

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**DAVID S. GINGRAS
Bar No. 021097,

Respondent.**

PDJ 2026-9010

**ORDER RE: MOTION
TO DISMISS**

**[State Bar File Nos. 24-
1692, 24-1826, 24-2483, 24-
2819, 24-3080 and 25-1230]**

FILED JUNE 22, 2026

The Presiding Disciplinary Judge (“PDJ”) has reviewed the Respondent’s Motion to Dismiss (“Motion”) and Alternatively, Motion for Summary Judgment, Statement of Undisputed Material Facts (“Statement of Facts”), and Affidavit of David S. Gingras in Support of Respondent’s Motion to Dismiss/Summary Judgment (“Affidavit”) all filed April 14, 2026. In this ruling the PDJ is only addressing the Respondent’s Motion to Dismiss, the alternative request for relief will be addressed separately if need be.

On April 30, 2026, the PDJ issued the Briefing RE: Motion to Dismiss Order (“Order”) to provide the parties the opportunity to file simultaneous briefs regarding whether the Arizona Supreme Court’s (the “Court”) exercise of its constitutional authority regarding attorney discipline

precludes the Respondent's requested application of ARS § 12-751 legislation in this matter. Respondent filed a brief on May 4, 2026 ("Respondent's brief") and the State Bar filed a brief on May 15, 2026 ("State Bar's brief"). These briefs have been considered in the order herein.

The ordering paragraph of the briefing Order stated the following:

IT IS ORDERED providing each party the opportunity to submit, simultaneously, a brief on this specific issue alone, that is **no more than 10 pages** in length and **must be filed** with the Disciplinary Clerk **no later than 4:00 p.m. May 21, 2026.**

Despite the Order's indication that the briefing opportunity was a simultaneous one, Respondent filed a document labeled, Response to State Bar's Brief RE: Applicability of ARS § 12-751 to Lawyer Discipline Proceedings, on May 20, 2026. While reviewed, the PDJ did not consider it in this order, as it did not conform to the PDJ's Order, nor did Respondent request and/or obtain relief in order to file such.

PROCEDURAL HISTORY

On September 15, 2025, the Attorney Discipline Probable Cause Committee ("ADPCC") issued Probable Cause Orders regarding State Bar file nos. 24-1692, 24-1826, 24-2483, 24-2819, 24-3080 and 25-1230 which were

attached to the Complaint filed by the State Bar on February 17, 2026. Thereafter, the State Bar filed an Amended Complaint (the “Complaint”) against David S. Gingras as Respondent (“Respondent”) on February 25, 2026.

Respondent Gingras argues that the “Bar seeks to discipline [him] for activities that are protected under the right to free speech and the right to petition”¹ and therefore he may seek dismissal of the Complaint pursuant to Arizona Revised Statutes (“ARS”) § 12-751 (also referred to as Arizona’s “anti-SLAPP law”). However, the Complaint actually seeks findings of violation regarding all of the following²:

**Ethical Violations Related to Respondent’s Violation
of Judge Mata’s February 21, 2024 Order**

The State Bar has alleged “by engaging in the conduct set forth[,] Respondent [Gingras] violated [Rule 42, Ariz. R. Sup. Ct.,] ER 3.4(c) by knowingly violating Judge Mata’s February 21, 2024 order and court rules; ER 3.6(a) by making extrajudicial statements that he knew or reasonably should have known would be disseminated by means of public communication and that would have a substantial likelihood of materially prejudicing the paternity case; ER 4.4(a) by using means that had

¹ Motion, page 2, I. Introduction.

² The PDJ has found, regarding specific violation allegations, that Respondent Gingras’ argument that the exercise of free speech, alone, in these proceedings is not a legally valid defense. *See* Order in Re: Motion for Partial Judgment on the Pleadings filed April 14, 2026. His argument here continues to not acknowledge lawyers agreed upon limitations on their conduct and speech provided in Rule 41, by taking the Oath and accepting the Creed, in addition to the other responsibilities provided throughout the Arizona Rules of Supreme Court.

no substantial purpose other than to embarrass, delay, or burden any other person; and, Rule 54(c), Ariz. R. Sup. Ct., by knowingly violating Judge Mata's February 21, 2024 order."³

Violations based on Respondent's Efforts to Preclude Michael Marraccini from Testifying on June 10, 2024

The State Bar has alleged that "based on the conduct set forth[,] Respondent [Gingras] violated ER 3.4(a) and ER 8.4(a) by unlawfully attempting to obstruct Clayton Echard's access to Marraccini's testimony, ER 4.4(a) by using means that had no substantial purpose other than to embarrass, delay or burden Echard or his counsel, and ER 8.4(d) by engaging in conduct prejudicial to the administration of justice."⁴

Violations related to Respondent's Disparaging Comments about Judge Mata

The State Bar has alleged, "based on the conduct set forth[,] Respondent [Gingras] violated ER 4.4(a) by using means that have no substantial purpose other than to embarrass or burden Judge Julie Mata, ER 8.2(a) by making a statement with reckless disregard as to its truth or falsity concerning Judge Mata's qualifications or integrity, ER 8.4(d) by engaging in conduct prejudicial to the administration of justice, and Rules 41(b)(3) and (7), Ariz. R. Sup. Ct., by failing to maintain the respect due to the court and Judge Mata and engaging in unprofessional conduct (including by making public statements about Judge Mata's qualifications or integrity that were objectively false or made with reckless disregard as to their truth or falsity)."⁵

Violation related to Respondent's Disparaging Comments About Members of the Public

The State Bar has alleged, "by engaging in the conduct set forth[,] Respondent [Gingras] violated Rule 41(b)(7), Ariz. R. Sup. Ct., by engaging in unprofessional conduct."⁶

³ Paragraph 64 of the Complaint.

⁴ Paragraph 99 of the Complaint.

⁵ Paragraph 108 of the Complaint.

⁶ Paragraph 113 of the Complaint.

Violations Related to Respondent's Pursuit of Meritless Claims, False Information in an Affidavit, and Presentation of Owens' False Testimony/Changing Version of Events

The State Bar has alleged, "Based on the conduct set forth[,] Respondent [Gingras] violated ER 1.3 by failing to act with reasonable diligence in representing Owens, ER 3.1 by asserting or controverting issues when he did not have a good faith basis in law and fact for doing so that was not frivolous, ER 3.3(a) and (b) by knowingly failing to take reasonable remedial measures when he knew that Owens intended to engage in, was engaging in or had engaged in criminal or fraudulent conduct related to the paternity case, ER 3.4(c) by knowingly disobeying an obligation under rules of the court, ER 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, ER 8.4(d) by engaging in conduct prejudicial to the administration of justice, and Rule 54(c), Ariz. R. Sup. Ct., by knowingly violating any rule or order of the court."⁷

Violations Related to the Non-Meritorious Appeal

The State Bar has alleged, "By engaging in the conduct set forth[,] Respondent [Gingras] violated ER 1.3 by failing to act with reasonable diligence in representing Owens, ER 3.1 by asserting or controverting issues on appeal when he did not have a good faith basis in law and fact for doing so that was not frivolous, and ER 8.4(d) by engaging in conduct prejudicial to the administration of justice."⁸

ANALYSIS

Respondent Gingras' Motion relies upon ARS § 12-751 ("Statute"). In their filings, the parties seem to agree that this is a relatively new statute⁹

⁷ Paragraph 177 of the Complaint.

⁸ Paragraph 184 of the Complaint.

⁹ "ARS § 12-751, generally referred to as the "Anti-Strategic Lawsuit Against Public Participation Statute," was substantially amended in 2022. See Respondent Gingras' Reply to the Motion for Leave to Exceed Page Limits, page 2, citing *State of Arizona v. Koert*, LC2025-000363-001 DT, April 14, 2026.

and application in Arizona attorney disciplinary matters is a case of first impression. The PDJ notes that the Statute provides that the movant has an initial burden, under ARS § 12-751(B), to establish *prima facie* proof that the legal action was substantially motivated by “a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right.” A finding must be made that the movant has met this burden before the plaintiff in the action is “required to file a response to a motion pursuant to subsection A” of this Statute.

The PDJ has conducted a cursory review of Respondent’s Motion and finds that the Motion is accompanied by a Statement of Facts and an Affidavit as directed procedurally under ARS § 12-751(B).¹⁰ However, before the PDJ proceeds with a substantive review of these materials for a *prima facie* showing, the PDJ finds that a review of the applicability of ARS § 12-751 in disciplinary matters must first be considered.

Therefore, the PDJ begins her analysis with a constitutional supremacy/ separation of powers review. Respondent Gingras argues that the speech at issue in the State Bar’s Complaint falls within his free speech

¹⁰ The PDJ has only received one previous motion attempting to rely upon this Statute. However, the previous motion did not meet the basic procedural requirements and was summarily dismissed.

right and right to petition.

ARS § 12-751 (A) provides,

In **any legal action** that involves a person's **lawful exercise of the right of petition, the right of speech**, the freedom of the press, the right to freely associate or the right to peaceably assemble **pursuant to the United States Constitution or Arizona Constitution**, the person other than a state actor or an intervenor may file a motion to dismiss or quash the action under this section. (Emphasis added.)

ARS § 12-751 (J)(1) defines the term “**Legal action**” as follows:

(a) [It m]eans any of the following:

(i) Any civil action, claim, cross-claim or counterclaim for damages other than nominal damages.

(ii) Any criminal prosecution, except for a drug trafficking offense included in title 13, chapter 34 or 34.1, a riot or a serious offense or violent or aggravated felony as defined in section 13-706.

(iii) Any written investigative demand pursuant to section 38-431.06 or other compulsory legal process or any regulatory or administrative action by a state actor.

Rule 48(a), Arizona Rules of Supreme Court (“Ariz. R. Sup. Ct.”) provides, “the nature of disciplinary proceedings ... are neither civil nor criminal, but are *sui generis*.” Therefore, the PDJ holds that the disciplinary action at issue would not fall within the definition of a “legal action” under ARS § 12-751(J)(1)(a)(i) and (ii). Respondent Gingras argues that this case involves (a)(iii) “a

‘regulatory or administrative action by a state actor.’”¹¹ While Respondent does not cite the legal authority he is relying upon, assuming such is accurate,¹² the PDJ finds that ARS § 12-751 reflects that the Arizona Legislature intends for this Statute to apply in attorney disciplinary proceedings.

The PDJ will assume for purposes of conducting this analysis that at least some of the Complaint’s allegations involve alleged violations of Arizona Rules of Professional Conduct and/or the Arizona Rules of the Supreme Court for what would generally be found to be “a person's **lawful** exercise of the right of petition [and/or] the right of speech pursuant to the United States Constitution or Arizona Constitution.”¹³ (Emphasis added.) However, the instant case does not involve a general member of the public and their actions. Rather, this matter is centered on the State Bar’s pursuit for discipline of an individual licensed to practice law in the State of Arizona for alleged violations of the lawyer’s obligations imposed upon lawyers by the Arizona Supreme Court’s

¹¹ Motion, page 8.

¹² The PDJ notes that the Court has distinguished its rules regarding lawyers “from those enacted by state administrative agencies as such is pursuant to legislation. When this Court promulgates rules pertaining to attorneys or to court procedures, it does so pursuant to its own constitutional authority over the bench, the bar, and the procedures pertaining to them.” *Scheehle v. Justices of the Supreme Court of the State of Arizona*, 211 Ariz. 282, 289, ¶ 23, (2005).

¹³ From the Motion and brief, it is unclear which conduct alleged in the 184 paragraph Complaint that Respondent Gingras is affirming and arguing was lawful exercise of a constitutional right of either speech or to petition.

rules.

Constitutional Authority

It is a well settled matter of law that the Arizona Constitution, Article 6 §§ 1,5, provides the Court administrative supervision over all the courts of the state, including attorney discipline. The Court has consistently found that,

[T]he practice of law is a matter **exclusively** within the authority of the Judiciary. The determination of who shall practice law in Arizona and under what condition is a function placed by the state constitution in this court. [I]n fact, the great weight of authority is in accord with the proposition that **the ultimate authority** for defining, regulating and **controlling the practice of law** is vested in the Judiciary. (citations omitted)

Hunt v. Maricopa County Employees Merit Sys. Comm'n, 127 Ariz. 259, 261-62 (1980). (Emphasis added).

To this end, the Court has issued rules such as: Rule 34 [Application for Admission] regarding the admission to practice law; Rule 41 [Duties and Obligations Members (lawyers)] which provides duties and obligations, including the Oath and Creed, that a lawyer must accept as part of admission; Rule 42 [Arizona Rules of Professional Conduct], provides ethical rules for a lawyer's practice; Violation of Rule 41 and 42 are subject

to disciplinary proceedings pursuant to Rule 54 [Grounds for Discipline], Ariz. R. Sup. Ct. (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, §§1,5). See also *Hancock v. O’Neil*, 253 Ariz. 509, 512, ¶12 (2022) (clarifying that the Court’s authority specifically includes attorney discipline.)

Rule 41, Ariz. R. Sup. Ct., places obligations upon a lawyer who **chooses** to be admitted to practice law in Arizona regarding such things as: the written manner (including word choice) that the lawyer may use, the veracity of the statements provided by the lawyer as an officer of the court, and the tone and purpose of the words stated or written by the lawyer. Comment [1] goes on to educate, “Lawyer, whether or not engaged in the practice or law, should act honorably and treat others with courtesy and respect.” A person is not required to practice law in Arizona. However, once one **elects** to do so, upon admission, the person has agreed upon these directives and restrictions on one’s general personal rights.

In addition, the Court’s rules provide for the enforcement of these

responsibilities/ obligations. Rule 55, Ariz. R. Sup. Ct., places obligations on: the State Bar in evaluating/investigating “all information coming to its attention, in any form” alleging unprofessional conduct, misconduct and incapacity; the ADPCC regarding considerations¹⁴ beyond probable cause before “authorizing bar counsel to prepare and file a complaint against a respondent.” Once the matter proceeds to an evidentiary hearing before a hearing panel (“panel”),¹⁵ if the panel finds a violation, Rule 58(j) and (k) guide the panel, including -if appropriate- to conduct a proportionality review in determining the sanction to impose.

Separation of Powers

Article 3 of the Arizona Constitution provides,

The powers of the government of the state of Arizona shall be divided into three separate departments, the legislative, the executive, and the judicial; and, except as provided in this constitution, such departments shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others.

Here, the Statute seeks to regulate attorney discipline complaints

¹⁴ In addition to reviewing things such as a respondent’s summary response.

¹⁵ Its membership is comprised of the PDJ, an attorney member and a public member.

involving the lawful exercise of the right of petition, and the right of speech, potentially resulting in the dismissal of the complaint. When a statute and Court rules conflict, given the Court's constitutional authority, the rules adopted by the Court prevail. 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. (Emphasis added.) "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[s] 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 understands that the Court favors an interpretation of legislation "so as to be constitutional whenever possible." *In re Shannon*, 179 Ariz. 52, 78, (1994). However, the PDJ finds that the ability to discipline a

lawyer for behavior, that the State Bar, ADPCC and the Panel finds violates the Court's rules, is an "important and necessary function in the Court's disciplinary process." *In re Shannon*, 179 Ariz. 52, 79, (*modified on other grounds*, 181 Ariz. 307) (1994). Neither Respondent Gingras' Motion nor brief provide a legal analysis as to how the Statute could be applied consistent with this Court's existing rules with regard to a lawyer's professional obligations and duties. Instead, Mr. Gingras' brief simply seems to state that the Statute supplements the Court's rules rather than conflicts. Stating it does not make it so.¹⁶ Given the absence of such a showing, the PDJ finds that interpreting the Statute as applying to attorney disciplinary actions would unnecessarily implicate constitutional questions¹⁷ and unduly hamper the Court's constitutionally imposed duties.

CONCLUSION

The PDJ finds the following:

The movant, Respondent Gingras, has failed to demonstrate that the Statute does not "unduly hamper" the Court's exercise of its constitutional

¹⁶ The PDJ does not find *State v. Brearcliffe*, 254 Ariz. 579 (2023) relevant or illustrative with regard to the question pending before the PDJ involving the Court's supervision of lawyers.

¹⁷ See e.g. *In re Shannon*, 179 Ariz. at 79.

authority regarding the practice of law in Arizona. Independent of such a showing, the PDJ has been unable to determine how to apply the Statute in a manner consistent with the Court's rules regarding attorney discipline.

For these reasons,

IT IS ORDERED DENYING Respondent Gingras' Motion to Dismiss filed April 14, 2026.¹⁸

Given that this is a matter of first impression and the effect the PDJ's ruling herein provides on the instant case, the PDJ understands that a party (or both) may wish to file a Petition for Special Action with the Court. **Therefore, the PDJ will not issue any additional procedural schedule in this matter at this time. However, if a Petition for Special Action is not filed within the next 30 days, the PDJ will thereafter proceed with issuing a new procedural schedule order in this matter.**

DATED this 22nd day of June, 2026.

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

¹⁸ The PDJ delayed the issuance of this order in consideration of the May 27, 2026 Respondent's request and PDJ order.

Copy of the foregoing emailed
this 22nd day of June, 2026 to:

David S. Gingras (Respondent)

[REDACTED]

Marc J. Randazza

[REDACTED]

Respondent's Counsel (limited
representation)

James D. Lee (Senior Bar Counsel)

Craig Henley (Senior Bar Counsel)

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by: CLopez