplements existing rules and protects existing legal rights by providing an expedited method for dismissing discipline cases that tread on the First Amendment. No existing Supreme Court rule authorizes the Bar to violate the First Amendment, and no such rule would be lawful, even if it existed.

Because there is no conflict between A.R.S. § 12-751 and any existing Supreme Court rule, there is no separation of powers problem present here.

II. A.R.S. § 12-751 Does Not Impair Any *Lawful* Powers Of This Court

In *Parker*, this Court also suggested any law may be freely ignored if it “unduly hampers the court in the performance of the duties imposed upon it by the Constitution” *Parker* at 5. Whether or not that is true with respect to general statutory rules created by state law, it is clear the supremacy clause of the United States Constitution strictly prohibits this Court from attempting to override constitutionally protected rights.

That reality was explained by the U.S. Supreme Court more than 100 years ago in *Ex Parte Young* wherein the Court explained:

The general discretion regarding the enforcement of the laws [by a state official] ... is not interfered with by an injunction which restrains the state officer from taking any steps towards the enforcement of an unconstitutional enactment to the injury of complainant. In such case no affirmative action of any nature is directed, **and the officer is simply prohibited from doing an act which he had no legal right to do.** An injunction to prevent him from doing that which he has no legal right to do is not an interference with the discretion of an officer.

Ex Parte Young, 209 U.S. 123, 159 (1908) (emphasis added).

Because of the U.S. Constitution’s supremacy clause, this Court has no power to violate the First Amendment, or any other constitutional right. Any law that limits this Court’s ability to violate the law, or to allow the State Bar to violate the law, only prevents this Court “from doing an act which [it] had no legal right to do.” That fact defeats the Bar’s suggestion that this Court can simply ignore the anti-SLAPP law if it finds the law “unduly hampers” the Court’s duties. The Court’s duties will always be “hampered” by the Arizona and U.S. Constitutions – that’s the very point of a Constitution. To “hamper” power, lest it grow and metastasize unchecked. *See Bates v. State Bar of Arizona*.

A.R.S. § 12–751 conflicts with no *lawful* power this Court may otherwise have, because this Court has no power to violate, or to aid in the violation of, the Arizona or the United States Constitutions. That point is emphasized by the fact A.R.S. § 12–751 merely restricts conduct by the State Bar that is *already deemed unlawful*.

Specifically, as explained in cases such as *Arizona Students’ Ass’n v. Arizona Board of Regents*, 824 F.3d 858 (9th Cir. 2016), federal law (42 U.S.C. § 1983) prohibits all government officials from violating a plaintiff’s constitutionally protected rights while acting under color of law. When a state actor violates the constitution, “A plaintiff may bring a Section 1983 claim alleging that public officials, acting in their official capacity,

took action *with the intent to retaliate against, obstruct, or chill the plaintiff's First Amendment rights.*" *Arizona Students' Ass'n*, 824 F.3d at 867 (emphasis added). That is the same unlawful conduct prohibited by A.R.S. § 12–751.

As the Ninth Circuit noted in that case, one specific unlawful act is the wrongful withholding of a license to practice law in a manner that violates the First Amendment. *See id.* at 867 (explaining, “Both the Supreme Court and we have recognized a wide variety of conduct that impermissibly interferes with speech. For example ... withholding a license [to practice law]”) (citing *Baird v. State Bar of Ariz.*, 401 U.S. 1, 7 (1971) (explaining, “The First Amendment’s protection of association prohibits a State from excluding a person from a profession or punishing him solely because he is a member of a particular political organization or because he holds certain beliefs.”))

In short, A.R.S. § 12–751 only does one thing—it prohibits the State Bar from engaging in conduct that is *already unlawful*. It simply brings about an expedited manner in resolving its unlawfulness and provides a substantive right to relief if it is deemed unlawful. *See* A.R.S. § 12–751(F).

Given that the anti-SLAPP law merely prevents illegal conduct and provides recourse for victims of such conduct, it is hardly surprising the law does not conflict with any existing Supreme Court rule. That is not surprising because the Arizona Supreme Court has no power to violate the U.S. Constitution and the Court therefore cannot adopt rules authorizing the State Bar to break the law; “of course, *a court has no power to allow what the law prohibits.*” *Arizona Wellness Ctr. Springerville, LLC v. Arizona Dep't of Health Servs.*, 2026 WL 801285, at *3 (Ariz. App. Mar. 23, 2026) (citing *State ex rel. Woods v. Block*, 189 Ariz. 269, 275 (Ariz. 1997)).

The hierarchy here is the First Amendment, the Arizona Constitution, and then, subordinate to those, we find the Rules of Professional Conduct. The anti-SLAPP law preserves and protects the highest law in the land. To the extent the Rules of Professional Conduct, or any other rule, conflicts with the Constitution, those rules must yield to the higher authority, not the other way around.

III. CONCLUSION

A.R.S. § 12–751 does not violate the separation of powers clause of the Arizona constitution because it does not conflict with any existing Supreme Court Rule. In addition, A.R.S. § 12–751 does not, as a matter of law, deprive this Court of any *lawful* power it may otherwise have. As such, A.R.S. § 12–751 applies here in full.

Submitted May 20, 2026.

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CERTIFICATE OF SERVICE

Original electronically filed via email to [REDACTED] on May 20, 2026 with:

Disciplinary Clerk of the
Office of the Presiding Disciplinary Judge
Supreme Court of Arizona

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/s/ David S. Gingras

Exhibit A

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A MEMBER OF THE
STATE BAR OF ARIZONA AND A NON-
MEMBER OF THE STATE BAR OR
ARIZONA**

ANDREW D. PARKER

Bar No. 028314,

KURT B. OLSEN,

Respondent

PDJ 2024-9002

PDJ 2024-9003

RULING RE:

ATTORNEY FEES AND COSTS

[State Bar Nos. 22-2766 and 23-0051]

FILED SEPTEMBER 18, 2025

PROCEDURAL HISTORY

On January 11, 2024, the State Bar filed a Complaint (the “Complaint”) against Andrew D. Parker and Kurt B. Olsen as Respondents (“Respondents”). The Complaint’s allegations were based on a First Amended Complaint (“FAC”) and Motion for Preliminary Injunction (“MPI”) filed by Respondents in the *Lake vs. Hobbs* litigation.

The matter proceeded to a contested evidentiary hearing on June 25, June 26, and June 27, 2024, before a disciplinary hearing panel comprised of then Presiding Disciplinary Judge (“PDJ”) Margaret H. Downie¹, attorney member Ralph J. Wexler, and public member Randall Clark (collectively the “hearing panel”).

¹ The Honorable Margaret H. Downie retired from the position and the current PDJ is Judge Lisa A. VandenBerg, the author of this ruling.

On August 26, 2024, the hearing panel issued a Report and Order of Dismissal (“Panel Report”). On May 7, 2025, the Arizona Supreme Court (the “Court”) affirmed the Panel Report. After the Panel Report but prior to the Court’s ruling, Respondent Parker filed a Motion for Attorneys’ Fees and Costs which was stayed on September 25, 2024. The current PDJ issued an order lifting stay on June 18, 2025.

PLEADINGS PENDING

Respondent Parker filed a Motion for Attorneys’ Fees and Costs (the “Motion”) and a Declaration of Brian Holohan in Support of Respondent Parker’s Motion for Attorneys’ Fees and Costs (“Holohan’s declaration”), on September 5, 2024². A Supplement to Respondent Parker’s Motion for Attorneys’ Fees and Costs, and a Declaration of Jessica Wolf³ were filed on September 9, 2024. A Second Supplement to Respondent Parker’s Motion for Attorneys’ Fees and Costs, and a Declaration of Brian Holohan in Support of Respondent Parker’s Second Supplement to Motion for Attorneys’ Fees and Costs were filed on June 2, 2025⁴. Collectively these pleadings will be referred to as “the Request”.

The State Bar filed a Response to Respondent Parker’s Motion for Attorneys’ Fees and Costs (“Response”) on July 8, 2025.

² Including referenced Exhibits 1-5.

³ At the time of filing, the referenced Exhibit 1 was inadvertently omitted from the submission. Exhibit 1 to Jessica Wolf’s Declaration was later filed August 11, 2025.

⁴ Including referenced Exhibit 6.

Mr. Parker filed Respondent Parker's Reply Memorandum in Support of Motion for Attorneys' Fees and Costs ("Reply") on July 16, 2025.

The PDJ denied the State Bar's Motion to Strike the Declaration of Jessica Wolf's referenced exhibit 1 that was filed on August 11, 2025 and provided the State Bar the ability to supplement their Response to the Request regarding the new addition to the record of the Wolf exhibit 1 and Respondent an opportunity to Reply. The State Bar filed on September 5, 2025 a Response to Jessica Wolf's Declaration Exhibit 1 filed August 11, 2025 ("Response to Wolf Exhibit"). Respondent filed on September 11, 2025 a Reply Re the Bar's Response to Jessica Wolf's Declaration ("Reply re Wolf Exhibit").

No party has requested oral Argument, therefore the PDJ proceeds with ruling.

ISSUE BEFORE PDJ

Respondent Parker has requested an award of attorneys' fees and costs pursuant to Rule 60(d), Ariz. R. Sup. Ct., and ARS §12-353(A). Mr. Parker and bar counsel acknowledge that this is a matter of first impression as neither of these recently adopted authorities have been previously applied. The Arizona Supreme Court's ("Court") guidance on this specific type of request for Attorneys' fees and costs is awaited.

CONFLICT OF LAWS

The PDJ begins her analysis with the question of whether it is appropriate to apply Rule 60(d) or ARS §12-353(A) to the Request. It appears, from the PDJ's reading of the Respondent's Reply, that the Respondent agrees with or at least does not refute the State

Bar's argument that Rule 60(d) should be applied in this case. The PDJ agrees with the State Bar's analysis that Rule 60(d) is appropriate to apply here.

On May 9, 2022, the Governor approved statute ARS §12-353 "Recovery of costs; attorney discipline investigations; definitions", with an effective date of September 24, 2022 (the "Statute"). This Statute provides for an attorney who prevails in an attorney discipline matter to recover attorney fees and court costs (and defines the term "court costs"). On July 15, 2022, a Petition to Amend Rule 60 was filed with the Court requesting to amend on an expedited basis subsection (d) to address the same subject matter as the Statute. After a period for public comment, the Court issued an order amending Rule 60 (d) on an emergency basis, effective August 29, 2022 (and later on a permanent basis effective January 1, 2023) (the "Rule").

The Statute and Rule conflict regarding the award of attorney's fees and costs available to a subject attorney who is successful in a disciplinary proceeding.

The Court enacted the amendment to Rule 60(d) prior to the effective date of ARS §12-353(A), within its well settled constitutional authority. *See Scheehle v. Justs. of the Sup. Ct.*, 211 Ariz. 282, 289, ¶23, 290, ¶29 (2005) (discussing the Court's ability to promulgate rules regarding its constitutionally proscribed administrative responsibilities under Ariz. Const. art. 6, §§1,3). *See also Hancock v. O'Neil*, 253 Ariz. 509, 512, ¶12 (2022) (clarifying that the Court's authority specifically includes attorney discipline). While the legislature "may, by statute, regulate the practice of law, such regulation cannot be inconsistent with the mandates of the Court." *Scheehle*, 211 Ariz. at 289 ¶24. "To put the matter in simpler

language, the rule-making power rests in both the courts and the legislature. When the legislature enters that field, the courts will bow to its judgment so long as these rules accord with the proper administration of justice. When, however, it appears that the legislative rule unduly hampers the court in the performance of the duties imposed upon it by the Constitution, **the rule adopted by the court will prevail.**" (emphasis added.) *State ex rel. Conway v. Superior Court within & for Greenlee Cnty.*, 60 Ariz. 69, 81 (1942), (overruled on other grounds by *Adams v. Bolin*, 74 Ariz. 269, 247 P.2d 617 (1952)(citation omitted)

The PDJ will proceed with applying Rule 60(d), Ariz. R. Sup. Ct. to this matter.

FINDING OF FACTS ("FOFs")⁵

FROM PANEL REPORT

1. Mr. Parker and Mr. Olsen, while representing plaintiffs initiated on April 22, 2022 civil litigation filed in the United States District Court for the District of Arizona known as *Lake v. Hobbs*.
2. The *Lake v. Hobbs* plaintiffs sought to prohibit the prospective use of electronic voting machines in Arizona based on constitutional and statutory grounds as described in the FAC filed on May 4, 2022.⁶
3. On June 8, 2022, Respondents lodged a MPI with the District Court asking the court to "enter a preliminary injunction barring Defendants from using

⁵ While an evidentiary proceeding was not held regarding the Respondent's Request, the PDJ proceeds with using "Findings of Facts" here to indicate key facts considered in analyzing the Request for clarity and convenience of the reader.

⁶ Panel Report, page 4, FOF 7.

computerized equipment to administer the collection, storage, counting, and tabulation of votes in any election until such time that the propriety of a permanent injunction is determined.”⁷

4. On January 11, 2024, the State Bar filed a Complaint against Mr. Parker and Mr. Olsen as Respondents. The Complaint’s allegations were based on the FAC and MPI filed by Respondents in the *Lake vs. Hobbs* litigation.
5. The Complaint proceeded to a contested evidentiary hearing heard by the hearing panel over a period of three days, followed by the Panel Report filed on August 26, 2024. The Court later affirmed the hearing panel’s Panel Report on May 7, 2025.
6. At the evidentiary hearing, the State Bar called as its only witnesses the Respondents, Andrew D. Parker and Kurt Olsen. Respondents, in their responsive presentation called an additional four other witnesses.
7. The Panel Report concluded that “the State Bar did not prove [**any** of] the charged ethical violations by clear and convincing evidence and therefore dismiss[ed] the Complaint against Mr. Parker and Mr. Olsen.”⁸
8. The Panel Report broke down the Complaint into two main categories: the FAC and the MPI.
9. Regarding the FAC, the hearing panel’s findings reflected that the State Bar alleged the Respondents’ reference to the Northern District of Georgia case *Curling v.*

⁷ Panel Report, page 12, FOF 32.

⁸ Panel Report, page 2 (emphasis added).

Raffensperger (“Curling”) was a violation of the ethical rules because it was too dissimilar to the facts and or issues presented in *Lake v. Hobbs*.⁹

Regarding this allegation, the Panel Report concluded that the State Bar offer[ed] no authority for the proposition that, to comport with ethical requirements and/or applicable rules of civil procedure, a complaint must set forth not only the plaintiff’s claims and theories, but also information that arguably undercuts or contradicts those claims and theories. (citation omitted)¹⁰.

10. At hearing, Mr. Parker [o]pined that it would have constituted malpractice not to have cited *Curling*— the most analogous to *Lake v. Hobbs* – notwithstanding differences in the two matters. [Further,] Respondents’ experts believed that Arizona’s voting systems were susceptible to the same infirmities identified in *Curling*. **[To which,] the State Bar presented no controverting evidence.** ¹¹

11. With regard to another allegation in the Complaint, the Panel Report found that, “As with the discussion of *Curling, supra*, the **State Bar cite[d] no authority for the proposition that Respondents were required to disclose in the FAC** facts and evidence the defendants would likely rely on in opposing their claims. In response, Respondents provided the special master’s report with their MPI-related

⁹ Panel Report, page 5, FOF ¶10.

¹⁰ Panel Report, page 7, FOF ¶12 (emphasis added).

¹¹ Panel Report, page 7-8, FOF ¶¶13,14 (emphasis added).

briefing and explained how and why their experts disagreed with its conclusions about connectivity to the internet.¹²

12. Turning to the State Bar's allegations regarding Article III Standing (it is important to note for purposes of the instant analysis),

[T]he District Court ultimately ruled that Respondents' clients lacked standing and granted the defendants' motion to dismiss the FAC and the United States Court of Appeals for the Ninth Circuit affirmed that decision.¹³ In later proceedings, the District Court imposed monetary sanctions against Respondents and their respective law firms based on violations of Rule 11, Fed. R. Civ. P., and 28 U.S.C. § 1927.¹⁴

13. The Panel Report acknowledged and found:

A legal argument can be so patently lacking in merit that an attorney disciplinary hearing panel has no need for expert testimony to conclude that it crosses the line into unethical conduct. **This [was] not such a case.** As Mr. Parker observe[d], 'Federal court standing is a technical and complex legal issue upon which experienced specialists and practitioners reach contrary conclusions.'¹⁵

14. Respondents ha[d] no burden in the proceedings and could have chosen not to present any testimony or documentary evidence after the State Bar rested. Instead, they presented substantial evidence in support of their belief that *Lake v. Hobbs* plaintiffs had standing to bring their claims in federal court.¹⁶

¹² Panel Report, page 9, FOF ¶19 (emphasis added).

¹³ Panel Report, page 9, FOF ¶20

¹⁴ Panel Report, page 9, FOF ¶20, *fn.*4 (the footnote goes on to point out that the hearing panel did not rely on the District court's sanctions in reaching its conclusions. The PDJ points out this material here simply to ensure that it is included in its review of the reasonableness of the State Bar pursuing these allegations through the contested evidentiary phase.

¹⁵ Panel Report, page 10, FOF ¶22 (emphasis added).

¹⁶ Panel Report, page 10, FOF ¶23.

15. Respondents presented evidence [including expert testimony] at the disciplinary hearing explaining their belief that, although statutorily required testing of Arizona's equipment had occurred, that testing was not objective, neutral, or expert. ...**The State Bar offered no controverting evidence.**¹⁷
16. As it relates to the MPI, the State Bar's Complaint alleged Respondents: (1) lacked a good faith basis for seeking the requested injunctive relief "less than five months before the 2022 Midterm Election;" (2) "had no good faith basis to assert that the injunctive relief the plaintiffs were requesting would 'cause little, if any, harm to the Defendants[;]" and (3) failed to cite *Garcia v. Google*, 786 F.3d 733 (9th Cir. 2015), or address the legal standard articulated in *Garcia* for mandatory injunctive relief.¹⁸
17. It is important to note for purposes of the instant analysis, the District Court dismissed the MPI as moot after it granted defendants' motions to dismiss the FAC. No court has adjudicated the substantive merits of the MPI.¹⁹
18. Regarding the timing of the MPI filing- the Panel Report found that, "the hearing panel ha[d] no expertise regarding the timing of requests for injunctive relief in election cases, and **the State Bar offered no expert testimony on this point.**" Although the hearing panel [was] left with the impression that injunctive relief in *Lake v. Hobbs* was a long shot due to the timing of the request, **the hearing evidence**

¹⁷ Panel Report, page 11-12, FOF ¶27 (emphasis added).

¹⁸ Panel Report, page 13, FOF ¶34.

¹⁹ Panel Report, page 13, FOF ¶33.

fell short of establishing by clear and convincing evidence that Respondents acted unethically by filing the MPI when they did.”²⁰

19. Regarding the Respondents’ claim that what plaintiffs were requesting would cause little, if any, harm to the Defendants, the hearing panel indicated that, “Read in isolation, the [Respondents’] assertion that the requested injunctive relief would cause ‘little, if any, harm to the Defendants’ might be viewed as hyperbolic or even disingenuous.” But when the entirety of the MPI argument is considered, along with the hearing evidence, the **hearing panel determined that it could not “find by clear and convincing evidence that Respondents violated ER 3.1.”**²¹

20. Further, the “[B]ar allege[d] Respondents acted unethically by failing to cite *Garcia v. Google*, 786 F.3d 733 (9th Cir. 2015), in the MPI or address the legal standard articulated in *Garcia* for mandatory injunctive relief.”²²

21. Regarding such, the Panel Report found, “Respondents presented testimony at the disciplinary hearing explaining their decision to cite *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017), rather than *Garcia*.” “The record (and common sense) support Mr. Parker’s pragmatic observation that, ‘A competent advocate seeking to persuade a district court to enter a preliminary injunction would gain more benefit

²⁰ Panel Report, page 15, FOF ¶40 (emphasis added).

²¹ Panel Report, page 17, FOF ¶43 (emphasis added).

²² Panel Report, page 17, FOF ¶44.

from citing a case in which an injunction was granted[, rather] than a case in which an injunction was denied.’”²³

22. Respondents rebutted that allegation with credible testimony, and the **State Bar did not prove by clear and convincing evidence** that the failure to cite or discuss *Garcia* violated the Arizona Rules of Professional Conduct. ²⁴

23. In their conclusion, the hearing panel acknowledged that retrospective scrutiny of complex litigation may reveal some less than pristine action on the part of lawyers. However, “based on the hearing evidence [the Panel Report finds] the only somewhat close call [in this matter] relate[d] to the MPI and Ethics Rule 3.1.” Rule 42 of the Ariz. R. Sup. Ct. “But for the hearing panel to conclude that objective attorneys would not have acted as Respondents did in that context, **significantly more evidence would be necessary – particularly given the State Bar’s high burden of proof**, Respondents’ strong substantive defense, and the safe harbor afforded fairly debatable and long shot claims advanced in litigation.”²⁵

FROM REQUEST AND RESPONSE

24. The State Bar’s judgment receipts and related budget for *all* discipline cases averages around \$85,000 annually – less than *one-fourth* of the amount Respondent seeks for this *one case*. Respondent’s demand also is over *56 times* what the State

²³ Panel Report, page 17-18, FOF ¶45.

²⁴ Panel Report, page 18, FOF ¶46 (emphasis added).

²⁵ Panel Report, page 22, Conclusion (emphasis added.)

Bar could recover for its fees in a disciplinary appeal (\$6,000). *See* Administrative Order No. 2011-17.²⁶

25. Mr. Wilson's time was billed at the rate of \$600 per hour. [Mr. Holohan's] time was billed at \$500 per hour. Ms. Johnston's time was billed at \$200.00 per hour. During the period of time that [their] bills were paid by the Parker firm's insurer, Mr. Wilson's hourly rate was \$300; [Mr. Holohan's] hourly rate was also \$300; Ms. Johnston's hourly rate was \$125.²⁷

CONCLUSIONS OF LAW

Rule 60(d) provides in relevant part:

After final disposition of a formal complaint following a contested hearing, the presiding disciplinary judge may award attorney's fees and costs to a prevailing respondent.

PDJ's Discretion

The PDJ considers the appropriate meaning to attach to the Rule's use of "may award." In *Associated Indemnity Corp. v. Warner*, 143 Ariz. 567, 570 (1985) the Court reasoned, regarding a statute with the same language. "The legislature used the phrase 'may award' in authorizing the trial judge to award a successful contract litigant reasonable attorney's fee. The natural import of this phrase is to vest discretion in the trial court to determine the circumstances appropriate for the award of fees."

²⁶ Response, page 7, fn.7.

²⁷ Declaration of Brian Holohan in Support of Respondent Parker's Motion for Attorneys' Fees and Costs, filed September 5, 2024, page 2, ¶¶8-9.

The Court had previously opined *In re Welisch*,

“Of course, when the law gives to a court or judge a power to be exercised at discretion, it means a sound legal discretion. ...Discretion' of court is a liberty or privilege allowed to a judge, within the confines of right and justice, to decide and act in accordance with what is fair, equitable, and wholesome, as determined by the peculiar circumstances of the case, and as discerned by his personal wisdom and experience, guided by the spirit, principles, and analogies of the law, to be exercised in accordance with a wise, as distinguished from a mere arbitrary, use of power, and under the law.’ ” *In re Welisch*, 18 Ariz. 517, 521–22, (1917) (citing *Words and Phrases*, 2d Series, vol. 2, page 64.)

Interpretation of Rule

“[The Court will] interpret court rules to effect the drafters' intent. *State v. Salazar–Mercado*, 234 Ariz. 590, 592 ¶ 4, (2014). If the rule is unambiguous, we apply it as written. *Id.* “ *Roberto F. v. Dep't of Child Safety*, 237 Ariz. 440, 441, ¶ 6, (2015). The Court has held, “Like with statutes, interpreting a court rule begins with the text of the rule. (citation omitted).” *Kelly v. Blanchard in & for Cnty. of Maricopa*, 255 Ariz. 197, 200, ¶ 11, (App. 2023), review denied (Aug. 22, 2023). Additionally, the Court held in *State ex rel. Brnovich v. City of Phoenix*, 249 Ariz. 239, 244, ¶ 21,(2020),

To determine that intent, we give the words their ordinary meaning, unless the context suggests a different one.” *See Am. Fed'n of State Cty. & Mun. Emps. AFL-CIO Local 2384 v. City of Phoenix*. (AFL-CIO Local 2384), 249 Ariz. 105, 108–109 ¶ 13, 466 P.3d 1158, 1161–62 (2020). We will not apply “fine semantic or grammatical distinctions” or “parse sentences,” however, as doing so “may lead us to results quite different from the objectives which the framers intended to accomplish.” *See Saban Rent-a-Car LLC*, 246 Ariz. at 95 ¶ 21, 434 P.3d at 1174 (quoting *United States v. Superior Court*, 144

Ariz. 265, 275–76, 697 P.2d 658, 668–69 (1985)). If the provision has only one reasonable interpretation, we apply it. See *AFL-CIO Local 2384*, 249 Ariz. at 108–09 ¶ 13.

Guidance on Exercising Discretion

The PDJ considers the analysis on when to exercise discretionary awards in civil matters, as described in *Associated Indemnity Corp. v. Warner*, 143 Ariz. 567, 570 (1985).

The relevant guidance is as follow:

1. The merits of the claim or defense presented by the unsuccessful party.
2. The litigation could have been avoided or settled and the successful party's efforts were completely superfluous in achieving the result.
3. Assessing fees against the unsuccessful party would cause an extreme hardship.
4. The successful party did not prevail with respect to all of the relief sought.

However, Rule 48(a), Ariz. R. Sup. Ct. provides, “the nature of disciplinary proceedings ... are neither civil nor criminal in nature, but are sui generis.”²⁸ Rather in cases such as this, the Court has described the disciplinary proceeding to be quasi-criminal in nature.²⁹

Simply by virtue of this being a prosecutorial cause of action, the PDJ's goal/purpose in electing to grant a fee request may be substantially different from the

²⁸ Case law has emphasized that the contested disciplinary hearing process is quasi-criminal in nature, at least with regard to due process concerns for the subject lawyer. See, e.g. *In re Sponsel*, 566P.3d960,980, ¶81 (emphasis added).

²⁹ *In re Sponsel*, 566 P.3d 960, 980 ¶81 (Ariz. 2025) (citation omitted).

statutorily prescribed purpose in civil litigation³⁰. The PDJ is unaware of any jurisdiction that provides a defendant in a criminal prosecution the ability to recover attorney fees and or costs at the conclusion of a contested criminal proceeding in which the defendant successfully obtains a finding of acquittal. In fact, the State Bar indicated (in an uncontroverted statement) it “is not aware of any other jurisdiction in which a respondent can recover attorneys’ fees for prevailing in a disciplinary proceeding.”³¹ One reason for that is rooted in public policy as discussed in the Response. A mechanism that would discourage disciplinary prosecution due to the risk exposure of a fee award would be counterproductive to the purposes of the disciplinary process.³²

The award of costs to a prevailing respondent

The parties seem to disagree as to the definition of costs in the context of Rule 60(d). Respondent Parker’s Reply re Wolf Exhibit seems to argue that the term “costs” in Rule 60(d) is not limited to “taxable costs”. The State Bar’s Response to Wolf Exhibit argues the PDJ must interpret the term “costs” in Rule 60(d) as defined in Rule 46(h)(8) Ariz. R. Sup. Ct. (“Costs” means all sums taxable as such in a civil action.)³³

³⁰ The *Warner* case indicated that in the civil statute at issue, once the decision to award reasonable fees was made- the purpose of the award was “to mitigate the burden of the expense of litigation to establish a just claim or a just defense.” The PDJ is aware of framework available in probate matters that intends to ensure that the subject person and or their estate is not inappropriately burdened with fees that have not been demonstrated to be a benefit to the estate. In family court matters, the court may, during and after litigation, award attorney fees to achieve equity among the parties in the litigation.

³¹ Response, page 5, second paragraph.

³² “Generally, courts agree that protecting the public, upholding the integrity of the legal system, assuring the fair administration of justice, and deterring other lawyers from similar misconduct are the primary purposes of lawyer discipline.” ABA’s *Annotated Standards for Imposing Lawyer Sanctions*, Standard 1.1, Purpose of Lawyer Discipline Proceedings.

³³ Response to Wolf Exhibit, page 3, first paragraph.

The PDJ agrees with the State Bar. Rule 46 is titled “Jurisdiction in Discipline and Disability matters; Definitions”. Paragraph (h) Definitions, states “When the context so requires, the following definitions **shall** apply to the interpretation of these rules relating to discipline.” (emphasis added.) Subparagraph 8, states “Costs” means all sums taxable as such in a civil action.” Further, the PDJ finds *Bennett v. Baxter Group Inc.*, 223 Ariz. 414, 423, ¶16 (app. 2016) as cited by the State Bar to be on point regarding the determination that photocopies of deposition records to be taxable costs. As well, the PDJ finds that the award of costs under Rule 60(d) is specific to the costs incurred by a prevailing respondent making a claim under the plain meaning of the language.

DISCUSSION

The PDJ will proceed by addressing: 1) the State Bar’s claim that the PDJ is required to limit its consideration of an award beyond the plain meaning of the Rule; 2) the remedy sought by Respondent; and 3) the analysis of whether to exercise the discretion of imposing an award and such an award’s purpose in this case, along with reasonable fees and costs to award.

THE BAR’S ARGUED LIMITATION ON RULE 60(d)

While the PDJ agrees with the State Bar’s argument that Rule 60(d) is controlling, it does not embrace the State Bar’s narrow/limiting interpretation on how to apply Rule 60(d). Interpreting a rule begins with the text of the rule itself. Here the PDJ finds that the Rule’s language is clear and unambiguous. As provided in the Conclusions of Law section above, there is no need to go beyond the plain meaning of its terms.

The limitations argued in the Response appear to be making the same requests as reflected in the Appendix attached to their Petition to Amend Rule 60 filed on July 15, 2022, as follows:

(d) **Assessment of the Costs and Expenses.** An assessment of costs and expenses related to disciplinary proceedings shall be imposed upon a respondent by the committee, the presiding disciplinary judge, the hearing panel, or the court, as appropriate, in addition to any other sanction imposed. Upon a showing of good cause, all or a portion of the costs and expenses may be reduced, deferred, or waived. After final disposition of a formal complaint following a contested hearing, the presiding disciplinary judge may, in their discretion, award attorney's fees and costs to a prevailing respondent. A respondent is considered to be a prevailing party only if the state bar's position was not substantially justified and the respondent prevails as to the most significant issue or set of issues, unless the reason that the respondent prevailed is due to an intervening change in the law. An award of attorney's fees shall be reasonable and may not exceed an amount paid or agreed to be paid by respondent. In appropriate cases, the state bar may also seek attorney's fees beyond the administrative fee allowed by Administrative Order 2011-17.

1. *Statement of Costs and Expenses; Request for Attorney's Fees and Costs; Objections.* At the conclusion of the disciplinary proceedings or the entry of a disciplinary sanction or dismissal by the presiding disciplinary judge or the hearing panel, ~~bar counsel~~ a party seeking attorney's fees, costs, or expenses shall file an itemized statement of costs and expenses or an itemized statement of attorney's fees supported by affidavit on proven, or admitted or dismissed counts and include argument about why attorney's fees should be awarded. ~~shall serve a copy on respondent and the disciplinary clerk.~~ A copy shall be served on the opposing party and the disciplinary clerk.

2. *Procedure.*

A. Upon Final Order of the Presiding Disciplinary Judge or the Hearing Panel.

(i) State Bar Attorney's Fees, Costs and Expenses. If the disciplinary sanction ordered by the presiding disciplinary judge or the hearing panel is not appealed, bar counsel shall file a final statement of costs and expenses with the disciplinary clerk within five (5) days after

the time to appeal has expired. The state bar may also request attorney's fees. At the same time, the disciplinary clerk shall file a statement reflecting the costs and expenses of that office in connection with the proceeding. The respondent shall file any objections to the statements of costs and expenses within ten (10) days of service. Bar counsel may file a response within five (5) days of service of the objection. Unless otherwise ordered, objections shall be determined on the pleadings without oral argument or an evidentiary hearing. The presiding disciplinary judge or the hearing panel shall rule on any objections to costs and expenses, enter an appropriate order, file the same with the disciplinary clerk, and serve a copy on the bar counsel of record and respondent or respondent's counsel. The respondent or state bar may appeal a decision on the assessment of costs and expenses as set forth in Rule 59.

(ii) Respondent's Attorney's Fees and Costs. If the respondent is the prevailing party as determined by the presiding disciplinary judge, the respondent may file a request for attorney's fees and costs with the disciplinary clerk within five (5) days after the time to appeal has expired. Bar counsel shall file any objections to the request for attorney's fees and costs within ten (10) days of service. The respondent may file a response within five (5) days of service of the objection. Unless otherwise ordered, objections shall be determined on the pleadings without oral argument or an evidentiary hearing. The presiding disciplinary judge or the panel shall rule on any objections to attorney fees and costs, enter an appropriate order, file the same with the disciplinary clerk, and serve a copy on bar counsel of record and respondent or respondent's counsel. The respondent or the state bar may appeal a decision on the assessment of costs and expenses as set forth in Rule 59.

B. Upon Final Order of the Court.

(i) Upon final order of the court affirming or imposing any disciplinary sanction, bar counsel shall file a final statement of costs and expenses with the clerk of the court within five (5) days after the clerk has given notice that a decision has been rendered. At the same time, the disciplinary clerk shall file a statement reflecting the costs and expenses of that office in connection with the proceeding. Respondent may file an objection to the statement of costs and expenses within ten (10) days of service. Bar counsel may file a response within five (5) days of service of the objection. If respondent objects, the court may remand the matter to the

presiding disciplinary judge or the hearing panel for determination as provided in subparagraph (2)(A)(1) of this rule.

(ii) Upon final order of the court, a prevailing respondent may file a request for attorney's fees and costs with the clerk of the court within five (5) days after the clerk has given notice that a decision has been rendered. Bar counsel may file an objection to the respondent's request for attorney's fees and costs within ten (10) days of service. Respondent may file a response within five (5) days of service of the objection. If bar counsel objects, the court may remand the matter to the presiding disciplinary judge or the hearing panel for determination as provided in this rule.

The Court did not adopt these limitations in either the emergency amendment effective on August 29, 2022 or in the permanent language effective January 1, 2023. For contrast, the reader is invited to compare the State Bar's proposal to the language adopted in the order amending the Rule both on a permanent and emergency basis, as provided herein:

Rule 60. Sanctions

(a)-(c) [No change]

(d) Assessment of the Costs and Expenses. An assessment of costs and expenses related to disciplinary proceedings shall be imposed upon a respondent by the committee, the presiding disciplinary judge, the hearing panel, or the court, as appropriate, in addition to any other sanction imposed. Upon a showing of good cause, all or a portion of the costs and expenses may be reduced, deferred, or waived. After final disposition of a formal complaint following a contested hearing, the presiding disciplinary judge may award attorney's fees and costs to a prevailing respondent.

1. [No change]

2. [No change]

(e) [No change]

Comment to 2012 Amendment

[No change]

The Court intentionally amended the Rule to provide broad discretion to the PDJ in determining when, why and how much to impose an award.³⁴

THE REMEDY SOUGHT BY RESPONDENT

The Respondent's Motion in this matter is not requesting an award of attorney fees as a remedy to make Respondent whole or to compensate for due process struggles. Rather, the Motion states, "an award of attorneys' fees cannot return Mr. Parker to the position and reputation he enjoyed before being subjected to this unwarranted proceeding."³⁵ Neither does it indicate that the award is to achieve equity among the parties in the litigation nor to remedy a financial hardship suffered. The Motion cited ARS §12-353 as an authority for the requested fees and costs, under the Statute's construction the Respondent did not need to provide anything more as it mandated an award.

However, the PDJ must conduct a measured analysis in applying the Rule as Respondent discusses in the Reply. As Respondent has indicated, Rule 60(d) as amended by the Court provides the PDJ the ability to impose an award based on sound discretion. The Court in *In re Welisch* discussed its meaning back in 1917, stating:

³⁴ This intentional choice of language is further highlighted when the Rule language is compared to that of the Statute.

³⁵ Motion, page 3, lines 7-9.

“Of course, when the law gives to a court or judge a power to be exercised at discretion, it means a sound legal discretion. ...Discretion' of court is a liberty or privilege allowed to a judge, within the confines of right and justice, to decide and act in accordance with what is fair, equitable, and wholesome, as determined by the peculiar circumstances of the case, and as discerned by his personal wisdom and experience, guided by the spirit, principles, and analogies of the law, to be exercised in accordance with a wise, as distinguished from a mere arbitrary, use of power, and under the law.’ ” *In re Welisch*, 18 Ariz. 517, 521–22, (1917) (citing *Words and Phrases*, 2d Series, vol. 2, page 64.)

To avoid the imposition of discretionary attorney’s fees appearing arbitrary, the Court in civil matters has provided guidance as discussed in *Associated Indemnity Corp. v. Warner*, 143 Ariz. 567 (1985)(the “Warner” case). *Supra*.

ANALYSIS ON WHETHER TO IMPOSE DISCRETION

In both a decision on whether to exercise the discretion to impose an award, and the amount to award, the PDJ will first and foremost consider the overarching objectives in the disciplinary proceedings “to protect the public, the profession and the administration of justice and not to punish the offender.” *In re Alcorn*, 202 Ariz. 62, 74, ¶ 41 (2002) *as corrected* (Mar. 21, 2002), citing *In re Kastensmith*, 101 Ariz. 291, 294 (1966).

Given the discretion provided, it is especially prudent to note that the ruling herein does not attempt to provide a blanket decision on how the PDJ will approach a future request for attorney fees pursuant to Rule 60(d).

With that said, the PDJ considers the four prongs outlined in the *Warner* case in its consideration of the appropriateness of a decision to award attorneys’ fees and costs in this matter.

1)The merits of the claim presented by the unsuccessful party.

While Respondent Parker's Motion points to the hearing panel's findings regarding the lack of clear and convincing evidence for each allegation provided in the Complaint, the Motion does not provide a complete picture as to the merits of the claims.³⁶

The hearing panel's findings regarding the alleged ethical violations involving the FAC were broke into four topic areas. In three of these four areas, the hearing panel made findings that the State Bar either: "presented no authority for the proposition" alleged to have violated the listed ethical rule, or the State Bar failed to present any "controverting evidence" to the Respondents' presentation.³⁷ These findings do not point to wrongful prosecution (i.e. meritless claims), but rather poor strategy in its trial strategy/preparation. It is almost as if the State Bar became so overconfident in the weeks immediately before the hearing that they missed critical analysis regarding meeting their heavy burden.

The procedural history of the case demonstrates that until the evidentiary hearing itself, the Complaint had been vetted regarding the merits of the allegations. Pursuant to Rule 55, Ariz. R. Sup. Ct., once bar counsel completed her evaluation of all information regarding the alleged unprofessional conduct/misconduct, a screening investigation was

³⁶ Motion, page 1, line 24, the Motion claims, "The Hearing Panel found that Mr. Parker committed no violation". There is a difference between the Respondent's statement and the Panel Report's conclusion "that the State Bar did not prove the charged ethical violations by clear and convincing evidence." Panel Report, page 2.

³⁷ FOF 9,10,11.

conducted. After that, it was reviewed by the Arizona Disciplinary Probable Cause Committee (“ADPCC”).

The ADPCC must first determine if probable cause exists. In addition to probable cause, the ADPCC is required, in determining whether to authorize bar counsel to file a complaint, to consider...

- A. **whether it is reasonable to believe that misconduct warranting discipline can be proven by clear and convincing evidence;**
- B. **whether the conduct in question is generally considered to warrant the commencement of disciplinary proceedings;**
- C. the level of the actual or potential injury; and
- D. whether the respondent has previously been disciplined or participated in diversion.” Rule 55 (c)(2) (emphasis added).

Here the Complaint was filed with a probable cause order by ADPCC. Thereafter the parties conducted discovery³⁸ and pursued partial motions for summary judgement (“PMSJ(s)”). Respondent Parker highlights in his Motion that the State Bar was unsuccessful in its PMSJ. However, equally important to the instant analysis is the fact that Respondent Parker’s PMSJ was unsuccessful. Additionally, the State Bar submitted a lengthy pre-hearing memorandum describing the argued merits of their case. These things demonstrate good faith on behalf of the prosecution.

The PDJ agrees with the State Bar that it should not be penalized “solely based on its failure to establish by clear and convincing evidence” an allegation at an evidentiary hearing. Certainly, the State Bar should not be expected to “always predict how the PDJ,

³⁸ Panel Report, page 10, fn. 5 (reflects that voluminous filings from the *Lake v Hobbs* litigation were included as exhibits at hearing.)

a hearing panel, or the Court will apply the ethical rules to a particular set of facts.”³⁹ The PDJ acknowledges a prosecutor faces the risk of having the strength of their case dramatically change during the course of the presentation of the testimony and evidence before a trier of fact.

The State Bar may have overestimated the strength of its case due to the District Court’s ruling that Respondents’ clients lacked standing and granted the defendants’ motion to dismiss the FAC, which the United States Court of Appeals for the Ninth Circuit affirmed. In fact, in later proceedings the District Court imposed monetary sanctions against Respondents and their respective law firms.⁴⁰

The PDJ acknowledges that the Panel Report reflected concerns with some of Respondents’ tactics, some of which are underlined in the Finding of Facts provided herein.⁴¹

However, given the following language in the June 19, 2024 PDJ’s order denying the PMSJs:

After considering the briefing and the extensive statements of facts/controverting statements of fact (supported by more than a thousand pages of documents and declarations), the PDJ concludes that, although numerous facts are undisputed, the inferences to be drawn from those facts are anything but undisputed. Each motion advocates how, in the movant’s opinion, the same core set of facts compels diametrically opposing legal conclusions. **Significantly more context is necessary to make informed decisions about the charged**

³⁹ Response, page 5.

⁴⁰ See FOF ¶12.

⁴¹ See FOF ¶¶ 18-19.

ethical violations – context that will be offered at hearing through witnesses, exhibits, and argument.⁴²

It is especially surprising that the June 20, 2024 Pre-hearing Statement reflected the State Bar's decision to call the Respondents as its only witnesses in order to meet their high burden of proof.

Given the essential role of the State Bar in discipline hearings, it is problematic that even in the Response the State Bar does not acknowledge any issues with their trial strategy or presentation.

To be clear, the PDJ is not speaking to who the State Bar should or could have called in addition to the Respondents, or whether it would have been prudent to use motions in limine⁴³ regarding the State Bar's anticipation that expert testimony would not be "admissible to establish whether a respondent's legal argument was objectively reasonable."⁴⁴ Rather, the issue before the PDJ is that the record nor the pleadings suggest how the State Bar planned to meet its heavy burden of clear and convincing evidence at hearing with just these particular two witnesses.

Equally problematic in the Response is the State Bar's argument, regarding Rule 49(d)(6), stating (on page 6 of the Response), "the rules direct bar counsel to dismiss a matter **only if**, after conducting a screening investigation, there is no probable cause to

⁴² Order Denying Motions for Partial Summary Judgement, page 2, filed June 19, 2024.

⁴³ In pre-hearing litigation, Respondents' submitted motions in limine and the PDJ denial indicated that while rare, the PDJ had previously indulged such requests. See Order Re: Motions In Limine filed June 18, 2024.

⁴⁴ Response, page 10.

believe misconduct or incapacity exists pursuant to these rules.” (emphasis added.) This misstates the plain meaning of the rule. The title of Rule 49(d) is “Powers and Duties of Bar Counsel.” Immediately thereafter, it states “Bar counsel **shall**.” (emphasis added)

6. Dismiss proceedings if, after conducting a screening investigation, there is no probable cause to believe misconduct or incapacity exists pursuant to these rules.⁴⁵

Bar Counsel’s argument here inaccurately suggests that Bar Counsel was forced by duty to proceed to the evidentiary hearing, while the procedural path of the case would suggest otherwise.

2) The litigation could have been avoided or settled and the successful party's efforts were completely superfluous in achieving the result.

Respondent’s efforts were not completely superfluous. However, the Panel Report pointed out that the Respondents did not have any burden to present evidence and could have chosen not to present anything after the State Bar rested, yet Mr. Parker and Mr. Olsen “presented substantial evidence.”⁴⁶ The PDJ finds that the record is unclear as to how much of Respondent Parker’s presentation may have been unnecessary.

3) Assessing fees against the unsuccessful party would cause an extreme hardship.

The State Bar has demonstrated that the requested award amount will be an extreme hardship. The State Bar’s judgment receipts and related budget for *all* discipline

⁴⁵ The actual language of Rule 49(d)(6) mandates dismissal by Bar Counsel in a specific circumstance, which is converse to the argument that such language precludes dismissal in other circumstances.

⁴⁶ FOF ¶14

cases averages around \$85,000 annually — less than *one-fourth* of the amount Respondent seeks for this one case. Respondent's demand also is over *56 times* what the State Bar could recover for its fees in a disciplinary appeal (\$6,000).⁴⁷

It is a non-profit entity that has its mission provided in Rule 32 (a)(2), Ariz. R. Sup. Ct., which includes not only “discipline of persons engaged in the practice of law... alternative business structure and legal paraprofessionals” (i.e. prosecution of matters such as this), but the bar is empowered to “A. organize and promote activities that fulfill the responsibilities of the legal profession and its members to the public; B. promote access to justice for those who live, work, and do business in this state; C. aid the courts in administration of justice; [and] E. conduct educational programs regarding substantive law, best practices, procedures and ethics; provide forums for the discussion of subjects pertaining to the administration of justice, the practice of law and the science of jurisprudences.” Certainly, the entity is integral to the disciplinary process achieving its goals to protect the public, clients, the legal system and the legal profession.⁴⁸ The PDJ acknowledges the State Bar's argument that the requested fee award will likely affect services that the Bar provides, which would be counterproductive to the legal community as a whole and the overarching policy goals of the disciplinary process.

4) The successful party did not prevail with respect to all of the relief sought.

⁴⁷FOF ¶24

⁴⁸ ABA's *Annotated Standards for Imposing Lawyer Sanctions*, Standard 1.1, Purpose of Lawyer Discipline Proceedings.

Respondents obtained a dismissal at hearing with respect to all allegations in the Complaint. The Panel Decision was clear that the State Bar failed to prove by clear and convincing evidence any allegation.

IMPOSING DISCRETION

The PDJ finds that it is appropriate under this specific set of facts to exercise its discretion and impose an award of attorneys' fees and costs. The PDJ finds the appropriate purpose for the assessment is to signal to the State Bar that the inadequate evidentiary presentation coupled with the lack of contrition or demonstrated insight in its Response must be remedied.

The PDJ finds that the State Bar generally executed its duties in this matter without issue until the actual evidentiary hearing's substance or lack thereof. More specifically, once the PDJ issued the June 19, 2024 ruling on the PMSJs, the record fails to demonstrate the State Bar heeded the PDJ's instruction in that ruling. Therefore, the PDJ finds that, given the PDJ's stated purpose for the award and the State Bar's demonstrated hardship, narrowing its consideration to the Respondent's attorneys' fees and costs incurred after the June 19, 2024 ruling on the PMSJs through completion of the three-day evidentiary hearing is appropriate.

The rate the PDJ will use for Counsel Wilson and Counsel Holohan is \$300.00 per hour per attorney and \$125 per hour for Ms. Johnson. The PDJ arrived at this being the appropriate hourly wage based on Mr. Holohan's indication in his declaration dated September 5, 2024 that the firm negotiated said hourly rate to be paid by Mr. Parker's law

firm insurance for payment in this case⁴⁹. The PDJ understands that the application of her sound discretion in assessing the attorneys' fees and costs must be "fair, equitable, and wholesome".⁵⁰ The PDJ does not find a justification for awarding a higher rate simply due to the State Bar becoming the payor.⁵¹

While the State Bar has concerns about Respondent Parker receiving a windfall or double payment⁵² from the awarded herein, the PDJ does not find such has been demonstrated in the record. Also, the PDJ does not join in the State Bar's concern regarding the omission of a new declaration for the recently filed Wolf Exhibit 1.

The PDJ used Exhibit 1 to Holohan's declaration to determine the attorneys' fees that were incurred after the PMSJ ruling. If the entry between June 19, 2024 and June 28, 2024 did not provide enough information to determine that the fee was incurred due to Respondent Parker's preparation and participation in the evidentiary proceeding the fee was excluded.⁵³ The PDJ finds that Respondent Parker shall be awarded attorneys' fees in the amount of \$31,500.00.⁵⁴

Turning to costs, the PDJ will not award costs for items that the record does not demonstrate comport with the definition under Rule 46(h)(8). The PDJ finds that Exhibits 3 and 4 to the Holohan declaration filed September 5, 2024 provide adequate

⁴⁹ FOF ¶24

⁵⁰ *In re Welisch*, 18 Ariz. 517, 521-22, (1917) (citing *Words and Phrases*, 2d Series, vol. 2, page 64.)

⁵¹ The PDJ has also considered Rule 42 Ethics Rule 1.5, Ariz. R. Sup. Ct. in her analysis as well.

⁵² Response to Wolf Exhibit, pages 2-3.

⁵³ Exhibit 1 to Holohan's declaration filed September 5, 2024, page 8-11. The PDJ did not find any concern with the amount of time allotted for the billed entries awarded.

⁵⁴ The PDJ calculated 104.5 hours incurred at the rate of \$300 an hour and 1.20 hours incurred at the rate of \$125.

documentation for the PDJ and opposing counsel to assess their accuracy, permissibility and appropriateness in the award of costs. Therefore, the award of costs shall include the transcript costs in the amount of \$4,939.55 and filing fees of \$21.22, as reflected in Exhibits 3 and 4 of Holohan's declaration.⁵⁵ The PDJ considered the Wolf Exhibit 1, which does not contain any documentation to support the entries in the document. It is noted that the exhibits to the Holohan declaration filed days prior to Jessica Wolf's declaration contained receipts that could be independently assessed by opposing counsel and the PDJ. Unfortunately, the Wolf Exhibit 1 does not provide specific documentation for the PDJ to find that it has evidentiary value regarding the travel expenses listed. Neither the PDJ nor opposing counsel have enough information to evaluate the reasonableness of the inclusion of the listed amounts in the awarded cost amount. The PDJ further finds that the other costs are not taxable costs and therefore are not permissible. Thus, the PDJ does not award any amount submitted in the Wolf Exhibit 1.

CONCLUSION

The PDJ finds it appropriate to award Respondent Parker, under these specific set of facts, a portion of the requested attorneys' fees and costs.

⁵⁵ The PDJ considered Exhibit 1 to the Declaration of Jessica Wolf. Exhibits to the Holohan Declaration filed days prior contained receipts that could be independently assessed by opposing counsel and the PDJ. The PDJ agrees that travel expenses specific to Mr. Parker would have been awarded if they had been adequately demonstrated.

IT IS ORDERED the State Bar of Arizona shall pay the law firm of Broening Oberg, Woods & Wilson, PC. (\$31,500.00 in attorneys' fees⁵⁶ and \$4,960.77 in costs) a total award of \$36,460.77.

The PDJ shall issue a companion Judgement and Order that will be effective 30 days from the date of this order.

DATED this 18th day of September, 2025.

Lisa A. VandenBerg
Hon. Lisa A. VandenBerg
Presiding Disciplinary Judge

Copy of the foregoing e-mailed
this 18th day of September, 2025, to:

Donald Wilson, Jr.

[REDACTED]

Respondent Parker's Counsel

Brian Holohan

[REDACTED]

Respondent Parker's Counsel

Kurt Olsen (self-represented)

[REDACTED]

Maret Vessella (Chief Bar Counsel)

[REDACTED]

Jonathan Barnes

⁵⁶ This calculation is comprised of 104.5 hours at rate of \$300.00 per hour and 1.20 hours of \$125.00 per hour.

[REDACTED]
Counsel for the State Bar

Daniel King

[REDACTED]
Counsel for the State Bar

by: CLopez