

ARIZONA SUPREME COURT

David S. Gingras,

Petitioner,

v.

State Bar of Arizona,

Respondent.

Arizona Supreme Court

No.: _____

Office of the Presiding Disciplinary Judge

No. PDJ2026-9010

APPENDIX TO PETITION FOR SPECIAL ACTION (APPELLATE) VOLUME 3

Documents			
Ex.	Date Filed	Description	Appendix Page(s) Pet.Appx
11	4/14/2026	<u>Order Granting in Part and Denying in Part State Bar's Motion for Partial Judgment on the Pleadings</u>	0455–0466
12	4/30/2026	<u>Order re: Briefing on Motion to Dismiss</u>	0467–0469
13	5/4/2026	<u>Respondent's Briefing re: Motion to Dismiss</u>	0470–0485
14	5/14/2026	<u>State Bar's Briefing re: Motion to Dismiss</u>	0486–0495

15	5/20/2026	<u>Response to State Bar's Brief re: Applicability of A.R.S. § 12-751 to Lawyer Discipline Proceedings</u>	0496-0536
16	6/22/2026	<u>Order Denying Motion to Dismiss</u>	0537-0551
17	7/8/2024	<u>Notice of Change of Judge For Cause</u>	0552-0566
18	7/8/2024	<u>Affidavit of David S. Gingras In Support of Petitioner's Notice of Change of Judge For Cause</u>	0567-0762
19	8/13/2024	<u>Order Denying Notice of Change of Judge</u>	0763-0771

Exhibit 11

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 IN RE:
MOTION FOR
PARTIAL
JUDGMENT ON THE
PLEADINGS**

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

FILED APRIL 14, 2026

The Presiding Disciplinary Judge ("PDJ") has considered the State Bar's Motion for Partial Judgment on the Pleadings ("Motion") filed March 9, 2026; the State Bar's Notice of Errata filed March 9, 2026; the Respondent's Motion for Leave to Exceed Page Limits ("Motion to Exceed Page Limits") filed March 18, 2026; the Respondent's Response to State Bar's Motion for Partial Judgment on the Pleadings ("Response") filed March 18, 2026; Respondent's Declaration of David S. Gingras in Support of His Response to the State Bar's Motion for Partial Judgment on the Pleadings ("Declaration") filed March 18, 2026; Respondent's Request for Judicial Notice ("Request") filed March 18, 2026; the Reply to State Bar's Motion for Judgment on Pleadings ("Reply") filed March 23, 2026; and Respondent's Notice of Filing Supplement Authority filed March 31, 2026.

IT IS ORDERED granting the Motion to Exceed Page Limits.

IT IS FURTHER ORDERED, to the extent Mr. Gingras' request is for the PDJ to take judicial notice of the existence of various pleadings and/or documents having been filed in the identified Superior Court paternity

matter for purposes of considering the Motion addressed herein, granting the Request.

Turning to the Motion, Response and Reply. In the Motion, the State Bar seeks judgment on a portion of the pleadings, pursuant to Ariz. R. Civ. P. 12(c) as incorporated into disciplinary proceedings by Ariz. R. Sup. Ct. 48(b), as to the Amended Complaint filed February 25, 2026 (“Complaint”) Count One allegations, as follows:

I. Respondent violated Judge Mata’s February 21, 2024 order in violation of Rule 42, Ariz. R. Sup. Ct., ER 3.4(c), 3.6(a), 4.4(a), and Rule 54(c), Ariz. R. Sup. Ct.; and

II. Respondent’s comments about Judge Mata were made in violation of Rule 41(b)(3) and (7), and Rule 42, Ariz. R. Sup. Ct., ER 4.4(a), 8.2(a), and 8.4(d).

The Respondent has filed a Response that objects to a Judgment on the Pleadings for numerous reasons.

ANALYSIS

General consideration of Motions for Judgment on the Pleadings:

[Regarding] a motion for judgment on the pleadings the court may consider as true such allegations of the complaint as are admitted by the answer. If these allegations set forth a claim for relief and the answer fails to assert a legally sufficient defense plaintiff is entitled to judgment. *Pac. Fire Rating Bureau v. Ins. Co. of N. Am.*, 83 Ariz. 369, 376, 321 P.2d 1030, 1035 (1958) [citing *Walker v. Estavillo*, 73 Ariz. 211, 240 P.2d 173 (1952)].¹

¹ The PDJ has considered Mr. Gingras’ citation of the unpublished federal decision, *Delta Zee Sols. LLC v. Britannia Tucson LLC*, 2026 WL 71411, *3 (D. Ariz. 2026).

In Discipline matters:

The PDJ agrees with the State Bar that,
Arizona attorney discipline cases are *sui generis*. See Rule 48(a), Ariz. R. Sup. Ct. The proceedings are expedited and therefore, by necessity, limited to issues relevant to the allegations of *attorney misconduct*. See Rule 58(j), Ariz. R. Sup. Ct.

The PDJ considers the Complaint and the Respondent's Amended Answer filed on March 6, 2026 ("Answer") in its review of the Motion, and finds,

I. Count One:

State Bar has alleged **Respondent violated Judge Mata's February 21, 2024 order in violation of:**

Rule 42, Ariz. R. Sup. Ct.,

- ER 3.4 (c)-

ER 3.4 is captioned: Fairness to Opposing Party and Counsel

It states, "A lawyer shall not: (c) **knowingly** disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." Emphasis added.

- ER 3.6(a)-

ER 3.6 is captioned: Trial Publicity

It states in (a),

A lawyer who is participating in [l]itigation of a matter shall not make an extrajudicial statement that the lawyer **knows** or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter. (Empasis added.)

- ER 4.4(a)-

ER 4.4 is captioned: Respect for Rights of Others

It states in (a),

In representing a client, a lawyer shall not use

means that have no substantial purpose other than to embarrass, delay, or burden any other person, or use methods of obtaining evidence that violate the legal rights of such a person.

- Rule 54(c), Ariz. R. Sup. Ct.-

Rule 54 is captioned: Grounds for Discipline

Subsection(c) states:

Knowing Violation of Any Rule or Any Order of the Court. This includes court orders issuing from a state, tribe, territory or district of the United States, including child support orders. (Emphasis added.)

The State Bar's Motion points to the following paragraphs of the Complaint and the Respondent's Answer as facts that satisfy the above allegations:

Paragraph 9: Respondent admits that the Maricopa County Superior Court case of *In the Matter of Owens and Echard*, FC2023-052114 was filed on August 1, 2023 (hereinafter referred to as "the paternity case").

Paragraphs 24-25: Respondent admits that he was hired by Laura Owens in March 2024 and filed a notice of appearance in the paternity case on her behalf on March 25, 2024.

Paragraph 41: Respondent admits that he knew of Judge Mata's February 21, 2024 [order] in the paternity case stating, among other things, "that no party shall disclose outside of themselves any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties".

Paragraphs 42-43: Respondent admits that he subsequently filed a motion in the paternity case, attaching a declaration dated April 1, 2024 which was signed by him and included three medical records.

Paragraph 44: Respondent admits that his April 1, 2024 declaration included references to the three medical records which were attached to the motion.

Paragraph 47: Respondent admits that he posted a Sonora Quest Laboratories' medical record dated October 16, 2023, on his law office blog on April 4, 2024.

Paragraph 49: Respondent admits that he was immediately informed of the violation of Judge Mata's February 21, 2024 order.

Paragraph 52: Respondent admits that he subsequently posted a portion of another medical report on his law office blog.

Paragraphs 53, 55-58: Respondent admits filing a responsive document in the paternity case, on April 26, 2024, which included medical records and summary portions of expert medical reports which were prepared for the opposing party.

Paragraph 59: Respondent admits that he posted the April 26, 2024 response as well as attached medical information and documents on his publicly accessible online X (formerly Twitter) account, his law firm's website and/or other social media on April 27, 2024.

Turning to Mr. Gingras' Response, the PDJ agrees with Mr. Gingras, if there are issues of fact properly raised by the Answer, specific to the alleged ethic violations, the Motion should be denied.

In the Response, Mr. Gingras argues that the portion of Judge Mata's February 21, 2024 order listed in paragraph 41 conflicts with other orders such that it failed to provide Mr. Gingras with notice regarding the scope of the prohibited conduct. (*See* Response at page 7.) The PDJ considered whether such provides a valid defense to the filing in the docket medical records and the posting of such that Mr. Gingras admitted in his Response. The Answer nor Mr. Gingras' Response reflect any indication that he took any steps to clarify the language in paragraph 41, even after opposing counsel sent an email indicating that Mr. Gingras' posting was in violation of the February 21, 2024 order as reflected in paragraph 49. Such is problematic with regard to Mr. Gingras' ethical duties. However, Mr. Gingras points to filings made by opposing counsel after the issuance of the February 21, 2024 order that at a minimum present colorable claim with regard to Mr. Gingras' alleged mental state.

Therefore,

IT IS ORDERED the Motion is denied with regard to the above listed allegations.

II. Count One:

State Bar has alleged, **Respondent's disparaging comments about Judge Mata violated:**

Rule 41, Ariz. R. Sup. Ct.,

Rule 41(b) is captioned, Duties and Obligations

It states, The duties and obligations of members, including affiliate members, shall be:

(3) To maintain the respect due to courts of justice and judicial officers, [and]

(7) To avoid engaging in unprofessional conduct and to advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the duties to a client or the tribunal.

Rule 42, Ariz. R. Sup. Ct.,

- ER 4.4 (a)-

ER 4.4 is captioned: Respect for Rights of Others

It states in (a), It is professional misconduct for a lawyer to:

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden any other person, or use methods of obtaining evidence that violate the legal rights of such a person.

- ER 8.2(a)-

ER 8.2 is captioned: Judicial and Legal Officials

It states in (a),

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

- ER 8.4(d)-

ER 8.4 is captioned: Misconduct

It states,

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice;

The State Bar's Motion points to the following paragraphs of the Complaint and the Respondent's Answer as facts that satisfy the above allegations:

Paragraph 101-103, 105-107: Respondent admits making the cited statements regarding Judge Mata and the public, "the contents of which speak for themselves."

In his [Answer] "defense", Respondent affirmatively alleges that he believes(d) in the truth of the statements and believes that the statements constitute "an opinion protected by the First Amendment of the United States Constitution and by the Arizona Constitution."

The State Bar then argued that, "Respondent's belief is disproven by, among other cases, the following specific to attorney discipline:

- *In re: Matter of James Lawrence Riley*, 142 Ariz. 604, 691 P.2d 695 (1984).
- *In re: Meyer L. Ziman*, SB-12-0037-AP (PDJ 2011-9067); see also *In re: Meyer L. Ziman*, 174 Ariz. 61, 847 P.2d 106 (1993).
- *In re: Douglas B. Levy*, SB-21-0085-AP (PDJ 2019-9044).
- *In re: Vladimir Gagic*, SB-22-0085-AP (PDJ 2022-9050).

"While Respondent unequivocally admits making unprofessional and disparaging remarks about Judge Mata, Respondent again denies the conclusion that he violated the cited ethical rules." See Motion page 6-7.

Turning to Mr. Gingras' Response,

Mr. Gingras does not challenge the State Bar's indication of his admissions regarding paragraphs 101-103, 105-107 of the Complaint. Rather, he focuses his Response specifically to what he describes as speech "outside of the courtroom," (making no distinction between statements made in motions before the court and those on social media).

Regardless, Mr. Gingras seems to argue that *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 111 S. Ct. 2720, 115 L. Ed. 2d 888 (1991), is controlling and supports his proposition "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”² with regard to “free speech”³ in the instant case. The PDJ disagrees. In the *Gentile* case, the subject lawyer held a press conference in which the Nevada court found, “he kn[e]w or reasonably should know[n to] have ‘substantial likelihood of materially prejudicing’ [an] adjudicative proceeding.” The U.S. Supreme Court found that the Nevada rule was void for vagueness. The Court went on to state, “Moreover, this Court's decisions dealing with a lawyer's First Amendment right to solicit business and advertise have not suggested that lawyers are protected to the same extent as those engaged in other businesses, but have balanced the State's interest in regulating a specialized profession against a lawyer's First Amendment interest in the kind of speech at issue. *See, e.g., Bates v. State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810. Pp. 2740–2745.”

Next Mr. Gingras argues that the Arizona Supreme Court has “not published any decisions directly on this specific issue in the last 25 years.”⁴ The PDJ disagrees and agrees with the portions of the cases cited above as provided in the State Bar’s Reply. *See Reply*, pages 5-6. (*See also further discussion infra. regarding cases such as In re Martinez.*)

As well, Mr. Gingras asks the PDJ to consider other jurisdictions findings regarding his proposition, citing *In re Green*, 11 P.3d 1078, 1083 (Colo. 2000). In the *In re Green* case out of Colorado, the subject lawyer’s criticism was “**based upon fully disclosed and uncontested facts**, and thus, attorney could not be disciplined for making the statements.” Emphasis added. Even if such could be considered as persuasive authority in the instant matter, other courts have declined to follow *In re Green* decision as well.⁵ For example, in *Matter of Marshall*, 2023-NMSC-006, 528 P.3d 653

² Response, page 16.

³ The PDJ notes that Mr. Gingras has failed to identify any legal basis under which his specific written statements would qualify as protected speech. It is a well settled legal principle that constitutional protections on speech are extended to all speech. In *State v. Brown*, 207 Ariz. 231,234 , ¶ 8 (App. 2004), the Arizona Court of Appeals noted that to “resort to **epithets** or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution.” *Citing Cantwell v. Connecticut*, 310 U.S. 296, 309–10, 60 S.Ct. 900, 906, 84 L.Ed. 1213, 1221 (1940); *see also Chaplinsky v. New Hampshire*, 315 U.S. 568, 572, 62 S.Ct. 766, 769, 86 L.Ed. 1031, 1035 (1942); *State v. Starsky*, 106 Ariz. 329, 332, 475 P.2d 943, 946 (1970); *State v. Hagen*, 27 Ariz.App. 722, 725, 558 P.2d 750, 753 (1976). Emphasis added.

⁴ *Id.*

⁵ Additionally, Mr. Gingras submitted a newly decided U.S. Supreme Court case regarding a law banning certain types of therapy, *Chiles v. Salzar* (full citation was not provided). For multiple reasons, this is not

(March 2023), the New Mexico Supreme Court,

[used] an objective knowledge standard applied when determining if attorney's statements about integrity of judge violated professional conduct rule; after-acquired evidence was immaterial in case involving attorney who made unfounded statements about integrity of judge presiding over his case; attorney did not have objectively reasonable factual basis to support his allegations of bias and lack of candor against judge; attorney filed "frivolous pleadings," in violation of professional conduct rule, since facts and circumstances as they existed at time attorney filed his pleadings did not support his allegations of bias against judge; attorney engaged in conduct prejudicial to administration of justice, in violation of professional conduct rule, by making statements that undermined public confidence in the judiciary.

Given Mr. Gingras' stated proposition regarding his speech "outside of the courtroom," the PDJ notes that a portion of Mr. Gingras' written statements at issue here were in a court pleading in a case in which he represented a client. Unprofessional conduct during the practice of law may result in the imposition of discipline pursuant to Rule 41(b)(7), Ariz. R. Sup. Ct. Rule 41, cmt 1. Unprofessional conduct includes "substantial or repeated violations of the Oath of Admission to the Bar or the Lawyer's Creed of Professionalism of the State Bar of Arizona." Rule 41(a).

The Oath of Admission to the Bar ("the Oath") provides, in pertinent part, that lawyers: (1) "will treat the courts of justice and judicial officers with respect;" (2) "will avoid engaging in unprofessional conduct;" (3) "will not advance any fact prejudicial to the honor or reputation of a party or witness unless required by [their] duties to [their] client or the tribunal;" and (4) "will at all times faithfully and diligently adhere to the rules of professional

controlling or persuasive authority.

responsibility and A Lawyer's Creed of Professionalism of the State Bar of Arizona."

The Creed of Professionalism of the State Bar of Arizona ("the Creed") requires lawyers to conduct themselves in accordance with the Creed when dealing with clients, opposing parties, opposing counsel, tribunals, and the general public. Lawyers must be "courteous and civil, both in oral and written communication." In negotiations, depositions, and other proceedings, they are to conduct themselves "with dignity" and not "be rude or disrespectful."

Our Supreme Court has found within the last six years that Rule 41(b)(7) "is not merely aspirational." *In re Martinez*, 248 Ariz. 458, 465 (2020) (interpreting former Rule 41(g)). Diligent and competent representation of a client does not require or justify denigrating, disrespectful, belittling language. *See, e.g., In re Bemis*, 189 Ariz. 119, 122 (1997) ("Respondent says that he would not have behaved as he did if the judge had acted properly . . . Regardless of respondent's belief that his actions were necessary to protect the clients' interests, his behavior was inexcusable."); *The Florida Bar v. Norkin*, 132 So. 2d 77, 92-93 (Fla. 2013) ("Attorneys should focus on the substance of their cases, treating judges and opposing counsel with civility, rather than trying to prevail by being insolent toward judges and purposefully offensive toward opposing counsel.").

Further the PDJ finds that Mr. Gingras has not asserted that the language quoted in the Complaint that has been conceded was objectively and reasonably necessary to advance his client's matter. Assuming arguendo he had effectively done so, the U.S. Supreme Court has indicated, in *Nix v. Whiteside*, 106 S. Ct 988, 995 (1986), "an attorney's ethical duty to advance the interests of his client is limited by an equally solemn duty to comply with the law and standards of professional conduct." As well, our Supreme Court has found in *Bemis* that disagreement with legal rulings does not justify vituperative attacks on the judiciary:

The court is most concerned with respondent's refusal to accept that his conduct cannot be justified by any perceived unfairness in the judges' rulings. As the commission noted, "this matter was the result

of [his] misguided, overzealous efforts to obtain a successful result for his clients.” Respondent must realize that “[z]ealous advocacy has limits. It clearly does not justify ethical breaches.” 189 Ariz. at 122.

The PDJ finds that Mr. Gingras has admitted the conduct described in paragraphs 101-103, 105-107 and has failed to present a valid defense with regard to findings of violation of Rule 41(b)(3) and (7), and Rule 42, Ariz. R. Sup. Ct., ER 4.4(a), 8.2(a), and 8.4(d). These findings shall proceed to an Aggravation and Mitigation proceeding at the appropriate time.

Therefore,

IT IS ORDERED granting the State Bar’s Motion for Judgement on the Pleadings, in part, with regard to Paragraphs 101-103, 105-107 of Count One of the Complaint, finding Respondent’s admitted comments, about Judge Mata provided therein, violate Rule 41(b)(3) and (7), and Rule 42, Ariz. R. Sup. Ct., ER 4.4(a), ER 8.2(a), and ER 8.4(d).

IT IS FURTHER ORDER that the State Bar file the appropriate pleading or Notice in the record within 5 calendar days of this order indicating whether the State Bar intends to proceed on any outstanding allegations in the Complaint or moves to dismiss the outstanding allegations, requesting that the evidentiary currently set be vacated and for the OPDJ to schedule the matter for an Aggravation and Mitigation hearing on the admitted violations only.

DATED this 14th day of April, 2026.

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

Please note, an unfinished version of this ruling was mistakenly sent via email to the parties on April 8, 2026. It was withdrawn as soon as the error was identified. The PDJ and the OPDJ apologize for any confusion that said email may have caused either party, the above is the final and official ruling on the pleadings referenced.

Copy of the foregoing emailed
this 14th day of April, 2026, to:

David S. Gingras (Respondent)

[REDACTED]

James D. Lee (Senior Bar Counsel)

Craig Henley (Senior Bar Counsel)

[REDACTED]

by: CLopez

Exhibit 12

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

**BRIEFING RE:
MOTION TO
DISMISS**

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

FILED APRIL 30, 2026

The Presiding Disciplinary Judge (“PDJ”) has reviewed the Respondent Gingras’ Motion to Dismiss pursuant to ARS § 12-751 (also referred to as “Arizona’s anti-SLAPP law”) filed April 14, 2026, in which he argues “Dismissal is required because the Complaint contains claims which arise from state and federally constitutionally protected speech and petitioning activity.” The PDJ finds that the requested application of ARS § 12-751 in Arizona attorney discipline to be a case of first impression.

The Arizona Supreme Court (the “Court”) is provided with the constitutional responsibility to administer an integrated judicial system, which allows it to regulate the practice of law pursuant to the Arizona

Constitution, Article 6 §§ 1,3. The Court has issued rulings in recent cases in which the Court has exercised its authority to regulate attorney's conduct (including pleadings) and speech, such as *In re Levy*, No. SB-21-0085-AP (10/26/22) (in which the Court affirmed its finding in *In re Martinez*, 248 Ariz. 458 (2020), that the Oath and Creed are not aspirational but enforceable with regard to an attorney's use of abusive language without regard to whether it reflects the attorney's "honest opinion" by applying an objective standard to the language) and *In re Gagic*, No. SB-22-0085-AP (05/03/2023) (in which the Court affirmed the long-term suspension of a lawyer who was found to have "made unsubstantiated contentions that a judge is engaged in a 'cover up' and also made wild, unsubstantiated accusations that several judges are motivated by personal animus.")

Given the Court's exercise of its constitutional authority in attorney discipline, including the sanctioning of lawyer's conduct and speech, the PDJ finds that it would assist her review, for the parties to **brief the issue as to whether the Court's supremacy precludes this legislation's application in discipline proceedings.** Therefore,

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.**

DATED this 30th day of April, 2026.

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

Copy of the foregoing emailed
this 30th day of April, 2026, to:

David S. Gingras (Respondent)

[REDACTED]

Marc J. Randazza

[REDACTED]

Respondent's Counsel

James D. Lee (Senior Bar Counsel)

Craig Henley (Senior Bar Counsel)

[REDACTED]

by: CLopez

Exhibit 13

BEFORE THE PRESIDING DISCIPLINARY JUDGE

C.LOPEZ

DISCIPLINARY CLERK

**IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,****DAVID S. GINGRAS
Bar No. 021097
Respondent.****No. PDJ 2026-9010****RESPONDENT'S BRIEFING RE:
MOTION TO DISMISS****I. INTRODUCTION**

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.” This pleading provides Respondent’s position on this issue.

To begin, the real concern here does not appear to be “supremacy,” but rather *separation of powers*. To rephrase the question: when the Arizona Legislature amended A.R.S. § 12–751 in 2022, did this usurp the Supreme Court’s *exclusive* authority to establish procedural rules for bar cases? That is a separation of powers issue, not a supremacy concern. However, supremacy as a separate issue is discussed below.

As explained below, A.R.S. § 12–751 does not violate the separation or “distribution” of powers clause in Article III of the Arizona Constitution. That exact legal issue was recently resolved in *State v. Koert*, a case Respondent mentioned on pages 2–3 of his Reply In Support of Motion for Leave to Exceed Page Limits.¹ In *Koert*, the Superior Court found A.R.S. § 12–751 was constitutional and did not violate “our Supreme Court’s procedural rulemaking authority” Because that ruling is correct, supported by other authority (including from the Supreme Court), this Court must reach the same conclusion.

¹ Available at: <https://gingraslaw.com/wp-content/uploads/2026/04/Giingras-Reply-ISO-Page-Limits-PDJ2026-9010-conformed.pdf>

II. PREFATORY COMMENT RE: SUPREMACY

Before addressing the Court’s specific legal question about the anti-SLAPP law, an important preliminary comment must be made. In this Court’s order, the PDJ repeated a line mentioned in multiple prior pleadings/orders: “that the Oath and Creed are not aspirational but enforceable” It appears the PDJ cites this line as support for the idea that the Arizona Supreme Court holds unlimited final and supreme authority to adopt *any* rules it desires, and that the PDJ may (indeed must) enforce those rules as-written.

That view is incorrect as a matter of law. The PDJ’s view is not wrong because it is *inaccurate*, but rather because it is *incomplete*.

The PDJ is right about one thing – the Arizona Supreme Court has admonished lawyers that the Rules of Professional Conduct and the lawyer’s Oath and Creed are “not aspirational.” Fair enough. But that is not the end of the analysis. The Arizona Supreme Court is not the final, nor is it the supreme, arbiter of the law.

The supreme law of the land is not Arizona law, nor the pronouncements of the Arizona Supreme Court; the Alpha and the Omega in a constitutional republic is the *Constitution*. The supreme law of the land is the United States Constitution, because it says so (with odd capitalization from 250 years ago): “the Laws of the United States ... shall be the supreme Law of the Land; ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. The role of the Supremacy Clause is well-settled; “Under the Supremacy Clause of the Federal Constitution, when a state law conflicts with a properly enacted federal law, the state law is preempted.” *Varela v. FCA US, LLC*, 505 P.3d 244, 250 (Ariz. 2022).

Here is where the concept of “supremacy” comes into play. The United States Supreme Court has spoken clearly about the limits imposed on the states by the supremacy clause: “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.” *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1054 (1991). Period.

Thus, while the Arizona Supreme Court has correctly noted the ethical rules are “not aspirational,” the Court was certainly not speaking as if they believed that there was no supremacy clause, nor that their own actions were not constrained by both the Constitution of the State of Arizona and the Constitution of the United States. The Constitutions are themselves not merely aspirational, and the U.S. Supreme Court’s decisions in *Gentile* and *Chiles v. Salazar*, 607 U.S. ____, 2026 WL 1433456 (2026) are controlling. Even the Supreme Court of Arizona, if it were to seek to find a way to overcome *Gentile* and *Salazar*, it would realize that it had no avenue to travel that could lead around those decisions. *See National Insts. of Health v. Am. Pub. Health Ass’n*, 145 S. Ct. 2658, 2663 (2025) (mem.) (Gorsuch, J., concurring in part and dissenting in part) (“Lower court judges may sometimes disagree with this Court’s decisions, but they are never free to defy them.”).

The complete and accurate legal rule is as explained by the U.S. Supreme Court in *Gentile* is this: no matter what ethical rules the Arizona Supreme Court adopts, those rules “cannot punish activity protected by the First Amendment.” Thus, while none of the ethical rules are aspirational in a general sense, the reach of those rules (and this Court’s application of them) is *always* strictly limited by the First Amendment, and by binding decisions from the United States Supreme Court.

Having said that, this response will address the PDJ’s specific question concerning the legality of the anti-SLAPP law.

III. DISCUSSION

a. Separation of Powers – General Rules

Although the PDJ referred to the issue of “supremacy” (which *does* play a role in this case for the reasons explained above), the question concerning A.R.S. § 12–751 does not implicate the supremacy clause. The question involves separation of powers:

The Arizona Constitution identifies the three branches of government—the legislative, executive, and judicial—and provides that they “shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others.” Ariz. Const. art. III. Among the powers ascribed to the supreme court is the “[p]ower to make rules relative to all **procedural matters** in any court.” Ariz. Const. art. VI, § 5(5) Our supreme court clarified . . . however, that *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.”

Lear v. Fields, 226 Ariz. 226, 229–30, 245 P.3d 911, 914–15 (Ariz.App. 2011) (emphasis added) (cleaned up) (citing/quoting *Seisinger v. Siebel*, 220 Ariz. 85, ¶ 7, 203 P.3d 483, 486 (Ariz. 2009); *State ex rel. Collins v. Seidel*, 142 Ariz. 587, 590, 691 P.2d 678, 681 (Ariz. 1984)).

The legislative branch *makes law*. The executive branch *enforces* the law. The judicial branch *interprets* the law. The Arizona constitution mandates that each branch is generally “separate” from the others; i.e., each is forbidden from exercising (or “usurping”) the powers of any other branch per Article III of the Arizona Constitution, but with some allowable overlap (i.e., courts certainly play a role in *enforcing* laws).

Under Article III, the Arizona Supreme Court cannot *create* new substantive laws, because that is the Legislature’s role. However, the Court *can* adopt **procedural rules**; i.e., what font colors are permitted, how long a brief may be, and so forth.

These rules are simple and clear enough, BUT with at least two important caveats – first, the Legislature can **always** create/change **substantive law** (since that is *not* a power held by the Supreme Court). Second, the Legislature can also create procedural rules for the courts without creating a separation of powers problem, as long the Legislature’s rules do not directly *conflict* with any existing Supreme Court rule. *See State v. Brearcliffe*, 254 Ariz. 579, 584–85 (Ariz. 2023).

Brearcliffe is illustrative. That case involved an Arizona statute, A.R.S. § 13–4033(C), created by the Legislature, which prohibited criminal fugitives from appealing convictions if they fled the state. *See Brearcliffe*, 254 Ariz. at 581. The defendant in *Brearcliffe* was convicted and fled to California where he was later arrested. He attempted to appeal, but the State moved to dismiss, claiming A.R.S. § 13–4033(C) barred the appeal. In response, the defendant argued: “§ 13-4033(C) is unconstitutional because it is a procedural law that usurps this [Supreme] Court’s rulemaking authority.” 254 Ariz. at 584, ¶ 20. That is the same separation of powers concern the PDJ raised here regarding the anti-SLAPP law.

The Supreme Court rejected that argument, noting, “The legislature may properly enact statutory procedures that supplement, rather than conflict with, rules this Court has promulgated” 254 Ariz. at 584–84 (emphasis added), The Court found A.R.S. § 13–4033(C) did not *conflict* with any existing Rule of Criminal Procedure; it only *supplemented* the rules (by adding a rule where the Supreme Court had not yet spoken).

As such, the *Brearcliffe* Court held the law was constitutional. This was true even though the law was procedural in nature and even though it was created by the Legislature. The Court held the law did not usurp its rule-making authority and was thus valid. *See id.*

The holding of *Brearcliffe* is simple—the Arizona Supreme Court does not possess *exclusive* authority to create procedural rules. As the Court itself explained, the Legislature may also create rules for the courts, provided the Legislature’s rule does not directly conflict with any existing Court-created rule. Only when a direct conflict arises is there any need to consider separation of powers.

That is the case here. Nothing in A.R.S. § 12–751 *conflicts* with any procedural rule applicable to this proceeding; it merely supplements the rules. Supreme Court Rule 48 adopts *some* Civil Procedure Rules for use in discipline cases. But nothing in Supreme Court Rule 48 *prohibits* the application of any substantive Arizona statutory law.

That makes sense given that *multiple* Arizona statutes can and do apply in discipline cases. As just two examples, clearly A.R.S. § 13–2702 (prohibiting perjury) applies here, as does A.R.S. § 12–353 (making an award of attorney’s fees mandatory for a prevailing respondent in a bar discipline proceeding). Supreme Court Rule 48 does not *exclude* those statutes from applying in discipline matters. If it did, then would we say perjury or fee shifting no longer apply unless the Supreme Court of Arizona makes its own rules pertaining to those subjects? Of course not. By the same logic, the anti-SLAPP law can also apply here without running afoul of separation of powers.

A.R.S. § 12–751 does not *conflict* with any existing procedural rule; it merely *supplements* those rules (exactly like A.R.S. § 13–4033(C) as approved in *Brearcliffe*). It is therefore constitutional and valid and must be applied as valid law.

b. A.R.S. § 12–751 Has Previously Been Held Constitutional

Although A.R.S. § 12–751 is relatively new (having been amended in late 2022), the law has been applied without much difficulty, at least in one recent civil case. *See Lucky’s, LLC v. Berman*, 2025 WL 2218597 (Ariz.App. 2025) (discussing and applying anti-SLAPP law in civil defamation case). The Court of Appeals did not consider whether the anti-SLAPP law was *constitutional* in *Lucky’s*, because that argument was never raised by any party – probably because the answer was obvious.

However, if the anti-SLAPP law was *not* constitutional (because it infringed the Supreme Court’s rule-making authority), the Court of Appeals could not have reached the conclusion it did in *Lucky’s*. Indeed, if the Arizona Supreme Court really has sole and exclusive authority to establish all rules that govern legal proceedings, the anti-SLAPP law would be invalid in *every case*, not just bar discipline cases. Thus, the fact that the Court of Appeals *presumed* the legal validity of A.R.S. § 12–751 weighs heavily in favor of this Court reaching the same conclusion.

As Respondent’s anti-SLAPP motion noted, other states with similar laws, such as Texas, have held they apply in bar discipline cases. *See, e.g., Commission for Lawyer Discipline v. Rosales*, 577 S.W.3d 305, 308 (Tex. App. 2019) (holding the Texas Citizen Participation Act or “TCPA”, a law similar to A.R.S. § 12–751, “applies to the Commission’s disciplinary proceeding against [an attorney]...”); *Robins v. Commission for Lawyer Discipline*, 2020 WL 101921, at *8 (Tex. App. 2020) (agreeing TCPA applies in lawyer discipline cases, because: “The TCPA was enacted to safeguard the constitutional rights to petition, speak freely, associate freely, ‘and otherwise participate in government’ from infringement by meritless lawsuits.”)

Even more helpful is a case Respondent mentioned just weeks ago – *State v. Koert*, Maricopa County Superior Court Case No. LC2025-000363. Pursuant to Ariz. Sup. Ct. R. 111(c), a copy of is attached as Exhibit A, and is available online here: <https://gingraslaw.com/wp-content/uploads/2026/04/Koert.pdf>

Koert is helpful because the case involved the same issue raised by the PDJ – whether A.R.S. § 12–751 invades the Arizona Supreme Court’s rulemaking authority. The Superior Court easily determined the answer to that question was no.

The defendant in *Koert* was arrested and charged with trespassing after she attended a protest at Arizona State University. She then invoked A.R.S. § 12–751, claiming the charges were “substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right” (meaning her First Amendment right to protest). The trial court (a justice court) found the defendant made a *prima facie* showing as required by the law, and the court set the matter for an evidentiary hearing.

The Maricopa County Attorney then filed a special action in the Superior Court, arguing among other things, that A.R.S. § 12–751 was unconstitutional because it violated the Supreme Court’s *exclusive* right to adopt procedural rules. The Superior Court rejected that argument:

The legislature may not abrogate judicially-created rules of procedure. *Seisinger v. Siebel*, 220 Ariz. 85 (2009). To determine whether a statute impermissibly infringes on our Supreme Court’s procedural rulemaking authority, courts evaluate whether (1) there is a conflict between the statute and the rule, and (2) the statute is a substantive or a procedural law. *State v. Brearcliffe*, 254 Ariz. 579, 585, (2023). “Substantive law creates, defines and regulates rights” whereas a procedural law “prescribes the method of enforcing such rights or obtaining redress.”

This statute creates an affirmative defense to otherwise meritorious criminal actions where the motivations behind those actions are constitutionally

impermissible. This is a substantive rather than procedural law and therefore this statute is not an unconstitutional infringement on the Supreme Court’s procedural rulemaking authority.

Koert, LC2025-000363 at 4 (emphasis added).

Of course, as noted above, the Arizona Supreme Court *does not* possess exclusive authority to create procedural rules. As long as a legislatively-passed procedural rule does not conflict with any existing rule adopted by the Supreme Court and does not abrogate any existing rule, the legislature is free to adopt any rules it deems necessary. In that case, if the Supreme Court deems the Legislature’s rule to be bad policy, the Court can simply reject it (assuming the rule is *procedural*, since the Supreme Court has no authority to create or change substantive law for policy reasons).

IV. CONCLUSION

A.R.S. § 12–751 is plainly constitutional. It was passed by the Arizona legislature for the express purpose of protecting the First Amendment rights of all Arizonans, including lawyers. The law prohibits state actors from retaliating against any person for exercising constitutionally protected rights, and it requires such claims to be resolved in an expeditious manner. For those reasons, the Court should proceed with addressing Respondent’s anti-SLAPP motion on the merits as soon as possible.

Submitted May 4, 2026.

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CERTIFICATE OF SERVICE

Original electronically filed via email to [REDACTED] on May 4, 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

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000363-001 DT

04/14/2026

HONORABLE KEVIN B. WEIN

CLERK OF THE COURT
A. Rowe
Deputy

STATE OF ARIZONA

PHILIP DANIEL GARROW

v.

MICHAELA JOY KOERT (001)

ALEXANDER R ARPAD

STEPHEN DOMINIC BENEDETTO
RUSSELL B FACENTE
CHRISTINA GRIFFIN CARTER
SUSAN ALI BASSAL
JARED G KEENAN
JUDGE WEIN
REMAND DESK-LCA-CCC
UNIVERSITY LAKES JUSTICE COURT

UNDER ADVISEMENT RULING

The Court has received and reviewed the State of Arizona's Petition for Special Action, Defendant's Response, and the State's reply. The Court has also received and reviewed amici briefs from various interested parties. The Court held oral argument on February 27, 2026, and then took the matter under advisement. For the reasons discussed below, the Court accepts jurisdiction but denies relief.

Background and Procedural History

This action arises from a case in which a group of protestors on ASU's campus, including Respondent Michaela Koert, were charged with misdemeanor trespassing. On June 10, 2025, in Justice Court, Koert filed a Motion to Dismiss and a Motion to Set for Evidentiary Hearing Pursuant to ARS § 12-751(C). The parties fully briefed the issue. The Justice Court ruled that the "defense ha[d] met their burden as to the potential prima facie case warranting an evidentiary

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000363-001 DT

04/14/2026

hearing ...” (State's Motion to Supplement the Record, Exhibit P at 6). The State filed a Motion for Reconsideration, which the Justice Court denied on October 2, 2025. The State then filed this Special Action.

In its Special Action, the State broadly makes two arguments. First, the State argues that the Justice Court abused its discretion when it found that Koert satisfied her prima facie burden to prove that the prosecution was “substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right.” The State contends that the Justice Court misapplied the plain language of the statute. Specifically, the State argues that Koert did not make the required showing. The State argues that Koert had the burden of making a prima facie pre-trial showing that the trespassing she allegedly engaged in was lawful (or, as phrased in the Petition, that the ASU time, place, and manner restrictions were unreasonable). The State also argues that ARS § 12-751 is unconstitutional for various reasons.

Analysis

1. The Justice Court Correctly Applied the Plain Language of the Statute

ARS § 12-751, generally referred to as the “Anti-Strategic Lawsuit Against Public Participation Statute,” was substantially amended in 2022. By its plain language, the law allows an individual to obtain dismissal of a legal action, including a criminal prosecution, if there is 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.” ARS § 12-751(B).

The State argues that, to invoke this statute, a criminal defendant must bring forth prima facie proof that the defendant is not guilty of the charged offense. The State frames this slightly differently in its pleadings, but at oral argument it agreed that “the only way this statute comes into play is if, at the motion to dismiss stage ... the defense can make a prima facie showing that the conduct ... was lawful.” This position has no support in the statute’s plain language and undermines its application to criminal proceedings.

As Koert correctly notes, the statute merely requires prima facie proof that the prosecution was substantially motivated by an improper and unconstitutional purpose. Nowhere does the statute require proof that the defendant’s conduct was lawful. And, as several amici note, the statute protects against prosecutions aimed at both past and future conduct, further undermining the State’s interpretation.

The statute plainly applies to criminal proceedings, but the State’s interpretation is inconsistent with that application. If a defendant is factually innocent and can establish that innocence (notwithstanding the fact that under our criminal justice system a defendant is deemed

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000363-001 DT

04/14/2026

innocent until proven guilty) then a motion under ARS § 12-751 would be unnecessary. And the State’s argument that Koert cannot invoke this statute because probable cause was already found, and not challenged, runs contrary to the legislature’s expressed intent.

Instead, the statute gives a defendant—including one who may otherwise be guilty—a mechanism to argue that the charges must be dismissed because of the unconstitutional motivations of the prosecutor. This is true regardless of whether the conduct was lawful. The Justice Court correctly applied the statute when it found that Koert had met her burden to bring forth *prima facie* evidence of the unconstitutional motivations of the prosecutor. Whether her conduct was lawful is irrelevant to an Anti-SLAPP motion.

2. ARS § 12-751 Does Not Violate the Constitution

A. The Statute Does Not Infringe on Executive Authority

The scope of the powers of the three branches of government is well-settled. As cases cited by the State acknowledge, “the legislative department has the power to define what conduct constitutes a crime.” *State v. Ramsey*, 171 Ariz. 413 (App. 1992). The Executive branch “has the power to enforce the law.” *Id.* But that power may be restricted by the legislature. *Andrews v. Wllrich*, 200 Ariz. 533, 537 (App. 2001). The judiciary, in its authority, should not exercise oversight of prosecutorial discretion. *Carson v. Gentry in and for the County of Maricopa*, 574 P.3d 205 (Ariz. 2025). But it’s the legislature that defines the bounds of that discretion and a judiciary that enforces these boundaries does not overstep its authority.

Here, the legislature limited the authority of prosecutors by prohibiting prosecutions substantially motivated by a desire to deter, retaliate against, or prevent the exercise of constitutional rights. This falls squarely within the legislature’s powers to define what conduct constitutes a crime, and the State cites no contrary authority.

The State concedes that there are already existing permissible limitations on prosecutorial charging decisions, namely selective prosecution claims and vindictive prosecution claims. The State argues that these limitations are the only permissible ones that may address prosecutorial intent. The State offers no case law or other binding authority to support this. The Court agrees with the State Senate President and the Speaker of the Arizona House of Representatives that this statute permissibly supplements and strengthens constitutional protections against vindictive prosecutions. As that brief argues, the legislature is free to create a process that “shifts the burden of proof to the government after adducing only a *prima facie* showing of an improper motive.” Brief of *Amici Curiae* Arizona State Senate President Warren Petersen and Speaker of the Arizona House of Representatives Steve Montenegro at p. 10. There is no support for the State’s argument

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000363-001 DT

04/14/2026

that §12-751 must strictly adhere to the governing principles set forth by selectivity and vindictiveness claims to pass constitutional muster.

B. The Statute Does Not Violate the Victims' Bill of Rights

It is true that this statute does not mention victims or victims' rights. But this silence does not mean that the statute somehow violates a victim's rights or any of the statutes or constitutional provisions protecting victims' rights. Nothing in the statute suggests that victim's rights do not apply and victims retain all their rights as outlined in Arizona law.

C. The Statute Does Not Conflict With the Rules of Criminal Procedure

The legislature may not abrogate judicially-created rules of procedure. *Seisinger v. Siebel*, 220 Ariz. 85 (2009). To determine whether a statute impermissibly infringes on our Supreme Court's procedural rulemaking authority, courts evaluate whether (1) there is a conflict between the statute and the rule, and (2) the statute is a substantive or a procedural law. *State v. Brearcliffe*, 254 Ariz. 579, 585, (2023). "Substantive law creates, defines and regulates rights" whereas a procedural law "prescribes the method of enforcing such rights or obtaining redress."

This statute creates an affirmative defense to otherwise meritorious criminal actions where the motivations behind those actions are constitutionally impermissible. This is a substantive rather than procedural law and therefore this statute is not an unconstitutional infringement on the Supreme Court's procedural rulemaking authority.

D. The Statute Is Neither Vague nor Overbroad

The State argues that the term "substantially motivated" is both vague and overbroad. It is not. "The United States Supreme Court long ago recognized that vagueness challenges fail when a statute employ[s] words or phrases having ... a well-settled common-law meaning." *Arizona Creditors Bar Ass'n v. State*, 257 Ariz. 406, 413 (2024). The term "substantially motivated" appears in both statutes and case law, both Arizona and federal. The Court finds that the phrase has a well-settled common law meaning and is, therefore, not vague.

Similarly, the statute is not subject to an overbreadth challenge. As the legislative amici note, courts "have not recognized an "overbreadth" doctrine outside the limited context of the First Amendment." *United States v. Salerno*, 481 U.S. 739, 745 (1987). The State does not assert a First Amendment interest here, and the doctrine does not apply.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000363-001 DT

04/14/2026

Conclusion

For all the reasons discussed, the Court finds that the Justice Court did not err in concluding that Koert made a prima facie showing that the prosecution was substantially motivated by a desire to deter, retaliate against, or prevent the lawful exercise of a constitutional right. The Court also finds that ARS § 12-751 is constitutional. The Court accepts jurisdiction of the State's Petition for Special Action but denies relief.

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.

Exhibit 14

05-15-2026

James D. Lee, Bar No. 011586
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Senior Bar Counsel
State Bar of Arizona

C. LOPEZ
DISCIPLINARY CLERK

Phoenix, Arizona 85016-6266
Telephone: [REDACTED]

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

**STATE BAR'S BRIEF ADDRESSING
THE APPLICABILITY OF A.R.S.
§ 12-751 TO LAWYER DISCIPLINE
PROCEEDINGS**

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

The State Bar of Arizona, by undersigned bar counsel, hereby submits this brief addressing the applicability of A.R.S. § 12-751 (Arizona's anti-SLAPP statute) to lawyer discipline proceedings.¹

Introduction

To determine whether the anti-SLAPP statute applies in lawyer discipline cases, one must first consider the Arizona Supreme Court's jurisdiction over lawyer discipline and the underlying purposes of the Rules of Professional Conduct.

Arizona Supreme Court's Jurisdiction re: Lawyer Discipline

The Arizona Supreme Court noted its authority over the practice of law as

¹ This brief addresses only the issue set forth in the PDJ's order dated April 30, 2026 ("whether the Court's supremacy precludes . . . application of A.R.S. § 12-751 in discipline proceedings"); it does not address the procedures or requirements set forth in the statute.

follows:

[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.

Hunt v. Maricopa County Employees Merit Sys. Comm’n, 127 Ariz. 259, 261-62, 619 P.2d 1036, 1038-39 (1980) (emphasis added).

The Supreme Court’s authority to regulate the practice of law is found in articles 3 and 6 of the Arizona Constitution. Article 3 states:

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.

Article 6, § 1 vests “judicial power” in “an integrated judicial department,” while article 6, § 5(5) states that the Arizona Supreme Court has the “[p]ower to make rules relative to all procedural matters in any court.”

Based on the Arizona Supreme Court’s constitutional authority over the courts and the practice of law, application of the anti-SLAPP statute to lawyer disciplinary proceedings could interfere with the Court’s exercise of its ultimate authority over the practice of law. For example, the resolution of charges of misconduct may be delayed and otherwise adversely affected if the state’s anti-SLAPP statute applies in lawyer discipline proceedings. If the statute applies in discipline proceedings, the Presiding Disciplinary Judge (PDJ) must conduct an evidentiary hearing or consider the parties’ pleadings upon receipt of a motion to dismiss premised on the statute, during which all discovery proceedings must be stayed if *prima facie* evidence is found. A.R.S. § 12-751(E). The

PDJ may, however, grant a motion for discovery for good cause shown. *Id.* The delay in conducting discovery and the burden associated with the possible presentation of the same evidence at two distinct hearings (one based on an anti-SLAPP motion to dismiss, and the other a hearing on the allegations of misconduct if the respondent-lawyer's motion to dismiss is denied).

The State Bar investigates and prosecutes charges that lawyers have made disparaging or otherwise inappropriate comments about judges and others. Although lawyers retain First Amendment rights, their free speech right and right to petition the government are restricted (*i.e.*, lawyers do not always enjoy the same rights that nonlawyers enjoy, at least in the context of the practice of law). *See In re Riley*, 142 Ariz. 604, 691 P.2d 695 (1984) (“a lawyer is held to a narrower standard of free speech than a non-lawyer when discussing the judiciary”), *In re Ziman*, SB-12-0037-AP/PDJ 2011-9067) (appeal denied Dec. 4, 2012) (hearing panel found misconduct based in part on speech), *In re Ziman*, 174 Ariz. 61, 847 P.2d 106 (1993) (misconduct found based in part on a profane and insulting remark), *In re Levy*, SB-21-0085-AP (October 26, 2022) (dec. order) (Rule 41(g), now Rule 42(b)(7), is not merely aspirational), *In re Martinez*, 248 Ariz. 458, 465, ¶ 22 (2020) (an objective standard is used to determine if demeaning language constitutes unprofessional conduct), and *In re Gagic*, SB-22-0085-AP (May 3, 2023) (dec. order) (misconduct found based in part on unsubstantiated contentions about judges).

Statutory Construction

“A basic tenet of statutory construction is that statutes should be construed so as to

be constitutional whenever possible.” *In re Shannon*, 179 Ariz. 52, 78, 876 P.2d 548, 574 (1994) (citation omitted). The Supreme Court, however, “consistently ha[s] held that the legislature does not have the power ‘to enact laws that would make it impossible, or even unreasonably difficult’ for the judicial department to perform its constitutional function.” *Id.* at 79, 876 P.2d at 575 (citation omitted).

Generally, both the legislature and the Arizona Supreme Court have constitutional authority to create substantive and procedural legal rights, subject to limitations established by the constitution’s separation of powers; the legislature is generally responsible for establishing substantive rights, whereas the Supreme Court is generally responsible for establishing procedural rights. *Seisinger v. Siebel*, 220 Ariz. 85, 92 ¶¶ 26-27, 203 P.3d 483, 490 (2009).

To determine whether a statute invades the authority of the Supreme Court, one must first determine whether it creates a substantive right or a procedural right. *Seisinger v. Siebel*, 220 Ariz. 85, 91 ¶ 24, 203 P.3d 483, 489 (2009). If the statute is “substantive,” the statute (generally) prevails. *Id.* at 92 ¶ 26, 203 P.3d at 490. If a statute is procedural, but conflicts with a court rule, the rule prevails. *Id.* at 89 ¶ 8, 203 P.3d 487.

“[I]t is generally agreed that a substantive law creates, defines, and regulates rights while a procedural one prescribes the method of enforcing such rights or obtaining redress.” *Carson v. Gentry in and for County of Maricopa*, ___ Ariz. ___, ¶ 77, 574 P.3d 205, 221 (2025) (quoting *Allen v. Fisher*, 118 Ariz. 95, 96, 574 P.2d 1314, 1315 (App. 1977)). Determining whether a statute is procedural or substantive, however, is not always simple. “A ‘state procedural rule, though undeniably procedural in the ordinary

sense of the term,’ may exist to ‘influence substantive outcomes,’ and may in some instances become so bound up with the state-created right or remedy that it defines the scope of that substantive right or remedy.” *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 416-17, 419-20, 130 S.Ct. 1431, 1450, 176 L.Ed.2d 311, ____ (2010) (Stevens, J., concurring in the judgment) (internal citation marks omitted).

In addressing that issue, the Arizona Court of Appeals has stated:

That a statute creates a procedural rule does not automatically render it invalid as a violation of the separation of powers provision. As our Supreme Court noted in *State ex rel. Collins v. Seidel*, 142 Ariz. 587, 591, 691 P.2d 678, 682 (1984), the legislature may enact procedural rules so long as they merely supplement, but do not contradict, existing court-made rules. It is the role of the courts to review a legislatively created rule to determine whether it meets the test enunciated in *Seidel* or, conversely, impermissibly infringes on the constitutional power vested in our Supreme Court. *Id.*

Encinas v. Pompa, 189 Ariz. 157, 159, 939 P.2d 435, 437 (App. 1997).

Arizona’s Anti-SLAPP Statute, A.R.S. § 12-751

Arizona’s anti-SLAPP statute establishes a procedure to promptly address whether a legal action is “*substantially* motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right.” A.R.S. § 12-751(A) and (B) (Emphasis added). The procedure will ultimately result in a finding whether a legal action was brought for an improper purpose. Although the two branches of government have (generally) distinct purposes, even if that statute were to be found to be exclusively procedural, the Supreme Court will enforce it if it is reasonable and workable, and does not conflict with Court rules. *State v. Reed*, 248 Ariz. 72, 76, 456 P.3d 453, 457 (2020)

("[W]e will recognize 'reasonable and workable' procedural laws if they supplement rather than conflict with court procedures") (citation omitted).

The Arizona Supreme Court could, alternatively, determine that the anti-SLAPP statute provides substantive rights to litigants. For example, the Arizona Supreme Court may defer to legislation regarding procedural matters that promote substantive goals of public policy. *See Readenour v. Marion Power Shovel*, 149 Ariz. 442, 446, 719 P.2d 1058, 1062 (1986) (Supreme Court deferred to legislation pertaining to relevant evidence that "promote[d] substantive goals of public policy such as accident prevention"). The statute's inclusion of language authorizing the recovery of costs and reasonable attorney fees may also be deemed to create a substantive right. Furthermore, the statute may also create a substantive right because it provides a procedure for citizens to promptly prevent forced litigation of a non-meritorious case, which could result in the expenditure of time and money.

When determining whether a statute is procedural or substantive, the Supreme Court looks at "the true function of the statute" at issue rather than relying on labels. *Seisinger*, 220 Ariz. at 93 ¶ 31, 203 P.3d at 491. At least one court has found that an anti-SLAPP statute was a "hybrid procedural/substantive law." *Diamond Ranch Acad., Inc. v. Filer*, 117 F.Supp.3d 1313, 1318 (D. Utah 2015).

The public policy underlying the anti-SLAPP statute is simple: Ensuring that citizens and residents may assert their Constitutional rights without the fear of retaliation through the courts. The question becomes whether the Arizona anti-SLAPP statute usurps

the Court’s rulemaking authority and violates the separation of powers doctrine if it were to be applied in lawyer discipline cases.

Other Jurisdictions’ Determinations Whether Anti-SLAPP
Laws create Procedural or Substantive Rights

There is a lack of consensus among courts whether anti-SLAPP laws are primarily procedural, substantive or a combination of both. While courts have split in determining whether anti-SLAPP laws primarily provide substantive rights or procedural rights, all have at least some procedural elements establishing an expedited procedure to resolve whether a lawsuit was filed primarily in an effort to quash a defendant’s Constitutional rights. The Second Circuit Court of Appeals has found that a state’s anti-SLAPP statute provided *substantive* protections,² the Tenth Circuit has found that a state’s anti-SLAPP statute was procedural and, therefore, conflicted with the Federal Rules of Civil Procedure,³ and other Circuits and the D.C. Court of Appeals have found that anti-SLAPP statutes include substantive and/or procedural rights, depending on the law under review.⁴

² See, e.g., *Adelson v. Harris*, 774 F.3d 803, 809 (2d Cir. 2014) (holding that Nevada’s anti-SLAPP law provided substantive rights).

³ See, e.g., *Los Lobos Renewable Power, LLC v. Americulture, Inc.*, 885 F.3d 659, 662 (10th Cir. 2018), *cert. denied*, 139 S. Ct. 591 (2018) (“The plain language of the New Mexico anti-SLAPP statute reveals the law is nothing more than a procedural mechanism designed to expedite the disposal of frivolous lawsuits aimed at threatening free speech rights.”); *Abbas v. Foreign Policy Grp., LLC*, 783 F.3d 1328, 1335 (D.C. Cir. 2015) (noting that the D.C. Court of Appeals found that its statute “establishe[d] a new ‘procedural mechanism’ for dismissing certain cases before trial”).

⁴ See, e.g., *Godin v. Schencks*, 629 F.3d 79, 89 (1st Cir. 2010) (finding before Maine’s statute was repealed, it had “both substantive and procedural aspects”); *Klocke v. Watson*, 936 F.3d 240, 245 (5th Cir. 2019), *as revised* (Aug. 29, 2019) (finding that Texas’ anti-

There is also a lack of consensus among state courts whether anti-SLAPP laws primarily establish substantive or procedural rights. Kentucky⁵ and Maine⁶ have held that anti-SLAPP statutes provide procedural rights, whereas Connecticut⁷ and Oklahoma⁸ have held that their state’s anti-SLAPP statute created substantive rights. Georgia, on the other hand, has determined that its anti-SLAPP law is both procedural and substantive in nature.⁹

SLAPP statute was procedural); *Carbone v. Cable News Network, Inc.*, 910 F.3d 1345, 1351 (11th Cir. 2018) (finding Georgia’s anti-SLAPP statute procedural, and created no substantive rights); *Banks v. Hoffman*, 346 A.3d 665 (D.C. 2025) (holding that the District of Columbia’s statute provided substantive rights, and stating that the substantive/procedural distinction was of minimal relevance (although it previously found the statute provided a “procedural mechanism”), and did not conflict with the District’s summary judgment rule, and was, therefore, lawfully enacted).

⁵ *Davenport Extreme Pools and Spas, Inc. v. Mulflur*, 698 S.W.3d 140, 151 (Kentucky App. 2024) (“Kentucky’s [anti-SLAPP] statutes fall squarely in the procedural category; they provide procedures that permit expedited consideration of already-existing substantive protections.”).

⁶ *Thurlow v. Nelson*, 263 A.3d 494 n.7, 397 Ed. Law Rep. 656, 2021 ME 58 (2021) (“Maine’s anti-SLAPP statute is a procedural mechanism to screen meritless cases and does not change common law regarding the underlying claim of defamation.”).

⁷ *Smith v. Supple*, 346 Conn. 928, 949, 293 A.3d 851, 864 (2023) (“The anti-SLAPP statute affords a defendant a substantive right to avoid litigation on the merits that can be costly and burdensome”).

⁸ *Steidley v. Community Newspaper Holdings, Inc.*, 383 P.3d 780 (Okla.Civ.App. 2016) (“While there is no doubt that such mechanisms are procedural, they affect substantive rights.” (footnote omitted)).

⁹ *Atlanta Humane Society v. Harkins*, 278 Ga. 451, 454, 603 S.E.2d 289, 293 (2004) (“[T]he verification requirement of the anti-SLAPP statute is procedural in nature in that verifications must contain certain assertions and must be filed within a certain time, but is *also* substantive in nature in that to determine whether the requirements of the statute have been met, the court must take a substantive look at the verification offered to ensure that the underlying lawsuit has not been initiated for an improper purpose.” (quoting

Conclusion

It is unclear whether Arizona's anti-SLAPP statute 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 and enforcement of the Rules of Professional Conduct (due to possible delay and the duplication of hearings). Also, A.R.S. § 12-751 applies only to a person's *lawful* exercise of the rights of free speech and petition. As noted above, the Arizona Supreme Court has, at least indirectly, found that lawyers have a limited right to free speech. As a result, Respondent may not now argue that he was exercising a *lawful* free speech right.

Although the PDJ could decide whether Arizona's anti-SLAPP statute applies in lawyer discipline cases, the PDJ could avoid addressing that issue by assuming the statute applies but that Respondent has not provided *prima facie* proof that the State Bar's complaint against him was "substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right."¹⁰

Harkins v. Atlanta Humane Society, 264 Ga.App. 356, 360(1), 590 S.E.2d 737, 740 (2003) (emphasis added)).

¹⁰ See *In the Matter of the Discipline of an Attorney*, 2004 WL 5214977 (Mass. 2004), the Massachusetts Supreme Court avoided resolving whether its statute applied to lawyer discipline proceedings, stating, "Assuming without deciding both that the respondent's conduct was protected petitioning activity within the meaning of the statute, and that the anti-SLAPP statute applies to bar discipline cases, we nevertheless conclude that the respondent has failed to show that bar counsel lacked a 'substantial basis other than or in addition to the petitioning activit[y]' for bringing this action." The Court further stated in a footnote: "We decline to construe this [anti-SLAPP] right so as to immunize every written or oral statement made by an attorney in connection with an issue being litigated

DATED this 15th day of May, 2026.

STATE BAR OF ARIZONA

/s/ James D. Lee

James D. Lee

Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 15th day of May, 2026.

Copy of the foregoing emailed
this 15th day of May, 2026, to:

Honorable Lisa A. VandenBerg
Presiding Disciplinary Judge
Supreme Court of Arizona

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Respondent

by: /s/ Melissa Duarte

JDL/md

in a civil suit because such a broad reading would preclude enforcement of many attorney conduct rules.”

Exhibit 15

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.

/s/ Marc J. Randazza
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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
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State Bar of Arizona
c/o [REDACTED]

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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

Exhibit 16

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)

[REDACTED]

by: CLopez

Exhibit 17

David S. Gingras, #021097
Gingras Law Office, PLLC

Attorney for Petitioner
Laura Owens

MARICOPA COUNTY SUPERIOR COURT
STATE OF ARIZONA

In Re Matter of:

LAURA OWENS,

Petitioner,

And

CLAYTON ECHARD,

Respondent.

Case No: FC2023-052114

**NOTICE OF CHANGE OF JUDGE
FOR CAUSE; MEMORANDUM &
AFFIDAVIT IN SUPPORT**

(Noticed Judge – Hon. Julie A. Mata)

(Presiding Judge – Hon. Ronda Fisk)

Pursuant to Rule 6.1 Ariz. R. Fam. L.P. Petitioner Laura Owens (“Laura” or “Petitioner”) submits the following Notice of Change of Judge for Cause, and memorandum and affidavit in support thereof.

As explained below, there is clear and convincing evidence demonstrating the judge currently assigned to this matter – Hon. Julie Ann Mata – is biased, prejudiced, and has engaged in conduct which violates both Laura’s right to due process of law under both the United States and Arizona Constitutions, and which separately violated Rules 2.9(A) and 2.9(C) of the Arizona Rules of Judicial Conduct by, *inter alia*: 1.) performing an independent investigation into the facts of this case; 2.) considering (and relying upon) information posted on the Internet about this case; and 3.) engaging in *ex parte* communications regarding this case with her father, Harry L. Howe.

1 This conduct, while sufficient to warrant additional other relief (including, but not
2 limited to, a new trial), establishes grounds to disqualify Judge Mata on the basis of bias
3 and prejudice within the meaning of A.R.S. § 12-409(5). For these reasons, Laura
4 respectfully requests the Family Court Presiding Judge, Hon. Ronda Fisk, review this
5 matter and to find that grounds exist to disqualify Judge Mata, and to promptly reassign
6 this matter to a new judge.

7 In the event Judge Mata disputes the allegations set forth below, Laura requests
8 that the Family Court Presiding Judge set this matter for an evidentiary hearing pursuant
9 to Family Law Rule 6.1(d)(2), and that upon doing so, the Court approve the issuance of
10 subpoenas *ad testificandum* to Judge Mata and her father, Mr. Howe.

11 I. CASE SUMMARY/BACKGROUND

12 The facts of this matter are set forth in detail in the affidavit of counsel submitted
13 herewith. In short, this case began as a simple paternity establishment action, with one
14 uncommon wrinkle — Respondent Clayton Echard (“Clayton” or “Respondent”) is a
15 minor celebrity as a result of his appearance on the reality TV dating program called *The*
16 *Bachelor*. Clayton did not merely appear as a *contestant* on *The Bachelor*, he was the star
17 of his season, appearing on the show from January to March 2022.



1 Laura claims she had a one-night sexual encounter with Clayton in Scottsdale on
2 May 20, 2023, and she learned she was pregnant 11 days later. Laura claims she tested
3 positive for pregnancy on five separate occasions before this case was filed: May 31,
4 June 1, June 19, July 25, and August 1. The first test taken on May 31 was an at-home
5 type pregnancy test which was positive. The next day, on June 1, Laura went to a Banner
6 Urgent Care for a professional pregnancy test. The test at Banner was also positive.

7 After Laura informed Clayton of these positive tests, on June 19, 2023, Clayton
8 invited Laura to his home to discuss the situation. Upon arrival, Clayton surprised Laura
9 with a home pregnancy test he had purchased, and he demanded she take the test
10 immediately in front of him (Laura claims she took the test as Clayton watched, while
11 Clayton claims she went to the bathroom and took the test behind a closed, or partially
12 closed door). In any event, this third test was also positive.

13 After the parties were unable to reach an agreement on how to deal with the
14 situation, and after two more positive tests, Laura filed this action, on August 1, 2023.
15 Upon filing and through the present, this matter was assigned to Hon. Julie A. Mata.

16 On August 21, 2023, Clayton filed a *pro se* response denying paternity. In his
17 response, Clayton claimed “only oral sex” occurred between the parties, not sexual
18 intercourse, and he further alleged “this entire petition is made up by [Laura].”

19 Laura claims that while the matter was pending, she had a blood test done on
20 October 16, 2023 which confirmed, yet again, she was pregnant, but the test results
21 suggested the pregnancy was not viable (i.e., it was likely to end in miscarriage). About a
22 month later, on November 14, 2023, Laura was seen by an OB/GYN facility called
23 MomDoc where it was confirmed she was no longer pregnant.

24 After learning she was no longer pregnant, Laura filed nothing further in this case,
25 and she took no actions to prosecute the matter any further. Because Laura is not an
26 attorney, she was not familiar with the process for seeking a voluntary dismissal. On
27 December 4, 2023, court administration issued a notice placing this matter on the inactive
28 calendar and scheduling the matter for dismissal on February 2, 2024.

1 Shortly before the case was due to be dismissed for inactivity, Clayton retained
2 counsel, Gregg Woodnick, who appeared in this matter for the first time on December 12,
3 2023. Mr. Woodnick immediately filed several pleadings including a Motion to Amend
4 Clayton's Answer to the petition (filed on December 12, 2023), and a Motion for Rule 26
5 Sanctions (filed on January 2, 2023). Notably, Mr. Woodnick filed these pleadings
6 without making any attempt to meet and confer with Laura as required by Family Law
7 Rule 9(c), and he moved for Rule 26 sanctions without ever providing written notice to
8 Laura of her right to amend or withdraw her petition as required by Family Law Rule
9 26(c)(2)(B).

10 Shortly thereafter, Laura retained counsel, Alexis Lindvall, who appeared on
11 December 22, 2023 and filed a Motion to Dismiss *With Prejudice* on December 28, 2023.
12 Days later, Ms. Lindvall withdrew from this matter, with Laura's consent, on January 2,
13 2024.

14 Confusingly, on January 25, 2024, Judge Mata issued an order *granting* Laura's
15 Motion to Dismiss. In that ruling, the court indicated: "Petitioner advises she is no longer
16 pregnant and has filed a Motion to Dismiss. While the Court will grant the Motion, the
17 issue of sanctions and attorney's fees remain." Judge Mata then set an evidentiary hearing
18 on those issues for June 10, 2024.

19 The undersigned was first retained to represent Laura on March 25, 2024. After
20 appearing in this case, undersigned counsel quickly discovered that Mr. Woodnick filed
21 the Rule 26 Motion for Sanctions (among other pleadings) without first consulting with
22 Laura (or her counsel), and the sanctions motion was filed *without* giving the mandatory
23 10-day written warning required by providing written notice to Laura of her right to
24 withdraw her petition as required by Family Law Rule 26(c)(2)(B). After counsel
25 discussed these problems, and despite initially refusing to do so, on April 3, 2024, Mr.
26 Woodnick filed a motion to withdraw his Rule 26 Motion for Sanctions. Unfortunately,
27 that request was not timely ruled on by the Court, resulting in the undersigned filing a
28 Motion for Judgment on the Pleadings as to the issue of sanctions on May 10, 2024.

1 On May 29, 2029, a minute entry order was issued explaining the Court had
2 intended to *grant* Clayton’s request to withdraw his Motion for Sanctions, but “due to a
3 clerical error, the acceptance was not remitted to the parties ...” Despite the Motion for
4 Sanctions being withdrawn, and despite no other sanctions or fees motions pending, the
5 case proceeded to trial on June 10, 2024.

6 On June 17, 2024 (filed June 18, 2024), Judge Mata issued an order finding in
7 favor of Clayton as to substantially all issues in the case, and awarding attorney’s fees in
8 an amount to be determined by later application. The post-trial order also purported to
9 find Laura lied about being pregnant in this case, as well as two other matters, and that
10 she may have committed perjury in this case, or elsewhere (the order is not entirely
11 clear). Based on those findings, Judge Mata referred this matter to the Maricopa County
12 Attorney’s Office.

13 Since receiving the post-trial decision, Laura has discovered evidence of
14 extremely serious misconduct by Judge Mata which is more than sufficient to remove her
15 from this case for cause. Laura will also seek, by separate motion, a new trial and a
16 complete reversal of *all* prior rulings issued in this case by Judge Mata due to her
17 misconduct, in addition to other relief.

18 II. LEGAL STANDARD

19 Family Law Rule 6.1(a) provides: “**(a) Grounds.** A party seeking a change of
20 judge for cause must establish grounds by affidavit as required by A.R.S. § 12–409.”
21 Among other reasons, A.R.S. § 12–409 permits disqualification of a judge by showing:
22 “the party filing the affidavit has cause to believe and does believe that on account of the
23 bias, prejudice, or interest of the judge he cannot obtain a fair and impartial trial.”

24 It is important to note A.R.S. § 12–409 does not contain any express time limits
25 for seeking a change of judge, but Arizona courts have read that statute as containing an
26 implicit limit – a party cannot ask to disqualify a judge under A.R.S. § 12–409 after a
27 trial has begun. *See Del Castillo v. Wells*, 523 P.2d 92, 94 (App.Div. 1 1974) (explaining
28 under A.R.S. § 12–409, “if a judge is allowed to receive evidence which of necessity is to

1 be used and weighed in deciding the ultimate issues, it is too late to disqualify him on the
2 ground of bias and prejudice.”)

3 At the same time, the *Del Castillo* court also noted requests to disqualify a judge
4 made under *other authority*, not A.R.S. § 12–409 (such as Civil Procedure Rule 42(f)) are
5 not subject to the same implicit restrictions as requests under § 12–409. Instead, *Del*
6 *Castillo* explains if a request is made under *other* authority, the outcome is controlled by
7 the text and substance of the specific rule invoked; “Clearly in enacting [Civil Procedure]
8 Rule 42(f) providing for a specific procedure for a change of judge, the Supreme Court
9 ‘modified or suspended’ the then existing procedure for a change of judge as a matter of
10 right outlined in § 12-409.” *Del Castillo*, 523 P.2d at 95. Thus, for example, in a civil
11 matter, a party may waive his or her right to a change of judge as a matter of right if “the
12 judge rules on any contested issue” Ariz. R. Civ. P. 42.1(d)(2).

13 Here, Family Law Rule 6.1 does not contain the same waiver language. On the
14 contrary, Rule 6.1 only requires that a party seek a change of judge for cause within 20
15 days after discovering the basis for the request, and the rule expressly provides “Case
16 events or actions taken before that discovery do not waive a party’s right to a change of
17 judge for cause.” (emphasis added). This broader rule (which permits a change of judge
18 *after* trial) makes sense given that family law cases are, unlike civil matters, often
19 continuing in nature. Because a family court judge may hold multiple trials and/or
20 evidentiary hearings in the same case over a span of many years, it would make no sense
21 to interpret Rule 6.1 as depriving a party of their right to disqualify a judge for cause
22 simply because that judge held one or more earlier hearings before the grounds for
23 disqualification were discovered. Rather, the text of the rule merely requires a party to
24 raise the issue promptly, even if that occurs after a trial or hearing is completed.

25 As explained in the concurrently filed affidavit of counsel, the grounds upon
26 which a change of judge are requested in this case are primarily based on misconduct
27 committed by Judge Mata which shows her post-trial ruling (filed June 18, 2024)
28 contained findings that were not based on the evidence admitted at trial. Rather, Judge

1 Mata made findings based on an improper *ex parte* investigation she conducted which
2 included reviewing information posted on the Internet about this case. Until Judge Mata's
3 post-trial ruling was issued on June 18, 2024 (less than 20 days ago), Laura did not know
4 and could not possibly have known of the judge's misconduct in this regard.

5 Although this single issue is sufficient to grant the relief requested, there is also
6 evidence showing *other* misconduct committed by Judge Mata, including the fact she
7 engaged in an improper *ex parte* discussion of the facts of this case with her father, Harry
8 L. Howe, in violation of Rule 2.9(A) of the Arizona Code of Judicial Conduct. Although
9 Laura (and undersigned counsel) heard rumors about Mr. Howe appearing at the trial on
10 June 10th, the specific details of exactly what occurred, and proof to establish these facts,
11 was not fully known until undersigned counsel returned from his pre-planned vacation on
12 June 28, 2024.

13 For those reasons, this request is timely pursuant to Family Law Rule 6.1(c)
14 because it has been brought within 20 days of discovering the grounds upon which the
15 request is based.

16 III. DISCUSSION

17 a. Clear And Convincing Evidence Shows Judge Mata Conducted An 18 Improper *Ex Parte* Investigation Into The Facts

19 The details of the grounds for disqualification are set forth in the affidavit of
20 counsel submitted herewith. To summarize those grounds, this request is primarily based
21 on the fact there is clear, irrefutable evidence that Judge Mata conducted an *ex parte*
22 investigation into the facts of this case AND, even worse, at least one of her post-trial
23 factual findings on a critically important issue was based *solely* on information posted on
24 the Internet and not based on the evidence admitted at trial.

25 Because episodes of such brazen and blatant judicial misconduct are thankfully
26 rare, comparable examples in Arizona are difficult to find. However, something very
27 similar occurred in *Reprimand of Judge B. Carlton Terry, Jr*, North Carolina Judicial
28 Standards Commission Inquiry No. 08-234 (April 1, 2009) (a copy of which is submitted

herewith).¹ That case, like this matter, involved a family court proceeding. In *Terry*, the assigned judge posted comments about the case on Facebook, and he also “used the internet site ‘Google’ to find information about [a party’s] photography business.” The judge also visited the website of a party, and copied a poem from that party’s website which he recited at trial.

Upon discovering these facts, one of the parties moved to disqualify the judge, asked to vacate the judge’s post-trial orders, and to have the case reassigned. Those requests were granted in their entirety, and the North Carolina Judicial Standards Commission later publicly reprimanded the judge for this conduct, finding he committed multiple violations of the Canons of Judicial Conduct, including by “conducting [an] independent *ex parte* online research about a party presently before the Court” and by having *ex parte* discussions about the case. The Commission found the judge’s actions were “prejudicial to the administration of justice that brings the judicial office into disrepute.”

Exactly the same rules and standards apply here. It is axiomatic that in civil cases in the State of Arizona, juries are *never* permitted to conduct “*trial by Google*”:

Research related to the case, including internet research, is strictly forbidden. Do not do any research or conduct any type of investigation about the case, the facts, the parties, the witnesses, the attorneys, or any person or entity related to the case. Do not look for information on the internet, or from any other source, about the case or about the facts or issues related to the case. In other words, do not try to find out information from any source outside this courtroom. The reason for this is that you must base any decision only on the evidence that is produced here in the courtroom. You must base any decision only on the evidence that is produced here in the courtroom, because the fairness of the trial depends on both parties knowing exactly what evidence you are considering so that they can respond to it or address it in their arguments.

REVISED JURY INSTRUCTIONS (CIVIL), 7TH (PRELIMINARY 9 – Admonition).

¹ Available at: <https://www.nccourts.gov/assets/inline-files/Public-Reprimand-08-234-Terry.pdf>

1 Notwithstanding all their other powers and responsibilities, judges acting as fact
2 finders in a bench trial are subject to exactly the same rule as jurors – a judge may never
3 “investigate facts in a matter independently, and shall consider only the evidence
4 presented and any facts that may properly be judicially noticed.” Ariz. Sup. Ct. Rule 81,
5 Code of Judicial Conduct Rule 2.9(C) (and comment 6, explaining, “The prohibition
6 against a judge independently investigating the facts in a matter extends to information
7 available in all mediums, including electronic.”)

8 As explained in the affidavit of counsel submitted herewith, there is no question
9 Judge Mata violated this most basic core requirement of fairness. She did so by making a
10 critical factual finding – that “Planned Parenthood is closed on Sunday” – and by falsely
11 attributing that finding to a trial witness (Clayton’s medical expert, Dr. Deans) who said
12 no such thing. Rather than basing this finding of the evidence admitted at trial, the only
13 possible source of this information was an independent investigation into the facts of this
14 case by the judge, which included looking at social media and/or other website comments
15 (it is irrelevant exactly which sites Judge Mata viewed or when she viewed them, because
16 *any* such *ex parte* investigation was *per se* a violation of Laura’s right to fundamental
17 fairness).

18 Furthermore, although Judicial Conduct Rule 2.9(C) does allow a judge to base
19 findings on facts which “may properly be judicially noticed”, the business hours of
20 Planned Parenthood locations in California in 2023 is *not* a fact subject to judicial notice
21 (nor did Judge Mata claim she took judicial notice of that fact). This exact issue was
22 discussed in ABA Formal Opinion 478 which offered the following hypothetical:

23 **Hypothetical #1:** In a proceeding before the judge in a case involving
24 overtime pay, defendant’s counsel explains that the plaintiff could not have
25 worked more than 40 hours per week because defendant’s restaurant is in
26 an “industrial area” and only open for breaks and lunch during the work-
27 week and not on weekends. The judge is familiar with the area and
28 skeptical of counsel’s claims. The judge checks websites like Yelp and
Google Maps, which list the restaurant as being open from 7 am to 10 pm,

1 seven days each week. Does this search violate Rule 2.9(C) of the Model
2 Code of Judicial Conduct?

3 **Analysis #1:** This search violates Rule 2.9(C) of the Model Code of
4 Judicial Conduct because the restaurant’s hours of operation are key to
5 whether the plaintiff could prevail on a claim of unpaid overtime. The judge
6 should ask the parties and their counsel to provide admissible evidence as to
7 the restaurant’s hours of operation.

8 ABA Formal Opinion 478, *Independent Factual Research by Judges Via the Internet*
9 (Dec. 8, 2017) (emphasis added).²

10 Again, because such blatant misconduct is rare, there is no directly controlling
11 comparable Arizona precedent on this issue (of course the Code of Judicial Conduct as
12 adopted by the Arizona Supreme Court is controlling here). However, courts in other
13 states have consistently agreed – this type of judicial misconduct is *per se* unlawful and it
14 entitles the movant to automatic relief regardless of whether the error was harmless. *See,*
15 *e.g., Davis v. United States*, 567 A.2d 36, 42 (D.C.Cir. 1989) (reversing conviction and
16 ordering new trial where judge asked a law clerk to perform independent investigation
17 into the facts of the case, and explaining, “under our system of laws, a judge is not an
18 investigator; the investigative function belongs to the parties and their agents. Laudable
19 goals and lofty purposes cannot be attained when the cost is the loss, or even the
20 appearance of loss, of judicial impartiality.”) (emphasis added) (citing *Kennedy v. Great*
21 *Atlantic & Pacific Tea Co.*, 551 F.2d 593, 596 (5th Cir. 1977) (reversing conviction and
22 ordering new trial where the trial judge’s law clerk personally visited the scene of the
23 slip-and-fall accident, and clerk later testified about the outcome of his investigation; “It
24 was unacceptable that the most damaging evidence against the defendants in this case
25 was brought about by the intervention of a court official in the accumulation of evidence.
26 . . . It was the law clerk’s duty as much as that of the trial judge to avoid any contacts
27 outside the record that might affect the outcome of the litigation[]” and further
28 explaining, “the law clerk’s ‘private view of an accident in litigation’ was a prohibited *ex*

² Available at: https://www.abajournal.com/images/main_images/FO_478_FINAL_12_07_17.pdf

1 *parte* communication that violated Code of Judicial Conduct); *State v. Dorsey*, 701
2 N.W.2d 238, 249-50 (Minn. 2005) (reversing conviction and ordering a new trial after
3 judge independently investigated facts of case; noting such conduct constitutes a *per se*
4 violation of due process which requires *automatic* reversal without applying harmless
5 error analysis; “when a defendant has been deprived of an impartial judge, automatic
6 reversal is required This deprivation constituted a structural error, which precludes
7 harmless-error analysis”) (emphasis added) (citing *Arizona v. Fulminante*, 499 U.S.
8 279, 309 (1991)).

9 Based on this authority, Judge Mata must be disqualified on the basis of bias and
10 prejudice as reflected by her gross misconduct. There is no question one of the most
11 critical factual findings in this case was the issue of whether “Planned Parenthood is
12 closed on Sunday” (the specific reasons why that fact was critical are explained in greater
13 detail in the affidavit of counsel submitted herewith). In her post trial ruling, Judge Mata
14 made a specific finding that “Planned Parenthood is closed on Sunday”, and she
15 attributed that statement to the testimony of Clayton’s medical expert, Dr. Samantha
16 Deans. But the trial transcript leaves ZERO question – Dr. Deans never testified to this
17 fact, nor did any other witness. Moreover, on the day of trial, this fact WAS *repeatedly*
18 and broadly published on social media sites and by anonymous third party comments
19 appearing on the personal website of undersigned counsel.

20 These facts demonstrate that Judge Mata did exactly what the rules expressly
21 prohibit – she conducted her own independent investigation into the facts, and then used
22 the results of that investigation to reach an adverse decision. This is a *profound* violation
23 of Laura’s rights, and of the rights of the people of Maricopa County who trust their
24 disputes will settled by impartial jurists according to law; “To be impartial, the fact-finder
25 must base its conclusions on the facts in evidence and must not reach conclusions based
26 on evidence sought or obtained beyond that adduced in court. When the fact-finder
27 violates this principle, the result is structural error requiring automatic reversal.” *State v.*
28 *Foote*, 2020 WL 54282, *4 (Minn.App. 2020) (cleaned up) (quoting *Dorsey*, 701 N.W.2d

1 at 249-50)); *see also Tribbitt v. Tribbitt*, 963 A.2d 1128, 1131 (Del. 2008) (“we hold that
2 ... the Family Court committed reversible error when it rejected unrefuted testimony by
3 the Husband’s expert and substituted for that testimony *the results of its own internet*
4 *search.*”) (emphasis added)).

5 **b. Other Evidence Supports A Finding Of Judicial Bias**

6 The law is clear – a single instance of misconduct by a trial judge is sufficient to
7 establish bias and require disqualification of the judge. As explained above, the evidence
8 proves Judge Mata undertook an independent investigation into the facts, and by doing
9 so, she manifested bias sufficient to require her disqualification.

10 But the evidence of bias and misconduct is not limited to just the “Planned
11 Parenthood is closed on Sunday” issue. Rather, as explained in the affidavit of counsel
12 submitted herewith, another separate issue also establishes Judge Mata’s bias – there is
13 evidence showing the judge shared information about this case with her father, Harry L.
14 Howe, and that he not only appeared at the trial as a spectator, he later socialized with
15 Clayton’s cult-like supporters, telling them, comically, “*I’m here for the shit show.*”

16 It is difficult to image a more disrespectful, disreputable, and disgraceful act for
17 any judge to commit than inviting her father to attend a high-profile trial *in support of a*
18 *party*, while also privately engaging in prohibited *ex parte* discussions about the case
19 with her father. These actions made a mockery of these proceedings. As shown in the
20 video clips submitted herewith, Clayton’s supporters *gleefully* celebrated Judge Mata’s
21 father’s participation in the case, even going so far as to laughingly ask people not to
22 spread information about his participation because, after all, “*We don’t need a mistrial*
23 *here.*” For once, those followers were exactly right – the conduct of Judge Mata and her
24 father absolutely warrant a mistrial (or more accurately, a retrial, before a different,
25 unbiased judge).

26 This shameful conduct not only violated Laura’s rights, it raises serious questions
27 regarding Judge Mata’s fitness as a Judge of the Superior Court. Any reasonable
28 objective observer in Laura’s position would be justified in wondering, “Was my case

1 fairly decided based on the evidence, or was Judge Mata simply trying to impress her
2 father – *Look at me Daddy! I’m a real judge now! Just watch me destroy a young*
3 *woman’s life because the other party was on The Bachelor! Hee hee!”*

4 Assuming the published allegations of Judge Mata are true (as documented, on
5 video, by Clayton’s own followers), this proves Judge Mata separately violated Rule
6 2.9(A) of the Code of Judicial Conduct. And Judge Mata’s blatant, pervasive disregard
7 for her ethical duties and her disrespect for Laura’s fundamental rights helps explain the
8 judge’s *numerous* (and otherwise heretofore inexplicable) adverse rulings during this
9 action.

10 As a general rule, prejudice or bias is “a hostile feeling or spirit of ill-will, or
11 undue friendship or favoritism, towards one of the litigants.” *In re Guardianship of Styer*,
12 24 Ariz. App. 148, 151, 536 P.2d 717 (1975). At the same time, “To prove prejudice or
13 bias, an appellant must point to relevant facts *other than adverse judicial rulings*.” *In re*
14 *Marriage of Kintopp*, 2022 WL 223743, *3 (App.Div. 2 2022) (emphasis added) (citing
15 *Stagecoach Trails MHC v. City of Benson*, 232 Ariz. 562, ¶ 21 (App.Div. 2 2013); *Smith*
16 *v. Smith*, 115 Ariz. 299, 303, 564 P.2d 1266 (App. 1977) (“bias and prejudice necessary
17 to disqualify a judge must arise from an extra-judicial source.”))

18 In the *vast majority* of disqualification requests when the movant argues judicial
19 bias, they can point to no evidence to support that claim other than adverse rulings. *See*
20 *Simon v. Maricopa Med. Ctr.*, 225 Ariz. 55, 63 (App.Div. 1 2010) (finding no proof of
21 bias where movant “has alleged no facts supporting his claim the judge was biased except
22 that the judge consistently ruled against him.”)

23 The unique facts and circumstances described above make this case one of the
24 exceedingly rare exceptions in which the trial judge manifested clear prejudice and/or
25 bias *early* in the proceedings, in the form of multiple, unexplained adverse rulings
26 (described in the affidavit of counsel submitted herewith), but unlike 99% of cases, here
27 there is clear *extra-judicial* evidence showing the true reason for those rulings was, in
28 fact, “a hostile feeling or spirit of ill-will, or undue friendship or favoritism, towards one

1 of the litigants.” The evidence of Judge Mata’s misconduct via-a-vis her father,
2 discovered only after the trial, supports a finding of bias which *does* arise from an extra-
3 judicial source, and not merely the adverse rulings themselves, and disqualification may
4 be separately supported on that basis.

5 **IV. CONCLUSION**

6 For the reasons stated above, Laura respectfully requests the Family Court
7 Presiding Judge, Hon. Ronda Fisk, review this matter and find that grounds exist to
8 disqualify Judge Mata, and to promptly reassign this matter to a new judge.

9 In addition, given the clarity of the evidence and the severity of the misconduct,
10 and the harm caused to the judiciary as a result, Laura further requests that the Presiding
11 Judge refer this matter to the Arizona Commission on Judicial Conduct for further
12 investigation and action as may be appropriate.

13 DATED July 8, 2024.

GINGRAS LAW OFFICE, PLLC

14 

15 David S. Gingras
16 Attorney for Petitioner
17 Laura Owens
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28

Original e-filed and **COPIES** delivered July 8, 2024 to:

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Isabel Ranney, Esq.
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Phoenix, AZ 85020
Attorneys for Respondent

Via ECF & Email

Hon. Ronda Fisk, Family Court Presiding Judge
Maricopa County Superior Court

125 West Washington Street
Phoenix, AZ 85003

By Hand-Delivery

Adis Bosnic
Family Department Administrator

Phoenix, AZ 85003

By Hand-Delivery

Hon. Julie A. Mata.
Northeast Court-G/102

Phoenix, AZ 85032

Via ECF & Email



Exhibit 18

1 David S. Gingras, #021097
2 **Gingras Law Office, PLLC**

3 Phoenix, AZ 85044

4 Tel.: [REDACTED]

5 Attorney for Petitioner
6 Laura Owens

7 **MARICOPA COUNTY SUPERIOR COURT**
8 **STATE OF ARIZONA**

9 **In Re Matter of:**

Case No: FC2023-052114

10 **LAURA OWENS,**

**AFFIDAVIT OF
DAVID S. GINGRAS
IN SUPPORT OF PETITIONER'S
NOTICE OF CHANGE OF JUDGE FOR
CAUSE**

11 **Petitioner,**

12 **And**

13 **CLAYTON ECHARD,**

(Noticed Judge – Hon. Julie A. Mata)

14 **Respondent.**

(Presiding Judge – Hon. Ronda Fisk)

15 **AFFIDAVIT OF DAVID S. GINGRAS**

16 I, David S. Gingras hereby swear and affirm under penalty of perjury as follows:

17
18 1. My name is David S. Gingras. I am a United States citizen, a resident of
19 the State of Arizona, am over the age of 18 years, and if called to testify in court or other
20 proceeding I could and would give the following testimony which is based upon my own
21 personal knowledge.

22
23 2. I am an attorney licensed to practice law in the States of Arizona (since
24 2004) and California (since 2002). I am an active member in good standing with the State
25 Bars of Arizona and California and I am admitted to practice and in good standing with
26 the United States Court of Appeals for the Sixth, Ninth and Tenth Circuits, the United
27 States District Court for the District of Arizona and the United States District Courts for
28 the Northern, Central, and Eastern Districts of California.

1 3. This affidavit is submitted pursuant to Rule 6.1(a) of the Arizona Rules of
2 Family Law Procedure and A.R.S. § 12–409.

3 4. As explained below, I have cause to believe, and on these grounds I do
4 believe, that on account of bias, prejudice, or other interests the judge currently assigned
5 to this matter, Hon. Julie A. Mata, is unable to act fairly and impartially, and is unable to
6 provide Petitioner Laura Owens (“Laura” or “Ms. Owens”) with a fair trial, including a
7 fair retrial which Ms. Owens is concurrently requesting.

8 5. For these reasons, Laura requests that the Family Court Presiding Judge,
9 Hon. Ronda Fisk, find that Judge Mata is disqualified from all further proceedings in this
10 action, and that the case be immediately reassigned to a new judge pursuant to Family
11 Law Rule 6.1(d)(4).

12 **CASE SUMMARY & PROCEDURAL BACKGROUND**

13 6. This case began with a petition to establish paternity filed *pro se* by Laura
14 on August 1, 2023.

15 7. In her petition, Laura claimed she had sexual relations with Respondent
16 Clayton Echard (“Clayton” or “Mr. Echard”) in Scottsdale on or about May 20, 2023, and
17 that she learned she was pregnant eleven days later on or around May 31, 2023.

18 8. Before filing this establishment action, Laura claims she tested positive for
19 pregnancy on **five separate occasions**: May 31, June 1, June 19, July 25, and August 1.
20 The first test taken on May 31, 2023 was an at-home type pregnancy test which was
21 positive. The next day, on June 1, 2023, Laura went to a Banner Urgent Care facility for a
22 professional medical test. The test at Banner was also positive.

23 9. After Laura informed Clayton of these positive tests, on June 19, 2023,
24 Clayton invited Laura to his home to discuss the situation. Upon arrival, Clayton
25 surprised Laura with a home pregnancy test that he had purchased, and he demanded she
26 take the test immediately in front of him (Laura claims she took the test as Clayton
27 watched, while Clayton claims she went to the bathroom and took the test behind a
28 closed, or partially closed door). In any event, this third test was also positive.

1 10. After two more positive tests, the parties were unable to reach an agreement
2 on how to deal with the situation, so Laura filed this action, *pro se*, on August 1, 2023.

3 11. On August 21, 2023, Clayton filed a *pro se* response denying paternity. In
4 his response, Clayton claimed “only oral sex” occurred between the parties, not sexual
5 intercourse, and he further alleged “this entire petition is made up by [Laura].”

6 12. Laura claims that while the matter was pending, she had a blood test done
7 on October 16, 2023 which confirmed, yet again, she was pregnant, but the test results
8 also suggested the pregnancy was not viable (i.e., it was likely to end in miscarriage).

9 13. On November 14, 2023, Laura was seen by an OB/GYN facility called
10 MomDoc where it was confirmed she was no longer pregnant.

11 14. After learning she was no longer pregnant, Laura filed nothing further in
12 this case, and she took no actions to prosecute the matter any further.

13 15. On December 4, 2023, court administration issued a notice placing this
14 matter on the inactive calendar and scheduling the matter for dismissal on February 2,
15 2024.

16 16. As noted above, when the case was initially filed, neither party was
17 represented by counsel. Both Clayton and Laura remained *pro se* throughout the
18 proceedings until December 12, 2023, when Clayton’s retained counsel, Gregg
19 Woodnick (“Mr. Woodnick”) appeared in this case. Mr. Woodnick immediately began
20 filing pleadings including a motion to amend Clayton’s Answer to the petition (filed on
21 December 12, 2023), and a Motion for Rule 26 Sanctions (filed on January 2, 2024). Mr.
22 Woodnick filed these pleadings without making any attempt to meet and confer with
23 Laura as required by Family Law Rule 9(c), and he moved for Rule 26 sanctions without
24 ever providing written notice to Laura of her right to withdraw her petition as required by
25 Family Law Rule 26(c)(2)(B).

26 17. Shortly thereafter, Laura retained counsel, Alexis Lindvall, who appeared
27 on December 22, 2023 and filed a Motion to Dismiss on December 28, 2023. Days later,
28 Ms. Lindvall withdrew from this matter, with Laura’s consent, on January 2, 2024.

1 18. I was first retained to represent Laura on Monday, March 25, 2024. Prior to
2 this, I did not know Ms. Owens and had not represented her in any other matters. I also
3 did not know Respondent Clayton Echard, and I knew nothing about this matter or any
4 other disputes between Ms. Owens and Mr. Echard.

5 **SUMMARY OF MEDIA/PUBLIC ATTENTION**

6 19. Despite being an otherwise simple and short-lived paternity matter, this
7 case quickly gained local, national, and even international media attention and massive
8 public scrutiny. There appear to be two main reasons for this. First, Clayton is arguably
9 famous as a result of his recent appearance on a nationally-televised reality TV dating
10 program called *The Bachelor*.

11 20. This media attention is relevant and important to understanding the basis
12 for this Notice, because it appears the trial judge, Julie Mata, allowed the significant
13 media hype and public attention to overwhelm her better judgment, eventually causing
14 her to engage in conduct which violated Laura's right to due process including her right
15 to have this matter heard by a fair and impartial jurist. Because that issue is key to
16 understanding what happened here and the grounds for disqualification raised by Laura,
17 this subject is discussed in some detail below.

18 21. For anyone who is not familiar with the show, *The Bachelor* is a long-
19 running reality TV dating show that first aired on ABC in 2002. The show involves a
20 single male star (the titular "Bachelor") who is presented with a number of female
21 "contestants" (usually around 25) from which to choose a potential fiancée. In addition to
22 *The Bachelor* (involving a single male lead), the show has several spin-off series
23 including *The Bachelorette* (involving a single female lead), and other reality shows.

24 22. Over the course of a "season" (which lasts for many weeks), the Bachelor
25 goes on various group and individual dates with the female contestants. At the end of
26 each show, the Bachelor chooses which women to keep and which to send home in a
27 "rose ceremony" where he selects his preferences by asking, "*Will you accept this rose?*"
28 Ideally, a season may end with a marriage proposal to the last woman remaining.

1 23. Clayton appeared as the “star” of Season 26 of *The Bachelor* which aired
2 on ABC from January 3 to March 15, 2022.¹ As a result of his appearance on this popular
3 show watched by millions of viewers, Clayton gained some degree of nationwide fame,
4 and his role on the show was heavily promoted and advertised by ABC (as is true of all
5 seasons of the show).

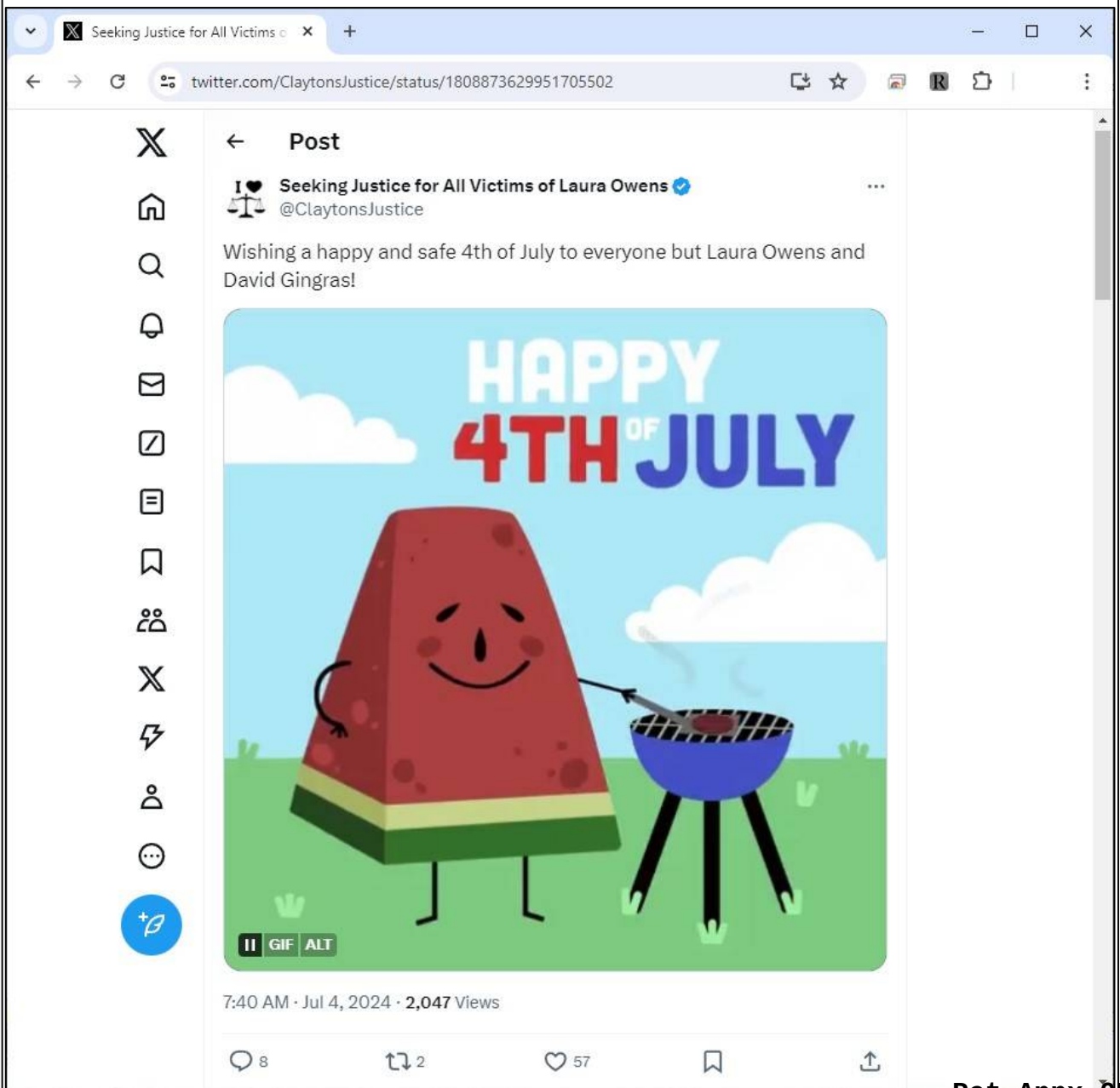


22 24. This leads to the second aspect of this case which caused it to gain far more
23 media and public attention than normal – as the previous star of a nationally-televised TV
24 show like *The Bachelor*, Clayton has a large and highly-devoted fan base, including
25 many followers on social media. For example, Clayton currently has nearly 300,000
26 followers on Instagram, see <https://www.instagram.com/claytonechard/>, and more than
27 60,000 followers on TikTok: <https://www.tiktok.com/@clayton.echard>.

28 ¹ See [https://en.wikipedia.org/wiki/The_Bachelor_\(American_TV_series\)_season_26](https://en.wikipedia.org/wiki/The_Bachelor_(American_TV_series)_season_26)

25. These facts — Clayton’s fame and the huge popularity of *The Bachelor* — coupled with the extremely odd allegations in this case (i.e., that Laura “faked” being pregnant with Clayton) have caused this otherwise simple case to gain a massive amount of public scrutiny and attention from local, national, and international news media.

26. In addition to being widely covered by traditional news outlets, this case has also received massive attention on social media, including sites like Reddit, Twitter, and YouTube, among others. For instance, anonymous “fans” of Clayton have created social media pages focused entirely on this case, including a Twitter account using the hubristic sobriquet “*Justice for Clayton*” or “JFC”. The JFC Twitter account has posted obsessively about this case nearly 3,500 times; one example of which is shown below:



1 27. In addition to posts on Twitter, anonymous fans of Clayton have created
2 websites devoted solely to this case, and to promoting their belief that Clayton is
3 somehow a “victim” who deserves “justice”. One such pro-Clayton fansite is
4 <https://justiceforclayton.com/> which contains copies of all, or substantially all, pleadings
5 filed in this case. This site also contains a one-sided narrative which highlights *only* those
6 facts favorable to Clayton’s version of events, while carefully avoiding any discussion of
7 facts unfavorable to Clayton’s narrative.

8 28. In addition to social media posts from his fans, Clayton himself has been
9 extremely personally active in publicly promoting this case, giving countless media
10 interviews in which he tells his side of the story. Clayton’s attorney, Mr. Woodnick, has
11 also published statements regarding this case, including a press release issued on March
12 7, 2024 in which Mr. Woodnick accused Laura of fraud, suggesting she “has been
13 accused of fabricating pregnancies and doctoring medical evidence as a means to extort
14 relationships several times, dating back ten (10) years.”

15 29. In an attempt to respond to some of this one-sided narrative, acting at
16 Laura’s request and with her written permission, I have occasionally posted comments
17 about this case online, primarily on my personal website: <https://gingraslaw.com/blog/>,
18 and on my Twitter account: <https://x.com/DavidSGingras>. The purpose of these
19 comments has been, primarily if not exclusively, to *respond* to information being
20 circulated about this case by Clayton, his lawyers, and/or his fans/supporters.

21 30. When I post comments on either Twitter or my personal website, members
22 of the public can, and often do, post responses/comments/replies. This point is important,
23 for reasons I will describe further below.

24 **“YouTubers” - DAVE NEAL/MEGAN FOX**

25 31. Before discussing the specific issues and conduct giving rise to Laura’s
26 request to disqualify Judge Mata, it is important to understand some of the other
27 participants who will be mentioned further below. Two such participants are individuals
28 named Dave Neal and Megan Fox.

32. I do not personally know either Dave Neal or Megan Fox, but during the course of this proceeding I have become generally familiar with them. According to his YouTube channel, <https://www.youtube.com/@DaveNealComedian>, Dave Neal is a stand up comedian who lives in Tennessee. Dave also creates and publishes videos on YouTube (nearly every day). Dave's videos often focus on *The Bachelor* and people, like Clayton, who have appeared on that show.

33. Over the last several months, Dave Neal has obsessively published *hundreds* of hours of videos regarding this case (again, often on a daily basis), as reflected on his YouTube channel below. These videos are generally, almost universally, devoted to viciously attacking Laura (and often me), and to proclaiming that Clayton is a "victim" who deserves "justice". Notably, Clayton has personally appeared in several of Dave Neal's videos, and it is clear that Dave Neal is *not* covering this case as a neutral journalist, but rather as a passionate, obsessive, advocate for Clayton.

 HER LAWYER WANTS A RETRIAL!! Bachelor Clayton Update - Accuser's LAWYER Questions Judges Integrity... 14K views • 2 weeks ago	 LAWYER THINKS CLAYTON WON (BY A LOT) Bachelor Clayton's Trial Is Over - Tilted Lawyer Predicts A Winner! 14K views • 2 weeks ago	 BACHELORETTE JEN 'PAUSES' SCHOOL Bachelorette Jenn Gives UPDATE On Her Career Path - Fans Share Opinions! 4.3K views • 2 weeks ago	 MY EXPERT TRASHES HER EXPERT Bachelor Clayton Trial Update - Medical Expert Calls In To Argue Against Accuser's... 10K views • 3 weeks ago
 KAITLYN RESPONDS TO EX'S 'LAUNCH' Bachelorette Kaitlyn Bristowe REACTS To Fans Following Jason Tartick's New... 19K views • 3 weeks ago	 CLAYTON THANKS BELIEVERS! Bachelor Clayton SHARES STRONG WORDS For His Supporters (and his accuser)! 10K views • 3 weeks ago	 RACHEL DISCUSSES DIVORCE Bachelorette Rachel Lindsay DISHES About Public Divorce & Why It Didn't Work Out 21K views • 3 weeks ago	 BOGUS CALL FOR PEACE! Bachelor Clayton's Accuser's Attorney Criticizes His Lawyers & I Reveal His... 20K views • 3 weeks ago
 FINAL LAST DITCH THOUGHTS! My Final Plea To 'Jane Doe' Before Tomorrow's Bachelor Clayton Echard Trial 13K views • 3 weeks ago	 ACCUSER'S LAST DITCH EFFORT! Bachelor Clayton Echard UPDATE - HAIL MARY Attempt By Accuser To Get Evidence... 15K views • 4 weeks ago	 FORMER LAWYER ADDRESSES HER LIES BREAKING: BACHELOR CLAYTON UPDATE- Former Lawyer Admits She Was 'Factually... 14K views • 1 month ago	 FAKE CANCER TEXTS EXPOSED Bachelor Clayton's Accuser FAKED CANCER With Ex & AUTHENTICATED Text Messages... 9.5K views • 1 month ago

1 34. Another “YouTuber” following this case is an individual using the name
2 “Megan Fox” who I believe is a resident of New York state. I do not personally know
3 Ms. Fox (I believe that name to be a pseudonym), but she has contacted me via email
4 several times during this case, and I understand that she claims to be a “journalist” who
5 publishes stories on an extreme far right-wing news website.

6 35. Like Dave Neal, Megan Fox also creates and publishes videos on her
7 YouTube channel here: <https://www.youtube.com/@MeganFoxWriter>. Like Dave Neal,
8 Megan Fox is a passionate supporter of the “JFC” cause, and her videos are
9 overwhelmingly devoted to “exposing” and destroying Laura, while promoting the
10 narrative that Clayton is an innocent victim who deserves “justice”.

11 36. Dave Neal and Megan Fox are mentioned because they are relevant to the
12 issues raised herein. This is so because they attended the trial held in this matter on June
13 10, 2024, and after the trial, both appeared on video claiming to have, or speaking with
14 others who claimed to have, direct knowledge regarding certain improper conduct
15 committed by Judge Mata during the trial, including the fact that Judge Mata allegedly
16 engaged in improper *ex parte* discussions about this case with her father, Harry L. Howe
17 (who also personally attended the trial and socialized with members of the JFC group).
18 Those points are explained further below.

19 **SUMMARY OF PRE-TRIAL JUDICIAL BIAS**

20 37. Shortly after I became involved in this case in late March 2024, several
21 events occurred which initially caused concern regarding Judge Mata’s possible bias and
22 lack of neutrality.

23 38. Specifically, immediately after Laura retained me to represent her in this
24 matter, I attempted to obtain a copy of her file from her previous counsel.

25 39. Unfortunately, Laura’s prior counsel did not promptly respond to this
26 request. This made it impossible for me to respond to a Motion to Compel filed by
27 Clayton before I was retained (the response to the Motion to Compel was due mere days
28 after I was retained).

1 40. Because I could not respond to the Motion to Compel without a complete
2 copy of Laura’s file, and because Mr. Woodnick refused to agree to an extension of time,
3 on April 1, 2024, I filed a lengthy and well-supported motion seeking an extension of
4 time to respond to the Motion to Compel. That motion explained the request was
5 primarily based on the fact that I did not have a complete copy of Laura’s file because her
6 previous counsel did not promptly provide the file to me.

7 41. Despite the fact good cause existed for my request for an extension, and
8 despite the fact Mr. Woodnick did not oppose the motion, just days later on April 3,
9 2024, Judge Mata issued a one-sentence minute entry order (file April 5, 2024) denying
10 my extension request without any explanation.

11 42. As a lawyer who has practiced exclusively civil litigation for more than 20
12 years, it is *extremely* unusual (essentially unheard of) in my experience for a judge to
13 deny an unopposed request for a short extension of time regarding a simple discovery
14 matter, when good cause clearly exists for the request, when no prior extension requests
15 had been made, and when the other party would not be prejudiced by the request. In fact,
16 having litigated hundreds of matters in state and federal court over the course of my
17 career, I cannot recall a single prior instance where a similar request was denied.

18 43. Of course, I am also well-aware that as a matter of law, adverse “[j]udicial
19 rulings alone do not support a finding of bias or partiality without a showing of an
20 extrajudicial source of bias or a deep-seated favoritism.” *Stagecoach Trails MHC, L.L.C.*
21 *v. City of Benson*, 232 Ariz. 562, 568 (App. Div. 2 2013) (citing *State v. Schackart*, 190
22 Ariz. 238, 257, 947 P.2d 315, 334 (1997)).

23 44. For that reason, I determined that although Judge Mata’s unexplained and
24 apparently baseless denial of my extension request raised concerns about possible bias,
25 the adverse ruling, standing alone, could not support a finding of bias. As such, I took no
26 action at that time.

27 45. Shortly thereafter, I discovered that in the Motion to Compel, Clayton’s
28 counsel, Mr. Woodnick, made multiple statements to the Court which appeared to be

1 knowingly false. After I confronted Mr. Woodnick with these concerns, he refused to
2 speak to me by telephone for several weeks. Given the fact I was newly retained and not
3 familiar with the complicated history of this case, Mr. Woodnick's refusal to speak with
4 me made it *much* more difficult to prepare this matter for trial.

5 46. For that reason, on April 8, 2024, I filed a motion entitled "Motion to
6 Compel Lunch and For Alternative Relief". In that motion, I informed the Court that Mr.
7 Woodnick was refusing to speak to me by phone, despite multiple rules of procedure and
8 professional conduct which required counsel to meet and confer by phone. As a result, I
9 asked the Court to order Mr. Woodnick to speak with me, in addition to other alternative
10 relief.

11 47. To support that request, my motion cited an earlier ruling from Hon.
12 Pendleton Gaines (deceased) in *Physicians Choice of Ariz., Inc. v. Miller*, Case No.
13 cv2003-020242, in which Judge Penny Gaines granted a virtually identical request,
14 noting, "The Court has rarely seen a motion with more merit. The motion [to compel
15 lunch] will be granted."

16 48. Unfortunately, as she did with my request for an extension of time to
17 respond to the Motion to Compel, on April 30, 2024 (filed May 1, 2024), Judge Mata
18 issued a single-sentence minute entry order denying my Motion to Compel Lunch. The
19 order denied my request without any analysis or explanation.

20 49. Later that same day (on April 30, 2024), I learned for the first time that
21 Clayton's counsel intended to use previously undisclosed evidence and witnesses at trial.
22 Due to the untimely and extremely late disclosure, within an hour of this discovery, I
23 filed an *emergency* motion bringing the issue to the Court's attention, and I requested an
24 immediate scheduling conference to discuss the issue further.

25 50. Despite the fact Rule 76.1 provides the Court "must" order a scheduling
26 conference when requested, on May 22, 2024, Judge Mata issued a minute entry order
27 denying my request for a scheduling conference, again without any explanation or
28 analysis.

51. Taken together, Judge Mata’s single-sentence, zero-explanation denial of these three motions: 1.) the request for an extension of time to respond to the Motion to Compel; 2.) the request for an order requiring Mr. Woodnick to speak with me, and 3.) the request for a scheduling conference, caused me to have serious concerns regarding Judge Mata’s possible bias and lack of neutrality. However, I continued to believe that despite the existence of what appeared to be apparent bias and hostility, Judge Mata’s adverse rulings alone would not support a finding of bias sufficient to seek her disqualification because of the rule “[a] party challenging a trial judge’s impartiality must overcome the presumption that trial judges are ‘free of bias and prejudice[.]’ *Simon v. Maricopa Med. Ctr.*, 225 Ariz. 55, ¶ 29, 234 P.3d 623, 631 (App. 2010), and the corollary standard that adverse “rulings alone do not support a finding of bias or partiality without a showing of an extrajudicial source of bias or a deep-seated favoritism.” *Stagecoach Trails*, 232 Ariz. at 568.

SUMMARY OF JUDICIAL MISCONDUCT & BIAS AT TRIAL

52. This matter proceeded to a bench trial before Judge Mata on June 10, 2024.

53. Prior to trial, I learned that Dave Neal and Megan Fox (among other JFC supporters) were planning to attend the trial in support of Clayton. It is my personal belief that courts are publicly-funded fora, trials and legal proceedings belong to the public, and should always remain open to the public. I further believe, as a matter of law, that members of the public have a near-absolute right to observe and report on events which take place in court, so I viewed the public interest in attending and observing the trial as a good thing.

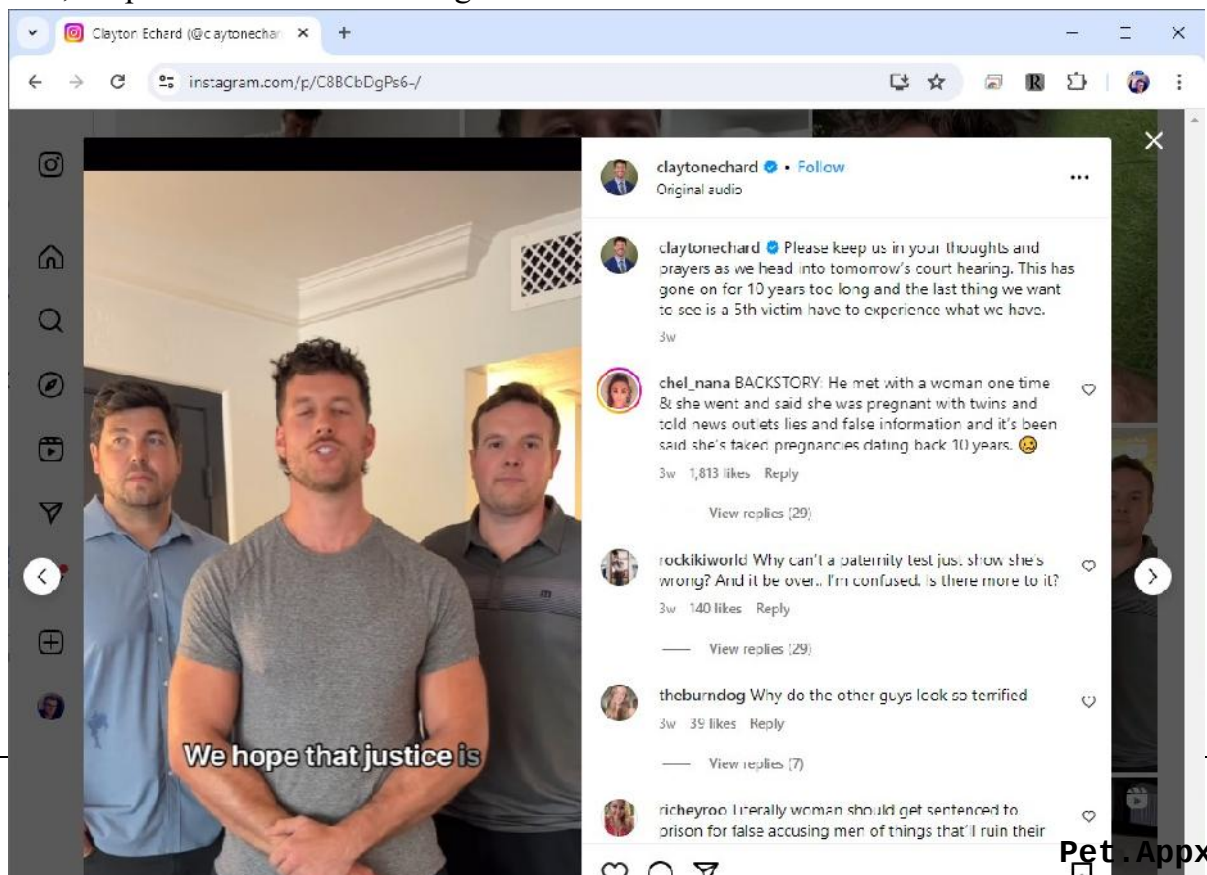
54. However, when I arrived at court on the morning of trial, I was surprised to see dozens if not hundreds of people waiting to watch the trial. Before trial began, Judge Mata spoke to counsel in her chambers and informed us that she had created an “overflow room” for at least 50 observers to watch the trial, and the seating in the courtroom itself was packed with spectators. Judge Mata informed counsel that she had taken certain security precautions due to the large crowd of spectators.

1 55. I found Judge Mata's comments about the crowd surprising, because prior
2 to the morning of trial, there was nothing filed in this matter (aside from a small number
3 of media requests for filming) that would suggest such a large crowd was likely to attend.
4 Based on this, it appeared Judge Mata gained some personal knowledge regarding the
5 likely crowd size that was not obtained from, nor shared with, the parties or counsel.

6 56. Shortly before trial began, I become aware that Mr. Woodnick intended to
7 call a witness named Mike Marraccini. Mr. Marraccini is an ex-boyfriend of Laura's. The
8 pair dated for approximately two years while living in San Francisco in 2016–2017.

9 57. During the relationship, Laura claimed Mr. Marraccini violently assaulted
10 her, causing a traumatic brain injury that eventually resulted in Laura developing
11 epilepsy. Based on this abuse, Laura sought and obtained a domestic violence restraining
12 order from the San Francisco County Superior Court, a copy of which is attached hereto
13 as **Exhibit A**. That order, later renewed, remains valid and in effect as of today.

14 58. On June 9, 2024, Clayton posted a video on his Instagram page standing
15 next to Mr. Marraccini (he appears on the right as shown here). In this video (and
16 elsewhere), Clayton suggested Mr. Marraccini intended to appear at the trial in this
17 matter, despite the DRVO issued against him.



1 59. On the morning of June 10, 2024, Laura informed me that she saw Mr.
2 Marraccini at the courthouse with Clayton and Mr. Woodnick. Based on this, Laura told
3 me she was too terrified to participate in the trial, and she told me she intended to leave
4 unless the DVRO was enforced. Having no other available option, I immediately
5 contacted court security and asked them to enforce the California court's order by
6 removing Mr. Marraccini from the facility.

7 60. Superior Court Security officers informed me they did not believe they had
8 authority to enforce the order, and they suggested the only option was to call 911 and ask
9 Phoenix PD to enforce the order. Based on that suggestion, I called 911, explained the
10 situation, and asked for officers to enforce the order.

11 61. After a few minutes, Phoenix Police responded. They reviewed the
12 California court's order, and I explained to them that pursuant to federal law (the
13 Violence Against Women Act, or "VAWA", 18 U.S.C. § 2265), they were required to
14 enforce the California court's order as-written. I provided the officers with a copy of the
15 specific provisions of VAWA which made interstate enforcement of the order *mandatory*,
16 and I directed their attention to the specific language of the order, shown here, that
17 required the order to be enforced in all 50 states.

Certificate of Compliance With VAWA

This restraining (protective) order meets all "full faith and credit" requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994) (VAWA) upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. This order is valid and entitled to enforcement in each jurisdiction throughout the 50 states of the United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.

23
24 62. I also explained that by travelling from California to Arizona for the
25 purpose of violating the order, Mr. Marraccini committed a federal crime pursuant to 18
26 U.S.C. § 2262, and that Laura desired his arrest and prosecution.

27 63. Despite this, Phoenix Police indicated they believed they had no choice but
28 to defer to Judge Mata on this issue. As a result, immediately prior to the start of trial, I

asked Judge Mata on the record to enforce the California court's order by removing Mr. Marraccini from the courtroom.

64. As she had done with substantially every other request, Judge Mata denied my request without any explanation. As a result, Laura was forced to sit in court just feet away from Mr. Marraccini which caused her to nearly become overwhelmed by fear, panic, and anxiety.

65. At the conclusion of the trial, I informed Judge Mata, on the record, that I was leaving the country later that evening for a family vacation in Europe to celebrate my mother's 80th birthday. I left Arizona the evening of June 10th, and I remained in Europe until I returned home on June 28th. The majority of this time was spent on a cruise ship in the Mediterranean with my family, and during that time, my Internet access was extremely limited. The ship's WiFi connection was so slow that I was unable to view videos posted on any medium (including Twitter and YouTube) during the cruise.

66. While I was on vacation, Laura contacted me and told me about some extremely disturbing information being shared on social media by Dave Neal and Megan Fox. Specifically, Mr. Neal and Ms. Fox appeared in several live-streamed and other videos in which they claimed Judge Mata's father, Harry L. Howe, was present in the overflow room during the trial, and they claimed Mr. Howe spoke with several of Clayton's supporters during and after the trial, proclaiming, "I'm here for the shit show." Another individual claimed Judge Mata's father sat "with them" and expressed that he was "here for the circus".

67. Laura assembled excerpts of some of these videos which are available for viewing here: https://youtu.be/GKVVfxrG_o. A CD containing these videos is also lodged herewith.

68. As unusual as this may be, the mere fact Judge Mata's father attended the trial (if true) is not the primary concern. The concern is that according to comments from Dave Neal, Megan Fox, and others appearing on video with them, Mr. Howe stated Judge Mata discussed the facts of this case with him prior to trial. One such specific statement

1 was made by a person named “Hava Derby” (who speaks between 0:00 and 0:40 in the
2 above video compilation). In her remarks, Ms. Derby claims that she spoke with Judge
3 Mata’s father at, or immediately after, the trial. Ms. Derby stated that Mr. Howe was
4 carrying papers with him (which, based on her comments, may have been Laura’s
5 Request for Findings of Fact and Conclusions of Law). Ms. Derby further claims Mr.
6 Howe told her Judge Mata showed her father Laura’s Request for Findings of Fact and
7 Conclusions of Law, and she (Judge Mata) told him, “Julie told me just....Dad, you have
8 GOT to read this...and printed out a copy for him...”

9 69. In the course of making these remarks, Ms. Derby also made statements
10 which appeared to imply that Judge Mata told her father that she intended to rule in favor
11 of Clayton before the case was tried. The discussion of that point is brief and not entirely
12 clear, but my belief is based on Ms. Derby’s claim Mr. Howe “whipped out papers”, that
13 “Julie printed them for him”, then she mentions Laura’s Request for Findings of Fact and
14 Conclusions of Law, finally asking “Did anyone see those were denied?” prior to trial.

15 70. What is also extremely disturbing is that in the video compilation, upon
16 hearing remarks regarding Judge Mata and her father, Dave Neal laughingly commented
17 (to paraphrase): “*Hold on...we don’t need a mistrial!*” That specific comment from Mr.
18 Neal appears between 0:40 and 1:00 in the above video compilation.

19 71. I understood those remarks from Dave Neal as a signal to the person
20 speaking that they should *not* disclose further information regarding comments they
21 claim to have received from Judge Mata’s father, because her believed they would expose
22 judicial misconduct and bias on Judge Mata’s part, requiring a new trial if those facts
23 were exposed.

24 72. Assuming Judge Mata did, in fact, share information about this case with
25 her father, that conduct would appear to be a *per se* violation of Rule 2.9(A) of the
26 Arizona Code of Judicial Conduct.

27 73. Despite these allegations, my personal view (based on the past several
28 months) is that Clayton’s followers are generally not honest or reliable, and I considered

1 the possibility the claims made regarding Judge Mata's father may be fabricated, either in
2 whole or in part.

3 74. Given how serious the issues were, I did not believe I could ethically make
4 a formal accusation of judicial impropriety without taking some reasonable steps to verify
5 the truth of what happened. *See, e.g.*, Arizona Rules of Professional Conduct, ER 8.2(a)
6 (providing, "A lawyer shall not make a statement that the lawyer knows to be false or
7 with reckless disregard as to its truth or falsity concerning the qualifications or integrity
8 of a judge") (emphasis added).

9 75. In an effort to ascertain the truth, while on vacation on the morning of June
10 17, 2024 (before I received the post-trial decision), I sent an email to Judge Mata's
11 division in which I raised concerns regarding Judge Mata's father and the alleged
12 statements made by Dave Neal and Megan Fox (at that time, I had not yet seen Ms.
13 Derby's remarks). A true and correct copy of this email is attached hereto as **Exhibit B**.

14 76. In this email, while noting the highly unusual circumstances, I asked Judge
15 Mata to promptly provide a response to the allegations regarding her father. I further
16 explained that if these allegations were true, I believed they may support a change of
17 judge for cause.

18 77. A few hours later, I received an email response from Judge Mata's division
19 stating: "To the extent that either party wishes to bring a matter to the Court's attention,
20 the Court respectfully asks that you file the appropriate motion." A true and correct copy
21 of this email is attached hereto as **Exhibit C**. Other than this brief response, Judge Mata
22 did not admit or deny the allegations concerning her father.

23 78. About 14 hours later, on the morning of June 18, 2024, I received the
24 Court's post trial ruling on the merits, a copy of which is attached hereto as **Exhibit D**.

25 79. After reviewing the June 18, 2024 decision (which found in favor of
26 Clayton as to virtually all issues), Laura and I immediately noticed something truly
27 shocking – **the ruling contained "findings" that were NOT based on any evidence at**
28 **trial**. Instead, **those findings were clearly copied from posts on social media**.

1 80. Specifically, and to cite just one obvious example, on page 10 of the
2 decision, Judge Mata made certain findings that were purportedly based on the trial
3 testimony of Clayton’s medical expert witness, Dr. Samantha Deans. Dr. Deans is an
4 OB/GYN who previously worked for Planned Parenthood on the East Coast.

5 81. As shown below, Judge Mata made a specific factual finding that *according*
6 *to the trial testimony of Dr. Deans*, “Planned Parenthood is not open on Sundays.”

7
8 **Samantha Deans, MD, MPH**

- 9 • Dr. Samantha Deans, MD, MPH, reviewed Petitioner’s records and provided her
10 analysis of the hCG results. (Ex. B. 39, 41). Additionally, she was the prior
11 Associate Medical Director of Planned Parenthood in Florida, and Pennsylvania.
12 • She testified that Planned Parenthood does not accept anonymous patients. They
13 do not accept patients using an alias. Patients are required to provide a
14 government issued form of identification. She further testified that Planned
15 Parenthood is not open on Sundays, when Petitioner testified, she sought care July
16 2, 2023.

17 82. Without belaboring the details of the entire history of that issue, the
18 question of whether Planned Parenthood was (or was not) “open on Sundays” was
19 relevant and extremely important. This is so because at trial, Laura testified she sought
20 care from a Planned Parenthood location in Southern California on July 2, 2023. As it
21 happens, July 2, 2023 was a Sunday. Therefore, if Planned Parenthood was not open on
22 Sunday in July 2023, absent some other explanation, that would appear to disprove
23 Laura’s claim that she sought care there on that day.

24 83. But here’s the problem – **Dr. Deans never testified about this issue at**
25 **trial, or at any other time.** To prove that point, attached hereto as **Exhibit E** is a true
26 and complete copy of the court report’s official trial transcript. As the index reflects, the
27 entirety of Dr. Deans’ testimony covers a total of six (6) pages.

28 SAMANTHA DEANS

Direct Examination by Mr. Woodnick	109
Voir Dire Examination by Mr. Gingras	111
Direct Examination Continued by Mr. Woodnick	112
Cross-Examination by Mr. Gingras	115

1 84. As the transcript clearly shows, at no time during her brief testimony did
2 Dr. Deans (or anyone else) ever address the question of whether Planned Parenthood was
3 (or was not) “open on Sundays”; that question was never asked, nor was it answered.

4 85. If Dr. Deans did not testify that “Planned Parenthood is not open on
5 Sundays”, where did Judge Mata’s finding on that issue come from? The answer is, once
6 again, absolutely shocking – **Judge Mata copied that finding from posts on social**
7 **media.**

8 86. As noted above, during the course of my involvement in this matter, I have
9 published a small number of comments (approximately 15 posts) regarding this case on
10 my personal website, GingrasLaw.com. This is a tiny, insignificant fraction of the
11 commentary published by Clayton and his followers. As noted above, the JFC Twitter
12 account has posted nearly 3,500 tweets about this case, and the number of other posts on
13 social media is certainly in the tens or hundreds of thousands, if not millions.

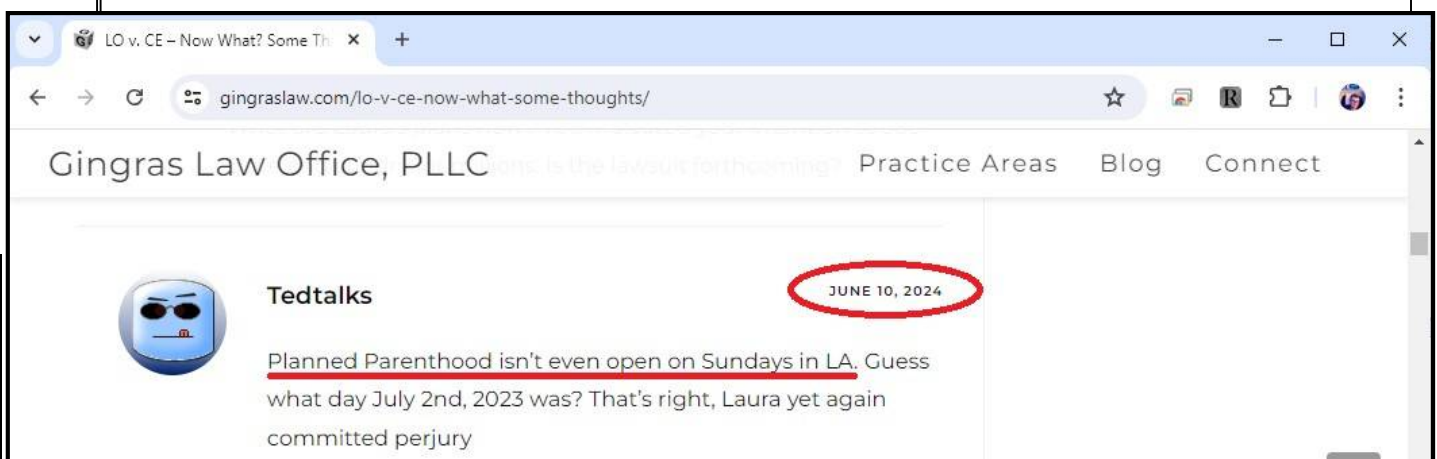
14 87. As limited as my online involvement in this case has been, I believe Judge
15 Mata conducted her own independent research into the facts of this case, and that this
16 involved her reviewing comments posted on my website or other social media pages.
17 That belief is based on the following facts.

18 88. First, throughout this case (and repeatedly at trial), Clayton’s counsel
19 Gregg Woodnick vociferously complained to Judge Mata about the fact that I was
20 making public statements about this case via my website and Twitter, and Mr. Woodnick
21 specifically provided copies of articles I wrote and posted on GingrasLaw.com about this
22 case. I found Mr. Woodnick’s complaints in this regard confusing, because the
23 information and comments I posted about this case were not improper in any way, and
24 because Clayton and his supporters (including Mr. Woodnick) had also posted public
25 comments online about this case suggesting that Mr. Woodnick fully understood I had a
26 right to inform the public of Laura’s side of the story.

27 89. Based on what I know now, I believe that by pointing to comments on my
28 website, Mr. Woodnick was not actually concerned about the contents of those posts.

1 Instead, I believe he was suggesting or hinting to Judge Mata that she should go online
2 and perform an *ex parte* review my site, and I believe that is exactly what she did.

3 90. That belief is based on the fact that immediately after Laura finished
4 testifying at trial, literally later that same day, anonymous supporters of Clayton began
5 posting comments on my website and also on social media, asserting Laura committed
6 perjury when she claimed to have sought care from Planned Parenthood on July 2, 2023,
7 because that day was a Sunday, and “Planned Parenthood isn’t even open on Sundays
8” This specific comment was posted by an anonymous user on my website on June 10,
9 2024, a week before Judge Mata issue her post-trial decision.



17
18 91. Similar comments were also posted by anonymous users on Twitter, one
19 example of which is shown here: <https://x.com/unde31312/status/1800319104189890581>



92. This evidence supports two conclusions. First, Judge Mata’s finding that “Planned Parenthood is not open on Sundays” did not come from the trial testimony of Dr. Deans, nor did it come any other witness; indeed the word “Sunday” does not appear anywhere in the transcript. That much is beyond dispute.

93. Second, the evidence shows Judge Mata violated Rule 2.9(c) of the Arizona Code of Judicial Conduct by performing a secret, undisclosed investigation in the facts of this matter, which clearly would have resulted in her seeing comments from Clayton's supporters regarding their beliefs as to Planned Parenthood's hours of operations.

94. The fact that Judge Mata based her post-trial ruling on anything other than the admitted trial evidence demonstrates, beyond a preponderance of the evidence, that grounds exist to disqualify Judge Mata from this matter on the basis of bias and prejudice. The same is true of Judge Mata's decision to have *ex parte* discussions about this case with her father.

95. The legal arguments supporting those conclusions are set forth in a memorandum of law filed concurrently herewith pursuant to Family Law Rule 6.1(d)(2).

96. For the reasons stated above, I have grounds to believe and I do believe, that on account of bias, prejudice, or other interests the judge currently assigned to this matter, Hon. Julie A. Mata, is unable to act fairly and impartially, and she is unable to provide Petitioner Laura Owens with a fair trial, including a fair retrial which Ms. Owens is concurrently requesting.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United State of America and the State of Arizona that the foregoing is true and correct.

EXECUTED ON July 8, 2024.


David S. Gingras

Exhibit A

DV-730**Order to Renew Domestic Violence Restraining Order**

Clerk stamps date here when form is filed.

FILED
San Francisco County Superior Court

SEP 11 2020

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

Fill in court name and street address:

Superior Court of California, County of
SAN FRANCISCO
SAN FRANCISCO SUPERIOR COURT
400 McAllister Street
San Francisco CA 94102

Fill in case number:

Case Number:
FDV-18-813693**1 Name of Protected Person:**Laura Owens

Your lawyer in this case (if you have one):

Name: In Pro Per State Bar No.: _____

Firm Name: _____

Address (If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your telephone, fax, or e-mail.):

Address: [Redacted] #305City: San Francisco State: CA Zip: 94123

Telephone: _____ Fax: _____

E-Mail Address: _____

2 Name of Restrained Person:Michael Marraccini

Description of restrained person:

Sex: ☒ M ☐ F Height: 6'4 Weight: 220 Hair Color: brown Eye Color: greenRace: White Age: 33 Date of Birth: 6/2/87

Mailing Address (if known): _____

City: _____ State: _____ Zip: _____

Relationship to protected person: _____

3 HearingThere was a hearing on (date): 9/11/2020 at (time): 9:00 ☒ a.m. ☐ p.m. Dept. 403 Room: 403

These people were at the hearing:

a. ☒ The person in ① c. ☐ The lawyer for the person in ① (name): _____b. ☒ The person in ② d. ☐ The lawyer for the person in ② (name): _____**4 Renewal and Expiration**The request to renew the attached restraining order, issued on (date): July 9, 2018 is:a. ☒ GRANTED. The attached restraining order is renewed and will now be in effect for:☒ 5 years ☐ permanently (the renewed restraining order must be attached to this form.)

The attached order will expire on:

(date): July 10, 2025 (time): 12:00 noon ☐ a.m. ☐ p.m. or ☐ midnight

(Child custody, visitation, and support orders may have been modified and may be different from those issued on the attached restraining order).

b. ☐ DENIED. The attached restraining order expires as stated in that order.Number of pages attached: 9Date: September 11, 2020[Signature]
Judicial Officer
Hon. Sharon Reardon**This is a Court Order.**

DV-130**Restraining Order After Hearing
(Order of Protection)**☒ Original Order ☐ Amended Order**1 Name of Protected Person:**Laura Owens

Your lawyer in this case (if you have one):

Name: Elisha Jussen-Cooke State Bar No.: 283446Firm Name: Cooperative Restraining Order Clinic

Address (If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your telephone, fax, or e-mail.):

Address: [REDACTED]City: San Francisco State: CA Zip: 94110Telephone: 415-864-1790 Fax: 415-241-9491E-Mail Address: elisha@roclinic.org**2 Name of Restrained Person:**Michael Marraccini

Description of restrained person:

Sex: ☒ M ☐ F Height: 6'4 Weight: 220 Hair Color: brown Eye Color: green
 Race: White Age: 31 Date of Birth: [REDACTED]
 Mailing Address (if known): _____
 City: _____ State: _____ Zip: _____
 Relationship to protected person: _____

3 ☐ Additional Protected Persons

In addition to the person named in **1**, the following persons are protected by orders as indicated in items **6** and **7** (family or household members):

Full name	Relationship to person in 1	Sex	Age
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

☐ Check here if there are additional protected persons. List them on an attached sheet of paper and write, "DV-130, Additional Protected Persons," as a title.

4 Expiration Date

The orders, except as noted below, end on

(date): July 10, 2020 at (time): 12:00 noon ☐ a.m. ☐ p.m. or ☐ midnight

- If no date is written, the restraining order ends three years after the date of the hearing in item **5** (a).
- If no time is written, the restraining order ends at midnight on the expiration date.
- Note: Custody, visitation, child support, and spousal support orders remain in effect after the restraining order ends. Custody, visitation, and child support orders usually end when the child is 18.
- The court orders are on pages 2, 3, 4, and 5 and attachment pages (if any).

This order complies with VAWA and shall be enforced throughout the United States. See page 5.**This is a Court Order.**

Case Number:

FDV-18-813693

5 Hearings The hearing schedule for July 10, 2018 is taken off calendar by agreement of the parties.

- a. The hearing was on (date): 7/10/18 with (name of judicial officer): Hon. Roger Chan
- b. These people were at the hearing (check all that apply):
- ☐ The person in (1) ☐ The lawyer for the person in (1) (name): _____
- ☐ The person in (2) ☐ The lawyer for the person in (2) (name): _____
- c. The people in (1) and (2) must return to Dept. _____ of the court on (date): _____ at (time): _____ ☐ a.m. ☐ p.m. to review (specify issues): _____

To the person in (2):

The court has granted the orders checked below. Item (9) is also an order. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to \$1,000, or both.

6 ☒ Personal Conduct Orders

- a. The person in (2) must not do the following things to the protected people in (1) and (3):
- ☒ Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, impersonate (on the Internet, electronically or otherwise), or block movements.
- ☒ Contact, either directly or indirectly, by any means, including, but not limited to, by telephone, mail, e-mail, or other electronic means.
- ☒ Take any action, directly or through others, to obtain the addresses or locations of any protected persons. (If this item is not checked, the court has found good cause not to make this order.)
- b. Peaceful written contact through a lawyer or process server or another person for service of legal papers related to a court case is allowed and does not violate this order.
- c. ☐ Exceptions: Brief and peaceful contact with the person in (1), and peaceful contact with children in (3), as required for court-ordered visitation of children, is allowed unless a criminal protective order says otherwise.

7 ☒ Stay-Away Order

- a. The person in (2) must stay at least (specify): 100 yards away from (check all that apply):
- ☒ The person in (1) ☐ School of person in (1)
- ☒ Home of person in (1) ☐ The persons in (3)
- ☒ The job or workplace of person in (1) ☐ The child(ren)'s school or child care
- ☒ Vehicle of person in (1) ☐ Other (specify): _____
- b. ☐ Exceptions: Brief and peaceful contact with the person in (1), and peaceful contact with children in (3), as required for court-ordered visitation of children, is allowed unless a criminal protective order says otherwise.

8 ☐ Move-Out Order

The person in (2) must move out immediately from (address): _____

9 No Guns or Other Firearms or Ammunition

- a. The person in (2) cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.

This is a Court Order.

Case Number:

FDV-18-813693

9

b. The person in (2) must:

- Sell to, or store with, a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms within his or her immediate possession or control. Do so within 24 hours of being served with this order.
- Within 48 hours of receiving this order, file with the court a receipt that proves guns have been turned in, sold, or stored. (Form DV-800, *Proof of Firearms Turned In, Sold, or Stored*, may be used for the receipt.) Bring a court filed copy to the hearing.

c. ☐ The court has received information that the person in (2) owns or possesses a firearm.

d. ☐ The court has made the necessary findings and applies the firearm relinquishment exemption under Family Code section 6389(h). Under California law, the person in (2) is not required to relinquish this firearm (specify make, model, and serial number of firearm): _____

The firearm must be in his or her physical possession only during scheduled work hours and during travel to and from his or her place of employment. Even if exempt under California law, the person in (2) may be subject to federal prosecution for possessing or controlling a firearm.

10

☒ Record Unlawful Communications

The person in (1) has the right to record communications made by the person in (2) that violate the judge's orders.

11

☐ Care of Animals

The person in (1) is given the sole possession, care, and control of the animals listed below. The person in (2) must stay at least _____ yards away from and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the following animals: _____

12

☐ Child Custody and Visitation

Child custody and visitation are ordered on the attached Form DV-140, *Child Custody and Visitation Order* or (specify other form): _____

13

☐ Child Support

Child support is ordered on the attached Form FL-342, *Child Support Information and Order Attachment* or (specify other form): _____

14

☐ Property Control

Only the person in (1) can use, control, and possess the following property: _____

15

☐ Debt Payment

The person in (2) must make these payments until this order ends:

Pay to: _____ For: _____ Amount: \$ _____ Due date: _____

Pay to: _____ For: _____ Amount: \$ _____ Due date: _____

Pay to: _____ For: _____ Amount: \$ _____ Due date: _____

☐ Check here if more payments are ordered. List them on an attached sheet of paper and write "DV-130, Debt Payments" as a title.

16

☐ Property Restraint

The ☐ person in (1) ☐ person in (2) must not transfer, borrow against, sell, hide, or get rid of or destroy any property, including animals, except in the usual course of business or for necessities of life. In addition, the person must notify the other of any new or big expenses and explain them to the court. (The person in (2) cannot contact the person in (1) if the court has made a "No-Contact" order.)

Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

This is a Court Order.

Case Number:

FDV-18-813693

17 ☐ Spousal Support

Spousal support is ordered on the attached Form FL-343, *Spousal, Partner, or Family Support Order Attachment* or (specify other form): _____

18 ☐ Rights to Mobile Device and Wireless Phone Account

a. ☐ Property Control of Mobile Device and Wireless Phone Account

Only the person in (1) can use, control, and possess the following property:

Mobile device (describe) _____ and account (phone number): _____

Mobile device (describe) _____ and account (phone number): _____

☐ Check here if you need more space. Attach a sheet of paper and write "DV-130 Rights to Mobile Device and Wireless Phone Account" as a title.

b. ☐ Debt Payment

The person in (2) must make these payments until this order ends:

Pay to (wireless service provider): _____ Amount: \$ _____ Due date: _____

c. ☐ Transfer of Wireless Phone Account

The court has made an order transferring one or more wireless service accounts from the person in (2) to the person in (1). These orders are contained in a separate order (Form DV-900).

19 ☐ Insurance

☐ The person in (1) ☐ the person in (2) is ordered NOT to cash, borrow against, cancel, transfer, dispose of, or change the beneficiaries of any insurance or coverage held for the benefit of the parties, or their child(ren), if any, for whom support may be ordered, or both.

20 ☐ Lawyer's Fees and Costs

The person in (2) must pay the following lawyer's fees and costs:

Pay to: _____ For: _____ Amount: \$ _____ Due date: _____

Pay to: _____ For: _____ Amount: \$ _____ Due date: _____

21 ☐ Payments for Costs and Services

The person in (2) must pay the following:

Pay to: _____ For: _____ Amount: \$ _____ Due date: _____

Pay to: _____ For: _____ Amount: \$ _____ Due date: _____

Pay to: _____ For: _____ Amount: \$ _____ Due date: _____

☐ Check here if more payments are ordered. List them on an attached sheet of paper and write "DV-130, Payments for Costs and Services" as a title.

22 ☐ Batterer Intervention Program

The person in (2) must go to and pay for a 52-week batterer intervention program and show written proof of completion to the court. This program must be approved by the probation department under Penal Code § 1203.097. The person in (2) must enroll by (date): _____ or if no date is listed, must enroll within 30 days after the order is made. The person in (2) must complete, file and serve Form 805, Proof of Enrollment for Batterer Intervention Program.

23 ☐ Other Orders

Other orders (specify): _____

24 ☐ No Fee to Serve (Notify) Restrained Person

If the sheriff or marshal serves this order, he or she will do it for free.

This is a Court Order.

Case Number:

FDV-18-813693

25 Service

- a. ☒ The people in (1) and (2) were at the hearing or agreed in writing to this order. No other proof of service is needed.
- b. ☐ The person in (1) was at the hearing on the request for original orders. The person in (2) was not present.
- (1) ☐ Proof of service of Form DV-109 and Form DV-110 (if issued) was presented to the court. The judge's orders in this form are the same as in Form DV-110 except for the end date. The person in (2) must be served. This order can be served by mail.
- (2) ☐ Proof of service of Form DV-109 and Form DV-110 (if issued) was presented to the court. The judge's orders in this form are different from the orders in Form DV-110, or Form DV-110 was not issued. The person in (2) must be personally "served" (given) a copy of this order.
- c. ☐ Proof of service of Form FL-300 to modify the orders in Form DV-130 was presented to the court.
- (1) ☐ The people in (1) and (2) were at the hearing or agreed in writing to this order. No other proof of service is needed.
- (2) ☐ The people in ☐ (1) ☐ (2) was not at the hearing and must be personally "served" (given) a copy of this amended order.

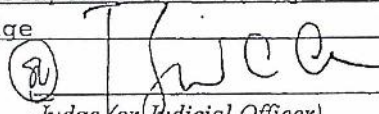
26 ☐ Criminal Protective Order

- a. ☐ Form CR-160, *Criminal Protective Order—Domestic Violence*, is in effect.
Case Number: _____ County: _____ Expiration Date: _____
- b. ☐ Other Criminal Protective Order in effect (*specify*): _____
Case Number: _____ County: _____ Expiration Date: _____
(List other orders on an attached sheet of paper. Write "DV-130, Other Criminal Protective Orders" as a title.)
- c. ☐ No information has been provided to the judge about a criminal protective order.

27 ☒ Attached pages are orders.

- Number of pages attached to this seven-page form: -1-
- All of the attached pages are part of this order.
- Attachments include (*check all that apply*):
 - ☐ DV-140 ☐ DV-145 ☐ DV-150 ☐ FL-342 ☐ FL-343 ☐ DV-900
 - ☒ Other (*specify*): Attachment One (1) - stipulation for 2-year Restraining Order After Hearing signature page

Date: _____

JUL - 9 2018

Judge (or Judicial Officer)
Hon. Roger Chan

Certificate of Compliance With VAWA

This restraining (protective) order meets all "full faith and credit" requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994) (VAWA) upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. This order is valid and entitled to enforcement in each jurisdiction throughout the 50 states of the United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.

This is a Court Order.

Warnings and Notices to the Restrained Person in 2

If you do not obey this order, you can be arrested and charged with a crime.

- If you do not obey this order, you can go to jail or prison and/or pay a fine.
- It is a felony to take or hide a child in violation of this order.
- If you travel to another state or to tribal lands or make the protected person do so, with the intention of disobeying this order, you can be charged with a federal crime.

You cannot have guns, firearms, and/or ammunition.



You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, and/or ammunition while the order is in effect. If you do, you can go to jail and pay a \$1,000 fine. Unless the court grants an exemption, you must sell to, or store with, a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms that you have or control. The judge will ask you for proof that you did so. If you do not obey this order, you can be charged with a crime. Federal law says you cannot have guns or ammunition while the order is in effect. Even if exempt under California law, you may be subject to federal prosecution for possessing or controlling a firearm.

Instructions for Law Enforcement**Start Date and End Date of Orders**

The orders *start* on the earlier of the following dates:

- The hearing date in item (5) (a) on page 2, or
- The date next to the judge's signature on this page.

The orders *end* on the expiration date in item (4) on page 1. If no date is listed, they end three years from the hearing date.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6.

Notice/Proof of Service

Law enforcement must first determine if the restrained person had notice of the orders. If notice cannot be verified, the restrained person must be advised of the terms of the orders. If the restrained person then fails to obey the orders, the officer must enforce them. (Fam. Code, § 6383.)

Consider the restrained person "served" (notified) if:

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; or
- The restrained person was at the restraining order hearing or was informed of the order by an officer. (Fam. Code, § 6383; Pen. Code, § 836(c)(2).) An officer can obtain information about the contents of the order in the Domestic Violence Restraining Order System (DVROS). (Fam. Code, § 6381(b)-(c).)

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, the orders remain in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

This is a Court Order.

Case Number:

FDV-18-813693

Child Custody and Visitation

The custody and visitation orders are on Form DV-140, items ③ and ④. They are sometimes also written on additional pages or referenced in DV-140 or other orders that are not part of the restraining order.

Enforcing the Restraining Order in California

Any law enforcement officer in California who receives, sees, or verifies the orders on a paper copy, in the California Law Enforcement Telecommunications System (CLETS), or in an NCIC Protection Order File must enforce the orders.

Conflicting Orders—Priorities for Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following priority (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *EPO*: If one of the orders is an *Emergency Protective Order* (Form EPO-001) and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No-Contact Order*: If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.
3. *Criminal Order*: If none of the orders includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order*: If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Restraining Order After Hearing (Order of Protection)* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order

SHORT TITLE:

Owens v. Marraccini

CASE NUMBER:

FDV-18-813693

ATTACHMENT (Number): One (1)

(This Attachment may be used with any Judicial Council form.)

The parties agree that a Two (2) year Restraining Order After Hearing shall be granted protecting Ms. Laura Owens and restraining Mr. Michael Marraccini.

By signing below, the parties acknowledge that each has read and discussed the terms of this restraining order with his or her respective counsel. Each party understands and accepts the terms of this agreement. Each party warrants that each freely and voluntarily executed this agreement. This agreement may be signed in counterparts. Each counterpart shall be deemed part of the original document. This agreement may also be signed by email and such email signatures shall be valid as originals.

So Agreed.

Dated: 7/6/18

Laura Owens
Laura Owens, Protected Party

Dated: 7/6/2018

Elisha Jussen-Cooke
Elisha Jussen-Cooke, Attorney for
Laura Owens

Dated: _____

Michael Marraccini, Restrained Party

Dated: _____

Randy Sue Pollock, Attorney for
Michael Marraccini

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page ____ of ____

(Add pages as required)

SHORT TITLE: Owens v. Marraccini	CASE NUMBER: FDV-18-813693
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ATTACHMENT (Number): One (1)

(This Attachment may be used with any Judicial Council form.)

The parties agree that a Two (2) year Restraining Order After Hearing shall be granted protecting Ms. Laura Owens and restraining Mr. Michael Marraccini.

By signing below, the parties acknowledge that each has read and discussed the terms of this restraining order with his or her respective counsel. Each party understands and accepts the terms of this agreement. Each party warrants that each freely and voluntarily executed this agreement. This agreement may be signed in counterparts. Each counterpart shall be deemed part of the original document. This agreement may also be signed by email and such email signatures shall be valid as originals.

So Agreed.

Dated: _____

Laura Owens, Protected Party

Dated: _____

Elisha Jussen-Cooke, Attorney for
Laura Owens

7/8/2018

Dated: _____

Michael Marraccini
Michael Marraccini, Restrained Party

Dated: 7/8/2018

Randy Sue Pollock
Randy Sue Pollock, Attorney for
Michael Marraccini

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page _____ of _____

(Add pages as required)

Exhibit B

David Gingras

From: David Gingras
Sent: Monday, June 17, 2024 10:10 AM
To: SUP DRJ06; Gregg Woodnick
Cc: Isabel Ranney; Maribeth Burroughs; Deandra Arena
Subject: RE: Owens v. Echard (FC2023-052114)--Response Requested

Importance: High

Dear Judge Mata's Division,

I am writing to raise a potentially urgent issue that has just come to my attention. In short, Ms. Owens informs me that various individuals have recently posted claims on social media which, if true, may warrant a change of judge for cause pursuant to Family Law Rule 6.1. Before pursuing this further, I wanted to bring this to the Court's attention and request a response from Judge Mata directly to verify whether the allegations are true.

In short, Ms. Owens has informed me of the following:

- 1.) Judge Mata's father was personally present at the trial held in this matter on Monday, June 10th;
- 2.) After the trial, several individuals ("supporters" of Mr. Echard) claim to have discussed the case with Judge Mata's father;
- 3.) According to these individuals, Judge Mata's father claimed the judge shared information with him about this case, and made comments indicating Judge Mata intended to make adverse rulings against Ms. Owens before trial.

Obviously, if these allegations are true, they raise extremely serious concerns.

However, I am fully aware that similar claims have recently been posted on social media in other unrelated cases, and those claims were later shown to be false.

In this instance, Ms. Owens has reason to believe the allegations regarding Judge Mata's father are true. She has obtained a video of a least one person making these claims, and that person claims to have directly communicated with Judge Mata's father about this matter. If this claim is true, Ms. Owens believes this may warrant a change of judge for cause pursuant to Family Law Rule 6.1.

Before proceeding, as unusual as this may be, I am respectfully asking Judge Mata to respond directly and explain whether these allegations are true.

As I mentioned in court last week, I am currently in Europe on a family vacation. We are currently on a cruise ship (the Norwegian Getaway) anchored in Cannes, France. We are leaving this evening for Florence, Italy, and we will be on the ship until early next week when it docks in Athens. We will have extremely limited phone/internet while the ship is at sea. Currently (as of Monday, June 17th), we are +9 hours ahead of Arizona time, but that will increase as we move further east.

Again, I fully understand the unusual nature of this message, and as noted above, I understand the allegations may be entirely false. However, given the serious nature of the issue, Ms. Owens has asked me to move forward with an immediate Notice of Change of Judge for Cause unless the Court confirms the above allegations are false. I hope this will not be necessary given the significant disruption this may cause, but I am ethically obligated to take all appropriate steps to protect Ms. Owens' rights, and I intend to do so.

For that reason, I respectfully request a response from the Court to the issues raised above by 5 PM (Arizona time) tomorrow, June 18, 2024. For purposes of clarity, the questions I am propounding are as follows:

1. Was Judge Mata's father present (either in court or in any overflow room) for the trial in this matter on June 10th;
2. Did Judge Mata's father speak with Mr. Echard or any of his supporters, including any of his attorneys, at any time;
3. Did Judge Mata share any information of any kind with her father regarding this case prior to June 10, 2024, and if so, what specific information was shared.

Thank you for your prompt attention to this request.

David Gingras, Esq.
Gingras Law Office, PLLC

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Exhibit C

David Gingras

From: SUP DRJ06 [REDACTED]
Sent: Monday, June 17, 2024 11:58 AM
To: David Gingras; Gregg Woodnick
Cc: Isabel Ranney; Maribeth Burroughs; Deandra Arena
Subject: RE: Owens v. Echard (FC2023-052114)--Response Requested

Good morning,

To the extent that either party wishes to bring a matter to the Court's attention, the Court respectfully asks that you file the appropriate motion.

Best,
Charles

From: David Gingras [REDACTED] >
Sent: Monday, June 17, 2024 10:10 AM
To: SUP DRJ06 [REDACTED] >; Gregg Woodnick [REDACTED]
Cc: Isabel Ranney [REDACTED]; Maribeth Burroughs [REDACTED] Deandra Arena
[REDACTED]
Subject: RE: Owens v. Echard (FC2023-052114)--Response Requested
Importance: High

Dear Judge Mata's Division,

I am writing to raise a potentially urgent issue that has just come to my attention. In short, Ms. Owens informs me that various individuals have recently posted claims on social media which, if true, may warrant a change of judge for cause pursuant to Family Law Rule 6.1. Before pursuing this further, I wanted to bring this to the Court's attention and request a response from Judge Mata directly to verify whether the allegations are true.

In short, Ms. Owens has informed me of the following:

- 1.) Judge Mata's father was personally present at the trial held in this matter on Monday, June 10th;
- 2.) After the trial, several individuals ("supporters" of Mr. Echard) claim to have discussed the case with Judge Mata's father;
- 3.) According to these individuals, Judge Mata's father claimed the judge shared information with him about this case, and made comments indicating Judge Mata intended to make adverse rulings against Ms. Owens before trial.

Obviously, if these allegations are true, they raise extremely serious concerns.

However, I am fully aware that similar claims have recently been posted on social media in other unrelated cases, and those claims were later shown to be false.

In this instance, Ms. Owens has reason to believe the allegations regarding Judge Mata's father are true. She has obtained a video of a least one person making these claims, and that person claims to have directly communicated with Judge Mata's father about this matter. If this claim is true, Ms. Owens believes this may warrant a change of judge for cause pursuant to Family Law Rule 6.1.

Exhibit D

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

HONORABLE JULIE ANN MATA

CLERK OF THE COURT
L. Overton
Deputy

IN RE THE MATTER OF
LAURA OWENS

DAVID S GINGRAS

AND

CLAYTON ECHARD

GREGG R WOODNICK

DEANDRA ARENA
JUDGE MATA
MARICOPA COUNTY ATTORNEY'S
OFFICE
225 W MADISON ST
PHOENIX AZ 85003

UNDER ADVISEMENT RULING

An in-person Evidentiary Hearing was held on June 10, 2024, regarding the issues of sanctions, paternity, attorney's fees, and costs.

JURISDICTIONAL FINDINGS

THE COURT FINDS at the time this action was commenced at least one of the parties was domiciled in the State of Arizona and that said domicile had been maintained for at least 90 days prior to filing the Petition. There are no minor children common to the parties.

PROCEDURAL HISTORY

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

- Laura Owens (“Petitioner”) filed a pro per Petition to Establish Paternity, Legal Decision Making, Parenting Time and Child Support on May 20, 2023.
- Petitioner filed a pro per Motion to Communicate on August 23, 2023, a Motion to Compel on August 29, 2023, and Expedited Consideration Requested! Motion to Communicate filed September 14, 2023, and Expedited (!) Motion to Seal Court Record on September 14, 2023. All motions were denied.
- Clayton Echard (“Respondent”) filed a pro per Answer on August 21, 2023. The Court granted Respondent’s Motion for Leave to Amend Response filed by counsel on December 12, 2023, and Amended Response to Petition to Establish filed on January 26, 2024.
- The parties attended an Early Resolution Conference on September 28, 2023, wherein the parties entered into a Rule 69 agreement to comply with a Ravgen DNA test on October 2, 2023.
- On October 6, 2023, Petitioner filed for an ex parte Order of Protection (“OOP”) in FC2023-052771. After a hearing, the OOP was affirmed. The same day the Ravgen results indicated “little to no fetal DNA.”
- On October 18, 2023, Petitioner filed a Request for Pre-Decree Mediation citing Respondent’s unwillingness to communicate with Petitioner and citing “he even acts as if the unborn children don’t exist despite a pro ponderous of the evidence [sic]”. (Dkt. No. 23, p. 2).
- On October 24, 2023, the parties appeared before Commissioner Gialketsis (retired) in CV2023-053952 in response to the Injunction Against Harassment (“IAH”) filed by Respondent. On the parties’ stipulation, the Court previously reviewed both days of the hearing and identified that the Petitioner, appearing virtually, frequently stood up and rubbed what appeared to be a swollen abdomen. November 2, 2023, testimony resumed, and Petitioner testified that she was “100%” and “24 weeks” pregnant with Respondent’s children. She further testified that the twins were due on February 14, 2024. She further testified that due to epilepsy she was experiencing a high-risk pregnancy and was being cared for by two specialists, namely Dr. Makhoul and Dr. Higley. She testified she last saw Dr. Higley “last Friday” prior to the November 2, 2023, hearing.
- October 25, 2023, the parties appeared before Commissioner Doody to determine the validity of the contested OOP in FC2023-052771. Petitioner’s abdomen again appeared swollen. During this hearing, she testified to the validity of the sonogram sent to Respondent, the media, and a Dropbox on Reddit, and further testified the parties were having a son. She later testified she believed she was having fraternal twins, one boy and one girl.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

- December 6, 2023, a second Ravgen test confirmed “little to no fetal DNA.”
- A third test was done; however, the test results were lost in transit.
- December 12, 2023, Respondent filed a Notice of Filing Affidavit of Non-Paternity.
- December 28, 2023, Petitioner filed a Motion to Dismiss Petition to Establish Paternity, Legal Decision Making, Parenting Time and Child Support with Prejudice in conjunction with a Notice Requiring Strict Compliance with Arizona Rules of Evidence, thereby invoking A.R.F.L.P. Rule 2(a). Petitioner cited the basis for the dismissal that she “is not now pregnant with Respondent’s children.” (Dkt. No. 32 at 1). The motion was denied as the issue of attorney’s fees, costs, and sanctions remained.
- January 2, 2024, Petitioner filed an Expedited Motion to Quash Deposition of Petitioner. January 3, 2024, Respondent filed a Response/Objection to Petitioner’s Motion to Dismiss. The Court denied Petitioner’s Motion to Quash.
- Respondent withdrew his Motion for Sanctions Pursuant to Rule 26, on January 3, 2024.
- Petitioner filed a Motion for Confidentiality and Preliminary Protective Order on January 18, 2024.
- Respondent participated in a deposition on February 2, 2024.
- At a Status Conference on February 21, 2024, Petitioner was ordered by this Court to comply with Rule 49 disclosure requirements. During the hearing, Petitioner’s counsel advised that the Petitioner had miscarried sometime in September or October 2023.
- Petitioner was deposed on March 1, 2024.
- On June 3, 2024, Petitioner’s prior counsel, filed Ethical Rule 3.3 Notice of Candor, wherein counsel advises the Court that statements made by counsel at the February 21, 2024, Status Conference were factually incorrect. Specifically, counsel stated “Ms. Owens has not lied in this case. She has not intentionally lied to the Court.” (Dkt. No. 108 at 1). While counsel believed the statements to be accurate at the time, counsel later determined those statements were not true based on the Petitioner’s deposition taken March 1, 2024. (*Id.* at 2-4).
- Voluminous additional pre-trial pleadings were filed by both parties. Those motions were ruled on separately, by minute entry, and the rulings are not relevant for purposes of this hearing.

FINDINGS OF FACT

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

Petitioner, Laura Owens

- Petitioner contacted Respondent through LinkedIn.
- Petitioner and Respondent met on May 17, 2023, to locate potential investment properties in Scottsdale.
- Petitioner has a podcast, a real estate investing company, and buys and sells horses. (Ex. B. 49, p. 13, line 24-25).
- Between May 18-20, the parties viewed some properties in Scottsdale.
- On the evening of May 20, 2023, Respondent invited Petitioner over to his home, which she accepted.
- After Petitioner arrived, Respondent told her he was “high” on cannabis “gummies” and he offered one to her, which she accepted.
- During the late evening of May 20, 2023, and early morning of May 21, both parties agree that Petitioner performed oral sex on Respondent “to completion” twice.
- Petitioner testified she did not want to have sexual intercourse, but that Respondent “stuck it in” briefly.
- Petitioner’s implication that Respondent initiated sexual intercourse without consent was not alleged initially in the court filings. It was not alleged until 2024. (Ex. B. 49, p. 67).
- At trial, Petitioner testified that the parties had sexual intercourse, and that it was rape.
- Petitioner testified Respondent was too high to remember sexual intercourse, due to his voluntary intoxication.
- Petitioner believes she became pregnant on May 20, 2023. She testified that after May 20, 2023, her menstrual period stopped and did not resume until November 2023.
- Petitioner has had PCOS since the age of seventeen and does not have regular periods. (Ex. A. 11).
- Petitioner has a history of epilepsy. (*Id.*).
- Petitioner testified she has been pregnant four times. Each time, the alleged father believed she fabricated the pregnancy, and doctored medical records.
- On May 24, 2023, Petitioner asked Respondent to prepare written purchase offers for two properties Petitioner wanted to purchase in Scottsdale – one was located at 19777 North 67th Street in Scottsdale (offer amount was \$425,000) and the other was located at 7609 N. Lynn Oaks Drive in Scottsdale (offer amount was \$699,000).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

- Petitioner asked Respondent, as her realtor, to prepare these purchase offers and to submit them to the seller or the seller's agent.
- Respondent prepared the purchase offers, which Petitioner signed on or around May 24, 2023, but Respondent never submitted them to the seller or the seller's agent.
- Petitioner later asked Respondent if he had heard anything from the seller in response to Laura's offers.
- Respondent advised he had not heard back from the seller.
- Petitioner testified that she advised the Real Estate Board and action was taken.
- On May 31, 2023, Petitioner took a home pregnancy test which showed a faint positive result.
- Petitioner testified that after multiple positive pregnancy tests, she told the Respondent she was pregnant.
- Petitioner denies using hormones, someone else's urine, or altering the test at all.
- Petitioner found Respondent's reaction to be hostile and dismissive.
- On June 1, 2023, Petitioner went to Banner Urgent Care at Greenway and 64th Street, she informed the nurse that she believed she may be pregnant, and she asked for a test to determine whether she was, in fact, pregnant. (Ex. A. 2).
- The test result from Banner Urgent Care was positive for pregnancy. (*Id.*).
- Petitioner testified that for more than six months prior to May 2023, she was not sexually active with any other men. Based on this, Petitioner testified that she believed she was pregnant, and Respondent was the only potential father.
- June 19, 2023, Petitioner went to Respondent's home at his request.
- Respondent provided a pregnancy test for Petitioner to take. Conflicting testimony makes it difficult to ascertain whether the test was taken in front of the Respondent or with the bathroom door closed due to a shy bladder. Both parties agree the test was positive.
- In the "Something to Consider" email the Court finds the language to imply Respondent was attempting to buy into the idea that rubbing or grinding their genitals together might have led to a pregnancy. (Ex. A. 2). The Court, however, does not find the email conclusive that Respondent believed her to be pregnant with his children, but rather an attempt to consider her ascertainment.
- In the "Something to Consider" email Respondent maintains that the lack of sexual intercourse would preclude him from being the father of the fetuses. The email does not deny the pregnancy test was positive. (Ex. A. 2).
- In the email, Respondent suggested that the positive test was the result of Petitioner's epilepsy medication.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

- Petitioner emailed Dr. Glynnis Zieman, MD from Barrow Concussion & Brain Injury Center on June 28, 2023. (Ex. A. 3). The subject of the email is “Pregnancy and Seizure Med?” (*Id.*).
- Petitioner denies sending Respondent an ultrasound video, citing instead that Greg Gillespie hacked into her email and sent the video to Respondent. (Ex. A. 5) (Ex. B. 49, p. 64).
- Petitioner testified that July 2, 2023, she anonymously sought care at a Planned Parenthood in Los Angeles. While she failed to provide records of any Planned Parenthood appointment, anonymous or under an alias, Respondent presumably sought records from all Mission Viejo Planned Parenthoods as that is where, up until today, Petitioner disclosed she sought care. (Ex. B. 49, p. 81, line 4). Petitioner testified that she had the sonogram at a Planned Parenthood in California either anonymously or under a pseudonym and changed the location to prevent Respondent from tracking down the records. The Court was not provided with those records at trial.
- Petitioner testified that on July 23, 2023, she experienced bleeding and passed two small fleshy objects smaller in size than her hand. She took pictures of the tissue and sought telehealth assistance.
- Petitioner testified that she texted a miscarriage hotline and sought telehealth assistance.
- The telehealth provider told Petitioner it was hard to tell if she miscarried and she should monitor the situation and seek further care as needed. Petitioner chose not to seek in person care that would have confirmed if she had been, still was, or had miscarried. The Court finds the “hard to tell” component of the telehealth visit was due to the nature of telehealth and the inability to provide care in the form of an exam, hCG test, blood test, ultrasound, or sonogram.
- Instead of seeking in-person care, Petitioner chose to take another hCG home pregnancy test on July 25, 2023, which was positive.
- Petitioner again took an at home test instead of seeking care on August 1, 2023.
- Petitioner testified that she made multiple appointments to see Dr. Makhoul. Three of the four appointments were rescheduled and then cancelled when the Petitioner tested positive for COVID. Dr. Makhoul’s records indicate forty-four pages of records confirming making and cancelling appointments.
- The Court was not provided with evidence of the positive COVID test but maintains that the nature of her high-risk pregnancy would warrant a visit to the emergency room who would be equipped to care for a high-risk pregnancy wherein the Mother was COVID positive.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

- In August 2023, the parties agreed to a DNA test through Ravgen.
- Petitioner paid \$725 to Ravgen for the test, but Respondent failed to provide a sample and Petitioner canceled the test on August 18, 2023. (Ex. A. 5).
- The Court does not find the sexual contact between Petitioner and Respondent resulted in a pregnancy.
- The Court finds that if the Petitioner was pregnant, it is profoundly unlikely that conception occurred because of rubbing, grinding, or oral sex.
- During this litigation, if Petitioner had maintained consistently an allegation of sexual assault, coupled with a police report, or physical exam, the Court may find differently. Evidence and testimony, however, do not support this inconsistent contention.
- Petitioner admitted to changing an hCG test result to reflect 31,000. (Ex. B. 17). She further testified she altered the document using Adobe, but not Adobe Acrobat.
- In late September or early October, both parties submitted samples to Ravgen for DNA testing.
- October 16, 2023, the Petitioner's blood was drawn, and the results were hCG levels of 102. (Ex. A. 9). Petitioner changed the results to reflect 102,000.
- Petitioner testified that on October 18, 2023, she was aware the alleged pregnancies were not viable and filed the Request for Pre-Decree Mediation in the hopes that at mediation she could tell the Respondent that the pregnancy was no longer viable.
- Upon denial of her Request, however, she did not file a Motion to Dismiss or make other arrangements to advise Respondent of the development.
- The Court finds this testimony incredible and a misuse of judicial resources.
- Petitioner was not treated by Dr. Makhoul, or Dr. Higley as testified to in her November 2, 2023, hearing on the IAH.
- Petitioner's alleged pregnancy was not treated by Dr. Makhoul, Dr. Higley, or any other in-person obstetrician or gynecologist.
- The Court finds failure to seek in person care for a high-risk pregnancy to be both unreasonable and uncreditable.
- The Court further finds that going to Banner for a pregnancy test, but not the passage of fetal tissue to be unreasonable and incredible. A reasonable person, if seeking emergency room care to confirm a pregnancy, would not rely on telehealth to confirm the non-viability of the pregnancies.
- Petitioner testified that on November 14, 2023, she sought OB/GYN services from a facility, MomDoc, to determine whether she was allegedly still pregnant.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

(Ex. A. 11). At that appointment, Petitioner took two pregnancy tests that were both negative.

- Petitioner testified that she currently weighs 91 pounds but weighed 133 in November 2023, during her MomDoc appointment. She experienced significant swelling in her abdomen and felt pregnant.
- The Court was presented with videos dated September 19, 2023, and October 9, 2023, Petitioner sent Respondent of her abdomen as evidence of pregnancy. (Ex. A. 6, 7). Dr. Medchill testified that while she appeared pregnant, that alone was not conclusive of pregnancy.
- Petitioner denies tampering with hCG tests but does admit to altering and fabricating ultrasounds and sonograms. She further testified that she changed the hCG numbers on two of the results. The Court finds little, if any difference, in altering the test itself for which she denies, and altering the results which she did tamper with by her own admission.
- During Petitioner's cross-examination, it became profoundly obvious that counsel for the Petitioner was attempting to coach her answers.
- Respondent's counsel, identifying the issue, moved between counsel and the Petitioner.
- From that point forward, the Petitioner began to exhibit extreme anxiety and unwillingness to answer questions.
- The Court had to remind the Petitioner twice that counsel would ask a question and she needed to answer it.
- At this time, Petitioner pushed back her chair and advised the Court she did not believe she was being treated fairly. The Court attempted to redirect Petitioner to no avail.
- At this time, Petitioner became emotional and asked for a brief recess, which the Court granted.
- The Court finds this interaction between counsel and Petitioner, diminishes the creditability and veracity of the Petitioner's responses during cross-examination.
- The Court finds it is impossible to determine the date of any alleged miscarriage, not because it is impossible, but rather because she failed to seek even a minimal level of care for her high-risk condition. Failure to demonstrate confirmation of ongoing pregnancy is a purposeful way to ensure Respondent would not be able to determine if she was pregnant and if so, for how long the pregnancy lasted.

Michael T. Medchill, MD

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

- Dr. Michael T. Medchill, MD, a retired OB/GYN and prior Chair at St. Joseph's Hospital, testified that pregnancy is possible without sexual intercourse. Dr. Medchill testified that he delivered 30,000 babies during his practice and saw many patients for miscarriages.
- Dr. Medchill testified that he reviewed approximately 200 pages of Petitioner's medical records from Barrow Neurological Institute in Phoenix that included summaries of Petitioner's medications. He did not, however, review primary care or historical OB/GYN records.
- Dr. Medchill testified that none of the medication records he reviewed would cause a false positive home pregnancy test.
- Dr. Medchill testified that a false positive hCG test could be the result of epilepsy medication, anxiety medication, Clozapine, horse urine, or IVF prescribed injections ("trigger shots").
- When asked by the Court, Dr. Medchill testified he did not review any Planned Parenthood records from Mission Viejo or Los Angeles facilities.
- Dr. Medchill testified that a home pregnancy can detect pregnancy eleven days after conception.
- Dr. Medchill testified that he is 99.9% sure that the Petitioner was pregnant based on the hCG tests. He did not change his perspective after Petitioner's admissions on the stand that she altered more than one test to reflect higher, viable hCG numbers.
- The Court finds Dr. Medchill's testimony that .1% chance that Petitioner received a false positive due to several medications she is in fact taking, possible trigger shot for hCG, and a prior history of ovarian cancer to diminish his creditability. Especially given that records that the Petitioner testified existed were not presented to her own expert for review and consideration.
- Dr. Medchill testified that a blood hCG level of 102 is proof of a non-viable pregnancy. While Dr. Medchill testified that a non-viable pregnancy is still a pregnancy, the Court finds that altering the number to reflect 102,000 which would be a viable pregnancy to indicate that she intended for the Respondent to believe that she was still pregnant with viable fetuses.
- Dr. Medchill concluded that the Petitioner became pregnant on May 20, 2023, and ended with a "spontaneous abortion" late October, early November, or possibly sooner in 2023. Given the alterations of the only records to indicate pregnancy the Court does not accept this conclusion.
- Dr. Medchill testified that woman may expel tissue during a spontaneous abortion, or the pregnancy might remain in her body, ultimately being reabsorbed.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

Given that the Petitioner testified under oath at a prior hearing that she was absolutely twenty-four weeks pregnant and had seen her doctor (presumably in-person) the Court does not accept that twenty-four-week-old twin fetuses would be reabsorbed into a mother's body. The Court further finds a miscarriage at that stage of pregnancy would result in emergency medical care and corresponding death certificates of the twins. If what Dr. Medchill testified to is true, and she miscarried much sooner, negating the need for the death certificates, then Petitioner perjured herself at a prior hearing.

Samantha Deans, MD, MPH

- Dr. Samantha Deans, MD, MPH, reviewed Petitioner's records and provided her analysis of the hCG results. (Ex. B. 39, 41). Additionally, she was the prior Associate Medical Director of Planned Parenthood in Florida, and Pennsylvania.
- She testified that Planned Parenthood does not accept anonymous patients. They do not accept patients using an alias. Patients are required to provide a government issued form of identification. She further testified that Planned Parenthood is not open on Sundays, when Petitioner testified, she sought care July 2, 2023.
- Dr. Deans testified that hCG does not confirm pregnancy. There must be serial hCG or an ultrasound and examination, which were never done, or never disclosed to the Court, the Respondent, Dr. Medchill or Dr. Deans.
- Dr. Deans reviewed the July 23, 2023, telehealth instructions that Petitioner "proceed to an emergency room for additional evaluation and care." (Ex. B. 41, p. CE0527). The instructions were not followed but Petitioner called the Abortion and Miscarriage Hotline which also recommended and encouraged the Petitioner to seek in-person medical care. (*Id.*).
- Dr. Deans testified that there is no data to indicate a conception date.
- After reviewing the records, Dr. Deans determined that the hCG tests were never dispositive of pregnancy and that the related miscarriage timeline, which included detailed analysis of the likely origin of hCG in Petitioner's blood and urine was not indicative of human gestational norms.
- Dr. Deans testified that heterophilic autoimmune responses due to exposure to animals could produce a positive hCG test, but the confirmation blood test would be negative.
- A prior history of cancer could also produce a positive hCG result. Petitioner has a prior history of ovarian cancer that prompted the surgical removal of her right ovary.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

- Familial hCG Syndrome can also produce a false positive hCG test. Dr. Deans testified that syndrome is very rare with only ten known cases in the world.
- Horse tranquilizers can create a positive hCG result.

Respondent, Clayton Echard

- Respondent denies all allegations of sexual intercourse.
- Respondent confirms both parties were under the influence of marijuana but denies being “high” and further denies memory loss because of the marijuana ingestion.
- Respondent testified that around May 22, 2023, he realized his behavior with Petitioner was unprofessional and he intended to discontinue a sexual relationship with the Petitioner. He testified that upon hearing this, the Petitioner became very emotional.
- Respondent testified that he told Petitioner he had submitted the offers to the seller. Respondent testified he did not believe the Petitioner was really interested in the properties.
- When asked if he had received any response, Respondent told Petitioner that he had not, but he never told Petitioner the reason why no response had been received – i.e., because the offers had never been submitted.
- Respondent made knowingly false statements to Laura about the real estate purchase offers.
- Respondent testified that Petitioner sent him approximately 500 texts message using thirteen different phone numbers threatening to leak information to the media. (Ex. B. 3).
- Respondent testified that Petitioner reached out to “The Sun,” called his family, co-workers, and prior girlfriends accusing him of being a deadbeat for not supporting her and the twins.
- Respondent testified that he received the video from Petitioner and continued to correspond with her over that email string which would reasonably prompt Petitioner to advise she did not send the video, but she did not advise of that at the time. (Ex. B. 11).
- Petitioner emailed Respondent “[y]ou can’t say you haven’t been given a voice when I have told you that I will have an abortion if we try things out for a few weeks and have a good reason for aborting the child...[t]hese words feel menacing because you know I like you and want to try things out with you.” (Ex. B. 7). The email continues “[y]ou would be ‘obliging’ to make the decision to date exclusively before deciding whether or not we have an abortion.” (*Id.*).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

- Petitioner encouraged Respondent to have sexual intercourse with her, citing she was “tight” and already pregnant.
- Petitioner further emailed Respondent that he had control of the outcome of the pregnancy “if we date exclusively and care for each other.” (Ex. B. 6). On June 28, 2023, she said “[i]f you think about it, having sex with me is the safest thing you can do at this point. I’m already pregnant and if we choose to go this route (and trust each other enough to have sex), then we are at the point where I would be taking abortion pills...so there’s no risk.” (*Id.*).
- Petitioner told Respondent the twins were a boy and a girl.
- Petitioner provided Respondent with a sonogram that was posted on YouTube seven years ago. Petitioner admitted to this during her deposition (Ex. A. 28).
- Petitioner sent a threatening letter to Respondent indicating her intention to sue him for 1.4 million dollars in collateral allegations unless he agreed to dismiss this action that she initiated. (Ex. B. 55).
- Petitioner signed a release of records for Dr. Jeffrey Blake Higley, MD at Women’s Care. In a letter dated March 18, 2024, the provider advised “[w]e have no record of treatment for the date(s) of service you request.” (Ex. B. 59, p. OWENS 2).

VALIDITY OF PETITIONER’S ORDER OF PROTECTION

In this case, the gravamen of Respondent’s position is that Petitioner has fabricated her pregnancy, a condition which cannot have resulted from the parties’ interactions, because according to Respondent they never had sexual intercourse. But he does admit that the pair engaged in oral sex. Respondent seeks to have the protective order invalidated based on the alleged fabrication, while Petitioner essentially argues that even if she was never pregnant, the sexual activity between the two, and Respondent’s subsequent harassing online conduct, are sufficient to sustain the order regardless.

There is a predicate issue that should be addressed which goes to the Court’s authority to reconsider the protective order at all. Put simply, extant appellate authority, namely *Vera v. Rogers*, 246 Ariz. 30 (Ct. App. 2018) and like cases, precludes reconsideration here.

In *Vera*, Mother applied for a protective order in Phoenix Municipal Court, but it was eventually transferred to the superior court after Father petitioned to establish legal decision-making authority, parenting time, and child support here. After a contested hearing, the commissioner handling the order of protection affirmed it in its entirety. Father then filed a

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

special action, asking the court of appeals to order the family court to amend the order of protection to align it with the temporary parenting-time orders it had made in the separate case. The court of appeals accepted the special action, finding it raised a “purely legal issue of first impression that is of statewide importance,” to wit, “the interplay between the procedural rules and statutes governing protective orders and family law proceedings.” (*Id.* at 33).

The court of appeals first recognized that the superior court, pursuant to ARFLP 5(A), has the authority to hold a joint hearing to concurrently consider both actions so that it may harmonize the orders. But having said that, the court noted that the superior court’s “authority to modify an order of protection only exists pursuant to the statutes and rules controlling protective orders.” (*Id.* at 34). And those statutes and rules prevented the relief Father sought in *Vera*, because another superior court officer had already affirmed the contested order of protection. Indeed, the court stated that “[o]nce [a contested] hearing has been held, an affirmed order of protection may be amended or dismissed only in two ways: (1) by a request of the party protected by the order, Ariz. R. Protect. Ord. P. 40(a), 41(a); or (2) by appeal, Ariz. R. Protect. Ord. P. 42(a)(2), (b).” (*Id.* at 35). Because Mother had not requested amendment, and Father did not appeal from what amounted to a final judgment, he could not obtain relief, and the family court had no power to amend the protective order. Put another way, “a superior court judicial officer is not to engage in horizontal appellate review of another judicial officer’s decision to affirm an order of protection.” (*Id.* at 36; *see also Davis v. Davis*, 195 Ariz. 158, 161, ¶ 11) (App. 1999) (holding that “a superior court judge has no jurisdiction to review or change the judgment of another superior court judge when the judgment has become final”).

Just like in *Vera*, absent a move by Petitioner to modify or dismiss the protective order, Respondent’s “sole remedy was to appeal” the final ruling affirming it after the contested hearing. (*Id.* at 36). Although *Vera* did not involve fraud, this Court was unable to identify any cases collaterally challenging a final protective order judgment on Rule 85 grounds in a separate family court proceeding, nor any authority suggesting that *Vera*’s exclusive roadmap (which is rooted in ARPOP 40 & 41) for amending or dismissing a final order of protection judgment is subject to an exception based on Rule 85 review. This Court’s power to invalidate the order is foreclosed by *Vera*.

Even if *Vera* did not foreclose this Court’s review, Respondent cannot prevail here (despite what appears to be a case of serial fabrications here and elsewhere by Petitioner). Under A.R.S. § 13-3601(A)(6), the parties admittedly had a relationship that was “previously . . . romantic or sexual,” however fleeting it might have been. Petitioner thus had a statutory avenue to seek a protective order, regardless of whether she fabricated her pregnancy. Moreover, Commissioner Doody did not issue the order based solely, or even primarily, on the “fact” of

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

Petitioner's pregnancy. Indeed, his initial order required that Respondent not contact Petitioner or "communicate or post untrue or harassing comments regarding Plaintiff online, including but not limited to social media, and shall not cause others to" do the same. (Dkt. No. 3, Case No. 2023-052771 filed October 6, 2023). Moreover, Petitioner's initial Petition referenced a myriad of communications Respondent made to her that could be deemed threatening per the statutory guidelines and appears to have prompted Commissioner Doody to confirm the order after the hearing. Thus, even if Petitioner's broader pregnancy allegations are proven untrue, one aspect of the court's order indicated that it found Respondent had engaged in harassing conduct, so even on the merits there is no cause to invalidate the final judgment.

Vera v. Rogers forecloses not only reviewing the orders in principle but also prevents tinkering at the margins as well. If the superior court cannot "engage in horizontal appellate review of another judicial officer's decision to affirm an order of protection," 246 Ariz. at 36, there is no way that the Court can otherwise review portions of those decisions piecemeal either. The parties' remedies as to both decisions were to appeal and have the appellate court review the entirety of those decisions. Both had hearings as to their respective orders, and under ARPOP 42(a)(2), "[a]n Order of Protection, an Injunction Against Harassment, or an Injunction Against Workplace Harassment that is entered, affirmed, modified, or quashed after a hearing at which both parties had an opportunity to appear" is appealable.

SANCTIONS

ARFLP 26(b) provides that "by signing a pleading, motion or other document, the attorney or party certifies to the best of the person's knowledge, information, and belief formed after reasonable inquiry: (1) it is not being presented for any improper purposes, such as to harass . . . (2) the claims, defenses, and other legal contentions are warranted by existing law . . . (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery" Meanwhile, Rule 26(c) provides that "if a pleading, motion, or other document is signed in violation of this rule, the court—on motion *or on its own*—may impose on the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney fee." (emphasis added).

In this case, Respondent filed a Motion for Sanctions Pursuant to Rule 26 on January 3, 2024, arguing that "Petitioner filed the underlying action for an improper purpose without medical evidence to support her claim that she was pregnant and/or that she was pregnant by Respondent." (Dkt. No. 40 at 1). However, after significant motion practice between the parties'

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

attorneys, Respondent filed a Motion to Withdraw Motions for Sanctions Pursuant to Rule 26 on April 3, 2024, while retaining his other claims under A.R.S. §§ 25-324, 25-415, 25-809. (Dkt. No. 76). The question thus becomes, can the court still award Rule 26 sanctions, considering Respondent's withdrawal of his motion.

As already noted above, ARFLP 26(c) expressly provides that the court can sanction a party for a violation "on its own." The Court was unable to locate any decisions pertaining to whether the withdrawal of a party's Rule 26 sanctions motion precludes a *sua sponte* court award. But, as a matter of plain meaning and strict interpretation, it would seem not to matter whether a party ever files a motion or even whether that party does file a motion and then withdraws it—a court may still award the sanctions it deems appropriate, based on the conduct it deems to violate the rule. Indeed, if per Rule 26(c) the court can at any time award sanctions of its own accord and on its own findings, absent invitation, the withdrawal of a party's motion to do so would not seem to vitiate or in any way affect that power, as a matter of plain logic. So, for instance, if the Court were to here find that Petitioner fabricated her pregnancy to provide leverage against Respondent in order to secure a long-term relationship with him and all its attendant benefits, Rule 26(c) would appear without doubt to provide it the authority to "order [her] to pay [Respondent his] reasonable expenses . . . including a reasonable attorney fee," regardless of any prior filings by the parties. That is because that fabrication, if adjudicated as such, would have been the predicate for her initial petition and many, indeed all, of the motions that came after it.

Although there is a dearth of case law on this issue, other rules confirm that the family court has the authority to award sanctions on its own. Rule ARFLP 76.2(a)(1), for instance, provides that "[i]n a pre-judgment or post-judgment proceeding, the court upon motion *or its own initiative* may impose sanctions if a party or attorney: (1) fails to obey a scheduling or pretrial order; (2) fails to appear at a Resolution Management Conference, a scheduling conference, an evidentiary hearing, a trial, or other scheduled hearing; (3) is substantially unprepared to participate in a conference, hearing or trial; (4) fails to participate in good faith in a conference, hearing, or trial, or in preparing a resolution statement, scheduling statement, or pretrial statement." (emphasis added). And the remedies available include, in addition to substantive sanctions, ordering the party at fault "to pay reasonable expenses--including attorney fees, an assessment to the clerk, or both--caused by any noncompliance with a court order." ARFLP 76.2(c); *see also Hamby v. Hamby*, No. 1 CA-CV 19-0498 FC, 2020 WL 4717115, at *2 (Ariz. Ct. App. Aug. 13, 2020) (confirming power of court to award sanctions on its own initiative under ARFLP 76). Rule 71 provides for a similar power in the settlement and ADR context.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

Additionally, as is evident from their near textual identicality, and per the *Arizona Family Law Rules Handbook*, “ARFLP 26 is based on [Arizona Rule of Civil Procedure] 11.” 3 Comparison with Civil Rules, 13 Ariz. Prac., *Family Law Rules Handbook* Rule 26. And Rule 11 also expressly provides that in the event of a violation “the court—on motion or on its own—may impose on the person who signed it, a represented party, or both, an appropriate sanction.” And in the Rule 11 context, the Court of Appeals has concluded that a trial court may impose sanctions even after a complaint has been dismissed for lack of prosecution. *See Britt v. Steffen*, 220 Ariz. 265 (App. Div.1 2008). This lends credence to the idea that the family court’s inherent authority to award sanctions under ARFLP 26 should not be read to be limited by the course of the case or by the litigation strategy pursued by the parties. The power is there by rule and can be used by the court when necessary and appropriate.

NON-PATERNITY

A.R.S. § 25-814(A)(2) provides a man is presumed to be the father of a child if “[g]enetic testing affirms at least a ninety-five percent probability of paternity.” A.R.S. § 25-814 (C) provides a man is presumed to be the father based on DNA testing, that may only be rebutted by clear and convincing evidence. Based on a lack of confirmed pregnancy and repetitive Ravgen results of “little to no fetal DNA” the Court cannot establish that Petitioner was pregnant. The Court cannot establish paternity of a nonconfirmed pregnancy lacking DNA evidence despite testing twice. Here, two test results of “little to no fetal DNA” fall woefully short of the 95% required to meet the burden of clear and convincing evidence that Respondent was the father of Petitioner’s alleged pregnancy.

ATTORNEY FEES AND COSTS

Clayton Echard has requested an award of attorney fees and costs. An award of attorney fees and costs is governed by A.R.S. § 25-324. A.R.S. § 25-324 provides as follows:

A. The court from time to time, after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceedings under this chapter or chapter 4, article 1 of this title. On request of a party or another court of competent jurisdiction, the court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and that are based on consideration of reasonableness of positions. The court may make these findings before, during

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

or after the issuance of a fee award.

B. If the court determines that a party filed a petition under one of the following circumstances, the court shall award reasonable costs and attorney fees to the other party:

1. The petition was not filed in good faith.
2. The petition was not grounded in fact or based on law.
3. The petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party.

C. For the purpose of this section, costs and expenses may include attorney fees, deposition costs and other reasonableness expenses as the court finds necessary to the full and proper presentation of the action, including any appeal.

D. The court may order all amounts paid directly to the attorney, who may enforce the order in the attorney's name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

THE COURT FINDS there is no substantial disparity of financial resources between the parties. Petitioner did not provide an AFI but testified she and her mother collectively earn \$200,000 a year. Respondent filed an AFI on May 15, 2024, citing monthly income of \$12,000, and annual income of \$144,000.

THE COURT FURTHER FINDS that Petitioner acted unreasonably in the litigation. Specifically, Petitioner acted unreasonably when she initiated litigation without basis or merit. Without an authentic ultrasound, sonogram, physical examination, and in conjunction with a belief she passed tissue in July 2023, the Court finds the underlying Petition premature at best. At worst, however, fraudulent and made to incite communication, a relationship, or both, with the Respondent. The Court further finds that filing a motion seeking mediation for the purpose of telling the Respondent that the pregnancies were not viable disingenuous at best but certainly misleading to the Court. If the purpose of the motion was in fact to attend mediation, then the Petitioner perjured herself today when she said the purpose of the mediation was to tell the Respondent about the miscarriage. Either way, Respondent likely incurred costs associated with this litigation prior to retaining counsel and he is entitled to reimbursement for those costs.

THE COURT FURTHER FINDS that Petitioner repetitively failed to comply with Rule 49, even on Order of this Court. Further compounded by the fact that on the day of trial, she testified that she anonymously sought care at a Planned Parenthood in Los Angeles. While she failed to provide records of any Planned Parenthood appointment, anonymous or under an alias, Respondent presumably sought records from all Mission Viejo Planned Parenthoods as that

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

is where, up until today, Petitioner disclosed she sought care. This undoubtedly, caused Respondent to incur substantial legal fees attempting to locate records that may, or may not exist in Los Angeles but now appear to have never existed in Mission Viejo. Additionally, Petitioner acknowledged she altered hCG test results, an ultrasound and sonogram.

THE COURT FURTHER FINDS that the provisions of A.R.S. § 25-324(B) do apply because the petition was not filed in good faith, the petition was not grounded in fact or based on law, the petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party. Here, the Court finds Petitioner provided false testimony as to the viability of the pregnancy in all three cases addressed in the procedural history. Additionally, prior to her deposition, Petitioner sent a threatening letter to Respondent indicating her intention to sue him for 1.4 million dollars in collateral allegations unless he agreed to dismiss this action that she initiated.

THE COURT FURTHER FINDS that Laura Owens knowingly presented a false claim, knowingly violated a court order compelling disclosure or discovery such that an award of attorney fees and costs is appropriate under A.R.S. § 25-415.

IT IS THEREFORE ORDERED granting Clayton Echard's request for attorney fees and costs associated with FC2023-052114.

IT IS FURTHER ORDERED denying Clayton Echard's request for attorney fees and costs associated with the OOP and IAH hearings referencing the analysis above.

IT IS FURTHER ORDERED that Laura Owens shall pay Clayton Echard's reasonable attorney fees and costs. Not later than July 8, 2024, Respondent and counsel for Clayton Echard shall submit all necessary and appropriate documentation to support an application for an award of attorney fees and costs, including a *China Doll* Affidavit and a form of proposed order. By no later than July 29, 2024, Laura Owens shall file any written objection and a form of proposed order. If Clayton Echard's counsel fails to submit the documentation by July 8, 2024, no fees or costs will be awarded. The Court shall determine the award and enter judgment upon review of the Affidavit as well as any objections.

ADDITIONAL ORDERS

IT IS FURTHER ORDERED granting the Respondent's Petition for Non-Paternity.

IT IS FURTHER ORDERED, the Court having determined that Laura Owens has a pattern of similar, if not identical behavior, and court involvement, referring this matter to the Maricopa County Attorney's Office for review of Laura Owen's actions pursuant to A.R.S § 13-

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

06/17/2024

2702 and A.R.S § 13-2809. Accordingly, the Maricopa County Attorney's Office will be endorsed on this Order.

The Court must decide the amount of attorney's fees and costs to be awarded but finds there is no just reason to delay making a final order.

IT IS THEREFORE ORDERED pursuant to Rule 78(b), Arizona Rules of Family Law Procedure, that this is a final judgment, and it shall be entered by the Clerk. The time for appeal begins upon entry of this judgment by the Clerk. For more information on appeals, see Rule 8 and other Arizona Rules of Civil Appellate Procedure.

IT IS FURTHER ORDERED denying any affirmative relief sought before the date of this Order that is not expressly granted above.

Done in open Court on: 06/17/2024



HONORABLE Julie Mata

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: https://superiorcourt.maricopa.gov/llrc/fc_gn9/

Exhibit E

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

LAURA OWENS,	)	
	)	
Petitioner,	)	
	)	
and	)	FC2023-052114
	)	
CLAYTON ECHARD,	)	
	)	
Respondent.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EVIDENTIARY HEARING
BEFORE THE HONORABLE JULIE MATA

Phoenix, Arizona
June 10, 2024

CERTIFIED COPY

Prepared for:	<i>Reported by:</i>
PETITIONER	<i>Nicole Tatlow, RPR</i>
	<i>Certified Reporter No. 50671</i>

A P P E A R A N C E S

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MARICOPA COUNTY SUPERIOR COURT

I N D E X

WITNESS	PAGE
LAURA OWENS	
Direct Examination by Mr. Gingras	14
Cross-Examination by Ms. Arena	48
Redirect Examination by Mr. Gingras	80
MICHAEL MEDCHILL	
Direct Examination by Mr. Gingras	84
Cross-Examination by Mr. Woodnick	98
Redirect Examination by Mr. Gingras	104
SAMANTHA DEANS	
Direct Examination by Mr. Woodnick	109
Voir Dire Examination by Mr. Gingras	111
Direct Examination Continued by Mr. Woodnick	112
Cross-Examination by Mr. Gingras	115
CLAYTON ECHARD	
Direct Examination by Mr. Woodnick	120

P R O C E E D I N G S

THE COURT: Good morning, everyone. This is the time set in FC2023-052114.

Appearances, please, beginning first with Petitioner's counsel.

MR. GINGRAS: Good morning, Your Honor. David Gingras on behalf of Laura Owens.

Ms. Owens is present with me in court today, along with her -- her mother and our medical expert, Dr. Michael Medchill.

THE COURT: Good morning to you all.

And from the Respondent, please?

MR. WOODNICK: Good morning, Judge. Gregg Woodnick. I'm here for Clayton Echard.

And also with me is my cocounsel, Deandra Arena and Isabel Ranney.

THE COURT: Good morning to all of you.

Is that, by chance our expert, maybe?

THE COURTROOM ASSISTANT: Yes.

THE COURT: Oh, no. I wasn't talking to the media. You're fine. I was talking to Leala.

All right. So, Counsels, I know we discussed in chambers whether the rule's going to be invoked or not. What did we decide?

MARICOPA COUNTY SUPERIOR COURT

1 MR. GINGRAS: We're not invoking it.

2 MR. WOODNICK: We're good.

3 THE COURT: Okay. All right. So then as I told
4 the parties, that extends your time by five minutes. Each
5 party will be given 50 minutes.

6 We will take a ten-minute break roughly halfway
7 through. I allow ten minutes for technical difficulties
8 because they just happen to everybody.

9 Are either counsel using a laptop that may kick
10 you out on Wi-Fi? No? All right. So that won't be an
11 issue, then, this morning.

12 And then the additional ten minutes has now been
13 absorbed into the parties' time.

14 Counsel, I note that you wish to make a record
15 before we begin. Did you wish to make that now?

16 MR. GINGRAS: I do, Your Honor, as quickly as I
17 possibly can.

18 THE COURT: Okay.

19 MR. GINGRAS: So we object to Mr. Michael
20 Marraccini being called as a witness. There are two bases
21 for this objection. The first is nondisclosure. I raised
22 this before in a motion in limine, if the Court would
23 remember. I don't think the Court had all the facts at that
24 time, and I don't know that I had an opportunity to present
25 them, so I just want to briefly explain what the basis is

1 for the nondisclosure objection.

2 I got involved in this case on March 25th, 2024.
3 Two days after that, Mr. Woodnick served a -- a second
4 supplemental disclosure statement. That was the first time
5 that Mr. Marraccini was identified as a witness. The entire
6 disclosure was a single sentence long, and I'll -- I'll read
7 it. "This witness is expected to testify about his prior
8 interactions with the petitioner, her two alleged
9 pregnancies during their relationship, and the subsequent
10 litigation." That was the entirety of the disclosure as to
11 Mr. Marraccini.

12 As I would in any case, Your Honor, once I got a
13 copy of the file, I started to investigate, and I reached
14 out to the contact person listed for Mr. Marraccini, who was
15 a lawyer in California named -- named Randy Sue Pollock. I
16 spoke to Ms. Pollock. She expressed extreme surprise. She
17 had never heard of this case, she'd never heard of
18 Mr. Woodnick, she had no idea why I was calling her. I told
19 her that her client had been listed as a witness and that I
20 wanted to know if he was going to come to trial or not. If
21 he was, I may want to speak to him, may want to depose him.
22 She said that she would get back to me and let me know.

23 She sent me an e-mail the next day, dated
24 April 19th, which I have a copy of, and I'll put it into
25 record if -- if Your Honor would allow. She said to me in

1 writing, "My client will not be testifying." Referring to
2 Mr. Marraccini. I thought, great, one less person, one less
3 time issue to deal with.

4 That remained my understanding until the morning
5 of April 30th, when I received a new disclosure from
6 Mr. Woodnick that totally changed the -- the landscape.
7 This was the first time that I'd heard there was an issue of
8 fake medical records with Mr. Marraccini and my client in
9 California some eight years ago. That's why I -- literally
10 within an hour of seeing that information, I filed an
11 emergency motion for a court hearing. The Court,
12 unfortunately, took two and a half weeks and then denied
13 that, so I was not given an opportunity to explain the
14 problem.

15 Here we are, Your Honor, the morning of trial. I
16 still don't know what Mr. Marraccini is going to say. That
17 is a complete violation of Rule 49. The whole purpose of
18 the disclosure rules is to avoid surprise. And yet here we
19 are, surprised, waiting to see what he's going to say.
20 That's improper.

21 The second issue, Your Honor, deals with this
22 California court restraining order. I think you have a copy
23 of it. It's one of our trial exhibits. We have a court
24 record from the State of California that prohibits
25 Mr. Marraccini from being within a hundred yards of

1 Ms. Owens. He's in violation of it right now. There is no
2 exception for court appearances. She is so terrified that
3 she may not be able to sit here during this trial.

4 Under the full faith and credit cause of the U.S.
5 Constitution and also under federal law, this Court is
6 required to enforce that order as it is written. You can't
7 change it, you can't modify it, you can't disregard it. And
8 yet here we are.

9 So for those two reasons, I would ask the Court
10 to exclude Mr. Marraccini.

11 THE COURT: Thank you.

12 Response?

13 MR. WOODNICK: I can do it in 30 seconds, Judge.

14 Number one, you already ruled on this. And
15 number two, there's a lack of transparency in the comments
16 because, number one, Your Honor already saw Mr. Marraccini's
17 correspondence to Mr. Gingras as to why he didn't want to
18 talk to him, and number two, Mr. Marraccini is here and is
19 available, and certainly Mr. Gingras could have walked out
20 in the hallway and talked to him, but instead, he called
21 9-1-1.

22 THE COURT: Thank you.

23 MR. GINGRAS: Your Honor, just --

24 THE COURT: Any response?

25 MR. GINGRAS: Very briefly.

MARICOPA COUNTY SUPERIOR COURT

1 The whole point here is I wanted to talk to
2 Mr. Marraccini. I wanted to interview him either
3 informally, which I would do in any case, or depose him if
4 he wouldn't participate. I couldn't do that because I
5 didn't have contact information from him, and his attorney
6 told me he wasn't coming. So somebody lied to me. I don't
7 know who it was, but I don't care. The disclosure rules
8 require him to disclose everything to me so that I am not
9 surprised. That was not done. He shouldn't be allowed to
10 testify.

11 THE COURT: Thank you.

12 Okay. The Court did previously rule on this. My
13 ruling will stand. But I appreciate the record.

14 So at this point, Counsel, on your client's
15 behalf, how many people will be testifying, and are they in
16 the courtroom right now?

17 MR. GINGRAS: We have three, and they are -- they
18 are all here.

19 THE COURT: Okay.

20 Do we have the expert available virtually?

21 THE COURTROOM ASSISTANT: Yes.

22 THE COURT: Okay.

23 And then, Counsel, from your perspective, which
24 witnesses are you calling, and are they all here?

25 MR. WOODNICK: We have Mr. Echard,

MARICOPA COUNTY SUPERIOR COURT

1 Mr. Marraccini, Mr. Gillespie, and Dr. Deans, who is by
2 phone -- or by video.

3 THE COURT: Okay. All right.

4 All right. So what we're going to do at this
5 time is we're going to swear everybody in. That gives the
6 parties a little bit more time. So I'm going to have anyone
7 who is being called as a witness to please raise your right
8 hand to be sworn in.

9 And I apologize, Dr. Deans. I can't see you.
10 But if you would, please, raise your right hand.

11 (WHEREUPON, the witnesses were duly sworn by the
12 Court Clerk.)

13 THE COURT: Dr. Deans?

14 DR. DEANS: I do.

15 THE COURT: Thank you.

16 All right. And counsel may or may not choose to
17 make an opening statement. Just as a strategic method,
18 sometimes attorneys choose to reserve their time for
19 testimony and evidence.

20 That being said, does either party wish to make
21 an opening statement?

22 MR. GINGRAS: I do, Your Honor. I'll take about
23 15 seconds.

24 THE COURT: Okay. When you're ready.

25 MR. GINGRAS: Your Honor, the file

1 notwithstanding, I'm actually a fan of keeping things
2 simple. I believe that simple is better. That means
3 focusing on what matters and filtering out what does not
4 matter.

5 We're here on a petition to establish paternity.
6 Unless I'm missing something, the only possible outcomes of
7 that petition are that paternity is established or it is
8 not. There is no baby in this case. There is nothing to
9 establish. Our position is that the petition's moot, that
10 the Court can simply deny it, dismiss it; use whatever
11 verbiage you want to.

12 The only remaining issue is, I guess, this issue
13 of Mr. Echard's request for a judgment of non-paternity. My
14 position is he bears the burden of proving that. There's
15 absolutely no evidence to support that. And Ms. Owens, at
16 the end of the day, she was pregnant, Your Honor. The fact
17 that she was pregnant negates everything else that you're
18 about to hear. Whether she lied to an ex-boyfriend eight
19 years ago has nothing to do with whether she was pregnant
20 last year. Nothing. It does affect credibility, but as
21 you're about to hear from our medical expert, there's
22 objective proof of pregnancy that does not require relying
23 on her credibility. It's that simple.

24 So we would like the Court to dismiss, deny the
25 petition. There's no basis for fees. There's no fee

1 request in front of you right now, so -- I -- I -- I guess
2 you could offer some guidance on what the Court would do in
3 the future, but there is no -- there is no sanctions request
4 to grant, there's no fee motion to grant.

5 THE COURT: Thank you.

6 Counsel, did you wish to make an opening
7 statement?

8 MR. WOODNICK: Generally, no, but today, yes.

9 Judge, we stand by our pretrial statement and
10 detail as verified by Mr. Echard. I'll remind the Court
11 that the Court not only has the establishment of paternity
12 matter, which was filed woefully inappropriately, as you'll
13 hear today and as you know from prior pleadings in this
14 matter; but we've got the collateral protective order
15 proceedings and the orders of protection related to that
16 that Your Honor indicated that you'd already watched or were
17 watching the videos related. That's all before the Court
18 today.

19 And Your Honor has authority to make the findings
20 today that the petition was filed in bad faith, that there
21 was pervasive fraud on this Court in multiple proceedings,
22 and that attorney's fees and sanctions can be ordered in
23 this matter.

24 THE COURT: Thank you.

25 All right. So now we'll begin.

MARICOPA COUNTY SUPERIOR COURT

1 Yes, Counsel?

2 MR. GINGRAS: Oh, sorry.

3 THE COURT: That's okay. Did --

4 MR. GINGRAS: I was going to call my first
5 witness.

6 THE COURT: Oh. Okay. Yeah.

7 So as -- as witnesses come up to the witness
8 stand, you can bring water with you. The exhibits will be
9 displayed for you. Please let us know if you can't see it.

10 And, Counsels, you should each be made a
11 presenter when it's your turn, but if you haven't, please
12 let Leala know.

13 MR. WOODNICK: Judge, are you keeping time, and
14 what's our time-check?

15 THE COURT: Yeah. Sure. Petitioner's at 4
16 minutes, 34 seconds. Respondent's at 1 minute, 11 seconds.

17 MR. WOODNICK: Thank you.

18 THE COURT: Uh-huh.

19 When you're ready.

20 MR. GINGRAS: Your Honor, I call Laura Owens.

21 THE COURT: All right.

22

23 LAURA OWENS,
24 called as a witness herein, having been first duly sworn,
25 was examined and testified as follows:

MARICOPA COUNTY SUPERIOR COURT

DIRECT EXAMINATION

BY MR. GINGRAS:

Q. Laura, how are you feeling?

A. Nervous.

Q. Okay. Just breathe and we'll get through this really quick. Okay?

Laura, we've talked about the timeline of events, and I want to just really quickly run through.

When did you first meet Mr. Echard?

A. May the 17th, I believe, we connected on LinkedIn.

Q. Okay. And did you -- were you intimate with him at some point?

A. Yes.

Q. When was -- what day was that?

A. May 20th.

Q. At some point after you were intimate with him, did you test positive for pregnancy?

A. Yes.

Q. Do you remember the first time that happened?

A. It was the evening of May 31st.

Q. Okay. After you tested positive the first time, did you do anything to confirm the pregnancy?

A. Yes.

Q. What did you do?

MARICOPA COUNTY SUPERIOR COURT

1 A. I went to Banner Health Urgent Care the next day,
2 and I took a test there.

3 Q. On June 1st?

4 A. Yes.

5 Q. If you can look at the screen in front of you
6 there, is Ex- -- it says Exhibit 2. That's actually the
7 wrong number. But that's a -- a printout of the -- the
8 positive pregnancy test you received from Banner?

9 A. Yes.

10 Q. On June 1st?

11 A. Yes.

12 Q. Okay. And after you got the second positive
13 test, what did you do?

14 A. I told Mr. Echard.

15 Q. All right. Did you go see him at some point to
16 talk about it?

17 A. Yes.

18 Q. What day was that?

19 A. June 17th.

20 Q. When you -- and you went over to his house, I
21 understand?

22 A. Yes.

23 Q. When you showed up at his house, did he ask you
24 to take a pregnancy test?

25 A. He did.

1 Q. Did you know in advance that he was going to give
2 you that test?

3 A. I did not.

4 Q. Did you take the test in front of him?

5 A. Yes, I did.

6 Q. Did he actually watch you pee on a stick?

7 A. Yes, he did.

8 Q. What was the result of that?

9 A. It was positive.

10 Q. After you had the third test that was positive
11 with him, did he send you an e-mail at some point to talk
12 about the -- the situation?

13 A. Yes.

14 Q. All right. Looking at the screen in front of
15 you, is this the e-mail that Mr. Echard sent you on, it
16 looks like, June 21st?

17 A. Yes.

18 Q. The third paragraph down has some highlighted
19 text, and I'll just read it.

20 "Considering you only performed oral sex on me,
21 and no vaginal penetration occurred, the chances of you
22 being pregnant seem considerably low. Although, again,
23 maybe rubbing up against one other allowed a sperm to make
24 its way inside you, it's a very low probability.
25 Nevertheless, it is one."

1 First of all, Clayton wrote that to you. Yes?

2 A. Yes.

3 Q. And did you have conversations with him where he
4 told you that he thought you were pregnant?

5 A. Yes.

6 Q. Is that verbal conversations or text or e-mail or
7 all three?

8 A. All three.

9 Q. Okay. Moving right along, after you got this
10 e-mail on --

11 MR. GINGRAS: And I'll move to admit, Your Honor,
12 Petitioner's Exhibit A2.

13 THE COURT: Any objection?

14 MR. WOODNICK: No.

15 THE COURT: A2's received.

16 BY MR. GINGRAS:

17 Q. After the e-mail of June 21st, what happened next
18 in terms of your proceeding to verify the pregnancy?

19 A. I took additional tests.

20 Q. Did you have a sonogram done in California?

21 A. Yes, I did.

22 Q. And where was that done?

23 A. Planned Parenthood.

24 Q. And you understand -- and I'm sure Mr. Woodnick
25 will ask you about this. Planned Parenthood has not been

1 able to verify that you were ever seen there. You
2 understand that?

3 A. Yes.

4 Q. Can you explain that?

5 A. Yes. I went under a fake name when I went there.

6 Q. Okay. And you had a sonogram done. Did you ever
7 present that sonogram as evidence in any court proceeding
8 anywhere?

9 A. No.

10 Q. We have, obviously, presented it in this case.
11 But you -- you've admitted already that you changed the name
12 at the top or the location --

13 MR. WOODNICK: Objection. Leading.

14 BY MR. GINGRAS:

15 Q. Did you --

16 THE COURT: Sustained.

17 BY MR. GINGRAS:

18 Q. Did you change the name at the top of the
19 sonogram?

20 A. Of the location, yes.

21 Q. Why did you do that?

22 A. I changed it because Mr. Echard was being
23 threatening towards me, and I didn't want him to know where
24 I had gone and try to track down my providers.

25 Q. Okay. After the Planned Parenthood sonogram --

1 do you remember approximately what date that was? I know
2 you signed a declaration, I think, that said July 2nd, and
3 then there may be a conflict. Do you remember what date
4 that was that you went?

5 A. It was actually the end of June.

6 Q. Okay. Did you -- were you in California both
7 weekends? Is that what the confusion was?

8 A. Yes.

9 Q. All right. After the sonogram in California,
10 around July 23rd, did something happen in terms of you
11 passing tissue or anything like that?

12 A. Yes.

13 Q. Can you explain briefly what happened on
14 July 23rd?

15 A. Yeah. I wasn't having any symptoms at all, but I
16 did pass tissue that looked like it could have potentially
17 been a miscarriage.

18 I'm not sure if you're going to pull that up, or
19 if I was looking for something.

20 Q. I'll wait till --

21 A. Okay. Yeah.

22 It looked like it could potentially be
23 miscarriage tissue, but I -- I wasn't sure.

24 Q. Did you seek any medical care after July 23rd
25 after the tissue passed?

1 A. Yes.

2 Q. Related to that?

3 A. Yes.

4 Q. What did you do?

5 A. I texted a hotline for pregnancy and miscarriage
6 questions, and I also did an appointment with a telemedicine
7 doctor as well.

8 Q. Okay. And what did they tell --

9 A. Video visit.

10 Q. I'm sorry.

11 What did they tell you?

12 MR. WOODNICK: Objection. Hearsay.

13 THE WITNESS: They --

14 MR. GINGRAS: Effect on listener.

15 THE COURT: Hold on one second.

16 Overruled.

17 BY MR. GINGRAS:

18 Q. Go ahead.

19 A. Oh. That means go ahead? Okay.

20 What was the question? What did they tell me?

21 Q. Yeah. What -- what information did they give
22 you, if any?

23 A. They told me that I needed to monitor myself, but
24 that they felt like unless I had more symptoms, I didn't
25 need to worry that it was a miscarriage.

MARICOPA COUNTY SUPERIOR COURT

1 Q. Okay. And after July 23rd, did you take any
2 other pregnancy tests shortly after that date?

3 A. Yes, I did.

4 Q. What date?

5 A. I believe the 27th and then also August 1st
6 before I filed this case.

7 Q. Okay. So the day that you filed -- before you
8 filed this case, how many pregnancy tests did you have?

9 A. Five.

10 Q. So you had one on May 31st, you had one on
11 June 1st at Banner, you had another one on June 17th with
12 Clayton, you took one -- I have -- my notes say July 25th,
13 but I think you just testified maybe a little -- day or two
14 differently. August 1st also. So five positive tests
15 before you filed this case?

16 A. Yes.

17 Q. Did you have any -- any negative tests before you
18 filed this case?

19 A. No.

20 Q. Laura, Clayton has argued -- let me -- let me go
21 back to the night of May 20th.

22 You have -- in your deposition you said that
23 Clayton actually had sexual intercourse with you. Do you
24 recall that?

25 A. Yes.

1 Q. And was that true?

2 A. Yes.

3 Q. Did you tell him that night that you did not want
4 to have sex?

5 A. Yes.

6 Q. And did he honor that request?

7 A. No.

8 Q. Laura, you've heard Clayton argue at various
9 places in this case that you were trying to trap him in some
10 way by what happened here.

11 Can you explain, if you were trying to trap him,
12 why did you tell him that you didn't want to have sex?

13 MS. ARENA: Objection. Leading.

14 THE WITNESS: I wasn't trying to trap him.

15 THE COURT: Hold on one second.

16 THE WITNESS: Sorry.

17 THE COURT: Sustained.

18 BY MR. GINGRAS:

19 Q. Okay. But you never -- that first night with
20 Clayton, you never said to him, "Let's" -- "Let's do it all
21 night long," anything like that?

22 MS. ARENA: Objection. Leading.

23 THE COURT: Sustained.

24 BY MR. GINGRAS:

25 Q. Did you -- did you tell Clayton that you wanted

1 to have sex that night?

2 A. No.

3 Q. Okay. Laura, let's switch very quickly.

4 Actually, let's go back to our timeline.

5 After you filed the case on August 1, did you do
6 anything in terms of DNA testing to verify -- again, verify
7 the pregnancy and verify that Clayton was the father?

8 A. Yes.

9 Q. What did you do to verify that?

10 A. We took a test -- well, I paid for a test in
11 August at Ravgen, which was the lab that he chose to conduct
12 the test. And I paid for it, and he did not schedule his
13 part of the test.

14 Q. So according to my notes, August 15th was Ravgen,
15 the initial booking for \$725 you paid. Is that accurate?

16 A. Yes.

17 MS. ARENA: Objection. Leading.

18 THE COURT: Sustained.

19 BY MR. GINGRAS:

20 Q. What -- what date did you initially book the
21 Ravgen test for?

22 A. August 15th.

23 Q. And what you pay for it?

24 A. \$725.

25 Q. Okay. And why didn't that test go forward? Or

1 did it go forward?

2 A. Clayton did not schedule his part of the test.

3 Q. Okay. So you had to cancel?

4 A. Yes.

5 Q. You eventually successfully completed testing?

6 A. Yes.

7 Q. What were the out- -- what was the result of
8 that?

9 A. It was inconclusive. Little to no fetal DNA.

10 Q. Okay. And do you remember when that result came
11 back?

12 A. I believe we took the test September 28th, so
13 shortly thereafter.

14 Q. All right. After the Ravgen results came back,
15 did you have any further pregnancy tests?

16 A. Yes.

17 Q. Do you remember the date, when and where that
18 happened?

19 A. Yeah. It was October the 16th, I believe, and it
20 was at Any Lab Test Now.

21 Q. And was that a quantitative test? Was it -- did
22 it involve a blood draw?

23 A. It was a blood draw, yes.

24 Q. And do you remember the results of that test?

25 A. It still showed that I was pregnant.

1 Q. Okay. At some point, did you eventually learn
2 that you were no longer pregnant?

3 A. Yes.

4 Q. What date did that happen?

5 A. November 15th, I believe.

6 Q. And was that -- did you go to a facility called
7 MomDoc?

8 A. Yes.

9 Q. And did you take -- how many -- did they give you
10 a pregnancy test then?

11 A. Yes.

12 Q. Was it more than one test?

13 A. They just gave me one test.

14 Q. Okay. And -- and the results were both negative?

15 A. Yes.

16 Q. Okay. After you learned that you were no longer
17 pregnant November 14th [sic], did you file anything further
18 in this case?

19 A. No.

20 Q. Did you -- what was your intent -- if we go back
21 to the -- Any Lab Test Now, October 16th, you filed a
22 request for mediation two days after that, correct?

23 A. Correct.

24 Q. What was your intent in doing that?

25 A. I wanted to dismiss the case. Or I wanted to go

1 over the test results.

2 Q. Did you -- did you know how to dismiss the case?

3 A. No.

4 Q. So you were -- you were making an effort to let
5 Clayton know that you weren't -- you thought the pregnancy
6 was probably ending badly, and you wanted to drop the case?

7 MS. ARENA: Objection. Leading.

8 THE COURT: Sustained.

9 BY MR. GINGRAS:

10 Q. All right. Laura, let's -- let's switch topics
11 briefly.

12 Clayton lie- -- did Clayton ever lie to you about
13 real estate contracts?

14 A. Yes.

15 Q. Can you briefly explain what happened with that?

16 A. Yeah. I first met him as a Realtor, and I had
17 him make two offers on two different properties on the same
18 day and found out he never submitted those offers.

19 Q. When --

20 A. I signed them.

21 Q. When were the offers submitted?

22 A. May 24th.

23 Q. And when did you find out that they -- that
24 Clayton didn't send them to the -- to the seller?

25 A. May 25th. Because they were only good for 24

1 hours.

2 Q. So he lied to you and said that he had sent
3 offers in that he didn't?

4 A. Correct.

5 MS. ARENA: Objection, argumentative, and
6 objection, relevance.

7 MR. GINGRAS: Goes to --

8 THE COURT: Overruled.

9 BY MR. GINGRAS:

10 Q. Go ahead.

11 A. Correct.

12 Q. Did -- at some point, did you file a complaint
13 against Clayton with the real estate board?

14 A. Yes, I did.

15 Q. Did you receive a response from the board
16 regarding your complaint?

17 A. Yes.

18 Q. What was that response?

19 A. They found him in professional violation of a
20 couple of things, but I can't remember what they were.

21 Q. Laura, that issue with the real estate contracts
22 happened before you tested positive for pregnancy, if I --
23 if I'm understanding the timeline correctly. Is that right?

24 A. Yes.

25 Q. Did you ever learn why Clayton did not submit

MARICOPA COUNTY SUPERIOR COURT

1 those offers, or why he said he didn't?

2 A. He said I [sic] didn't because he said I
3 wasn't -- I had no intention of purchasing real estate.

4 Q. Were you -- did you have an intention of
5 purchasing real estate?

6 A. Yes.

7 Q. Did you wind up purchasing real estate?

8 A. Yes.

9 Q. Okay. Let's talk about proof of pregnancy again.
10 So did you take a photo of the test that you took on
11 May 31st?

12 A. Yes, I did.

13 Q. All right. I think attached -- if you -- do you
14 still have -- yeah, you still have that exhibit?

15 A. Yeah, I still have the exhibit in front of me.

16 Q. So attached to this e-mail are a couple of photos
17 here. One -- one's right there. Day 11, it says. Is
18 that -- is this a photograph that you took?

19 A. Yes. Day 11 is one I took. And I believe the
20 one above is one Clayton took.

21 Q. Okay. So -- so the one that says Day 11 is a
22 photo that you took, and you sent that to Clayton at or
23 around that time?

24 A. Yes.

25 Q. And then the one above that is -- it says Day 21,

1 and it also appears to show positive. And that's the test
2 that Clayton gave you?

3 A. Yes.

4 Q. And he sent that picture back to you?

5 A. Yeah. He took it right after the test at his
6 place.

7 Q. All right. And the test that you took at Banner
8 and the results that you received there on June 1st, did you
9 send that to Clayton?

10 A. Yes.

11 Q. And that's Exhibit -- it's our Exhibit A1.

12 MR. GINGRAS: And I'll move to admit that one as
13 well, Your Honor.

14 THE COURT: Any objection?

15 MS. ARENA: No objection to A1, Your Honor.

16 THE COURT: A1's received.

17 BY MR. GINGRAS:

18 Q. Okay. Laura, did you do -- regarding the Banner
19 test, the Day 11 test, or the Day 21 test, those three
20 tests, did you do anything at all to tamper with the results
21 of those tests?

22 A. No.

23 Q. Did you take any drugs, hormones, or any
24 substance at all to -- to affect the outcome?

25 A. No.

1 Q. Did you use someone else's urine to change the
2 outcome?

3 A. No.

4 Q. Laura, in Clayton's deposition, this exact issue
5 came up about him giving you the test and wanting you to
6 take it in front of him. And he testified -- I'll just --
7 I'll just read from his deposition.

8 "Yeah, I wanted to make sure she didn't bring
9 anything into the bathroom, but she couldn't pee right in
10 front of me because she said she had stage fright, so I
11 closed the door so she would -- so she would be able to
12 pee."

13 Is that deposition testimony truthful?

14 A. I did have stage fright. He was right, I did
15 tell him that. But I did pee in front of him because he
16 insisted that I did that.

17 Q. Okay. And when he sent you the e-mail on
18 July 19th, two days after -- I'm sorry -- June 19th, two
19 days after you went to his house and took that third test in
20 front of him, did he say anything at all about the fact that
21 you closed the door and couldn't pee in front of him?

22 A. No.

23 Q. Okay. And Clayton -- he obviously saw the first
24 pregnancy test that you took; he saw the second one that you
25 took, or the results of it, anyway; and the third one that

1 you took in front of him.

2 If we go back to Exhibit A2, at the end of this
3 e-mail, Clayton says -- at the very top of the page, he
4 says, "I say all this" -- and in the e-mail, he talks about
5 the fact he thought you might be on some medication that
6 affected the results, I guess. But he says -- at the top
7 paragraph, he's --

8 MS. ARENA: Your Honor, I'm going to object.
9 He's reading information off of a -- a potential piece of
10 evidence that hasn't been admitted, and he's giving quite a
11 narrative.

12 MR. GINGRAS: It has been admitted.

13 THE COURT: Yeah, 2's been received. If you look
14 in the top left-hand corner, if there's a green sticker,
15 that means it's been received. If --

16 MS. ARENA: My apologies, Your Honor.

17 THE COURT: -- it's brown, it means it was
18 declined.

19 Go ahead, Counsel.

20 BY MR. GINGRAS:

21 Q. Laura, the question I have for you regarding the
22 first paragraph at the top of the page there, Clayton wrote,
23 or the e-mail says, "This is why it's important for us to do
24 the paternity test because there's no question that if it
25 comes back positive, it is mine."

1 Did Clayton ever tell you that he wanted you to
2 have a paternity test done?

3 A. Yes.

4 Q. Did he ever say to you that if you didn't file
5 this case, that he would?

6 A. Yes.

7 Q. How many times?

8 A. I don't know how many times. A bunch of times.

9 Q. At some point before you filed this case, did you
10 hire a lawyer to help you?

11 A. Yes.

12 Q. And who was that?

13 A. Bonnie Platter.

14 Q. And she never appeared in any case for you, is my
15 understanding. Is that right?

16 A. Yeah, she never appeared.

17 Q. Okay. But what did you have her do with regard
18 to Clayton and -- and the pregnancy issue?

19 A. I wanted to prevent filing a case publicly in
20 court. For both of our sakes, I didn't want it to be public
21 and thought that we could come up with a parenting plan.
22 If, in fact, the pregnancy was Clayton's, I thought we could
23 come up with it on our own without having to involve the
24 court.

25 Q. Okay. So you -- before you filed this case, you

1 made an effort to work with him to get the test done
2 privately without the court being involved?

3 A. Yes. And I -- I hired the attorney. I said I
4 would pay for it.

5 Q. Did he hire anyone?

6 A. No.

7 Q. To your knowledge?

8 Laura, let's move forward to look at Exhibit A3,
9 which -- have you ever seen this before?

10 A. Yes.

11 Q. Do you -- can you tell us what it is?

12 A. This is the -- this is a message in my patient
13 portal for -- I'm part of a domestic violence brain injury
14 program in -- at Barrow, and this is a conversation with my
15 doctor there.

16 Q. Okay. Did you send this e-mail? Looks like it's
17 an e-mail dated June -- June 28th from you to a
18 Dr. Glynnis Zieman, Z-I-E-M-A-N. Did you write that e-mail?

19 A. Yes.

20 MR. GINGRAS: Your Honor, I move to admit
21 Exhibit -- whatever that is. A -- A3.

22 THE COURT: Any objection?

23 MS. ARENA: No objection, Your Honor.

24 THE COURT: A3's received.

25 ////

1 BY MR. GINGRAS:

2 Q. Laura, in this e-mail, at the very top there, you
3 write to Dr. Zieman that you went to Planned Parenthood
4 while in California. And you said they did a scan there, it
5 was confirmed that you were pregnant, and that they saw --
6 they saw a sac.

7 Does that refresh your recollection about the
8 date that you went to see Planned Parenthood?

9 A. Yes.

10 Q. And is the statement that you made to Dr. Zieman
11 truthful?

12 A. Yes.

13 Q. Did you -- when you wrote that, did you know that
14 anyone would ever see that in the light of day other than
15 you and Dr. Zieman?

16 A. Nope. I had no idea.

17 Q. Okay.

18 Okay. Can you explain why you changed the name
19 at the top of the sonogram that we talked about before from
20 Planned Parenthood? I think -- I don't know if you answered
21 that before.

22 A. Yeah. I just didn't want Clayton to know where I
23 had gone to get the -- the sonogram because he had been
24 intimidating before.

25 MR. GINGRAS: If the Court can help me switch

MARICOPA COUNTY SUPERIOR COURT

1 from my exhibits to Clayton's.

2 THE COURT: Sure. If you scroll down to where --
3 yeah. That -- exactly. Now go all the way to the bottom.
4 There should be an R.

5 Keep going if you're able to.

6 MR. GINGRAS: I -- yeah, it stopped there.

7 THE COURTROOM ASSISTANT: Sir? Sir? You're just
8 going to go to the very top where it says "Change."

9 MR. GINGRAS: I don't see that.

10 THE WITNESS: It's --

11 THE COURTROOM ASSISTANT: Right above where it
12 says your -- your -- sorry -- your exhibits.

13 MR. GINGRAS: Oh. Right. It's tiny. I'm
14 blind -- I'm blind.

15 THE COURTROOM ASSISTANT: Yeah.

16 MR. GINGRAS: There it is. Yup.

17 THE COURTROOM ASSISTANT: And then "Share
18 Window."

19 MR. GINGRAS: Yup. Got it. And we're going to
20 go . . .

21 THE COURTROOM ASSISTANT: And then scroll all the
22 way down.

23 MR. GINGRAS: Yeah. Okay.

24 Oop.

25 I want to see Clayton's exhibits, though.

MARICOPA COUNTY SUPERIOR COURT

1 THE COURTROOM ASSISTANT: Yeah. You're going to
2 scroll all the way down.

3 MR. GINGRAS: Ah. Respondent's. Gotcha.
4 Gotcha, gotcha, gotcha.

5 BY MR. GINGRAS:

6 Q. Okay. Laura, looking at Respondent's
7 Exhibit 31 --

8 Oh. I don't know why that doesn't match.

9 This -- no, that's not it either.

10 These are not the same as . . .

11 THE COURT: So what you want to do is -- it may
12 not be the exhibit numbers that the attorneys labeled it as
13 being. Those are the Court --

14 MR. GINGRAS: Uh-huh.

15 THE COURT: -- designations. So --

16 MR. GINGRAS: I'm looking for -- I'm looking for
17 his Exhibit 31.

18 THE COURT: All right. So if you look for his
19 Exhibit 31, that does show that it is Exhibit 31.

20 MR. GINGRAS: Exhibit 31 on -- on his exhibit
21 list is listed, "Petitioner faking ultrasound."

22 Ah. I'm sorry. I -- I didn't realize it -- it
23 was a video.

24 There we go. That's what I wanted to see right
25 there.

1 BY MR. GINGRAS:

2 Q. Laura, Exhibit -- Clayton's Exhibit 31 is a --
3 appears to be an e-mail from you to Clayton. It says
4 "Ultrasound Video Proof." "Clayton, here's my 100
5 billion percent real" -- "real ultrasound video."

6 Do you recognize that?

7 A. It's not an e-mail that I sent, but I've seen it
8 since.

9 Q. Okay. Did -- well, you answered my question. Do
10 you know what, first of all, what that -- what this shows?
11 Do you know what it shows?

12 A. I do now.

13 Q. Laura, did you -- if this -- assuming that what
14 we're looking at here is -- is meant to be an e-mail from
15 you, did you send this to Clayton?

16 A. I did not.

17 Q. Did you ever send Clayton an e-mail with an
18 ultrasound video attached to it?

19 A. I did not.

20 Q. Do you have any idea why Clayton would think that
21 you sent him an e-mail like this?

22 A. Well, yeah. It has my signature on it.

23 Q. Well, that's a fair statement. But you didn't
24 send this. Do you know who did?

25 A. I have sus- -- my suspicions, but I can't

1 be . . .

2 Q. No, let's hear it. I'd like to hear it.

3 A. I have a suspicion that an ex of mine sent this
4 to Clayton.

5 Q. Who? Which ex?

6 A. Greg Gillespie.

7 Q. Is he in the courtroom today?

8 A. Yes.

9 Q. Okay. Why do you think Greg Gil- --
10 Greg Gillespie sent this?

11 A. Because Greg has hacked my e-mail before and has
12 admitted to hacking other people's e-mails.

13 Q. Okay. So you're -- you're, obviously, under
14 oath. Under penalty of perjury, you did not send that
15 e-mail, and you don't know who did?

16 A. Correct.

17 Q. Okay. Let's talk about --

18 Going back to our Exhibit A5.

19 Got it.

20 Whoops.

21 So can you tell us what Exhibit A5 is? Do you
22 recognize this?

23 A. Yes.

24 Q. Is this a receipt that -- well, it's an e-mail,
25 but does -- does it reflect the Ravgen that you talked about

1 before?

2 A. Yes.

3 Q. Okay. And that was August 15th that you made
4 that payment?

5 A. Yes.

6 Q. And then later on here, at the bottom, you
7 indicate -- let's see here. Fri- -- this appears to be an
8 e-mail from you Friday, August 18th. Did you write that
9 e-mail?

10 A. Yes.

11 Q. You send that to, it looks like, to Clayton and
12 also cc'd Ravgen?

13 A. Yes.

14 Q. And it states here that, "Unfortunately, Clayton
15 has refused to take the prenatal paternity test." Is that
16 accurate?

17 A. Yes.

18 Q. And is that the reason why the test didn't happen
19 in mid August?

20 A. Yes.

21 MR. GINGRAS: Okay. Your Honor, I move to admit
22 Exhibit A5.

23 THE COURT: Any objection?

24 MS. ARENA: No objection, Your Honor.

25 THE COURT: A5's received.

1 BY MR. GINGRAS:

2 Q. Okay. Let's look at Clayton's Exhibit 9.

3 Hopefully -- there we go.

4 Laura, do you recognize this exhibit, Exhibit 9?

5 A. Yes.

6 Q. This appears to be an e-mail from you to Clayton
7 dated October 14th, 2023. And this is an e-mail that you
8 sent him?

9 A. Yes.

10 Q. All right. In this e-mail, first of all,
11 you're -- you're saying some -- a reference to a sonogram
12 video, and you said, "It matches up with a still video that
13 Dave sent me." I assume that we're talking about Dave Neal?

14 A. Yes.

15 Q. And you told him, "This was not my ultrasound. I
16 stand by that a hundred percent."

17 Did -- did Dave Neal ever -- did Dave --

18 Well, first of all, who's Dave Neal?

19 A. Dave Neal's a content creator.

20 Q. And at some point, did Dave send you a sonogram
21 video and ask if it was yours?

22 A. Yes.

23 Q. What did you say to him?

24 A. I said it was not mine.

25 Q. Did you ever have a sonogram video of any kind

1 with Clayton?

2 A. No.

3 Q. Did you ever send a sonogram video to anyone
4 claiming that it showed the pregnancy with Clayton?

5 A. No.

6 Q. If we go down to the second paragraph, Laura, I'm
7 going to see if I can highlight here. And again, this is
8 you ta- -- I can't highlight.

9 The second sentence in the second paragraph.
10 I'll read it.

11 "I think you were very, very high that night, and
12 you forgot that when you were on top of me" -- "top of you
13 on the cou-" -- "on your couch, you were begging me to let
14 you put it in for 30 seconds, then 25, then 20, 15, 10, and
15 I said no each time. Then I thought you were just fingering
16 me, but you stuck it in briefly."

17 First of all, you wrote those words to Clayton,
18 right?

19 A. Yes.

20 Q. And were those words accurate?

21 A. Yes.

22 Q. Is that what happened that night on -- on
23 May 20th?

24 A. Yes.

25 Q. When you sent this e-mail to Clayton, did he ever

1 respond back to you and deny that that's what happened?

2 A. No.

3 Q. Okay.

4 Let's talk now about the last positive test that
5 you took.

6 Let me see here. It says Exhibit A9, but that's
7 not it.

8 The -- you went to Any Lab Test Now at some
9 point; is that correct?

10 A. Yes, I did.

11 Q. And -- and when did that happen?

12 A. On October 16th, I believe.

13 Q. Okay. I don't know why -- again, these aren't
14 matching up. That's not it. Because we're -- are we on --
15 yeah, we're on his. That's why. Okay. I need new glasses.

16 There it is. Okay.

17 So, Laura, looking at Exhibit A9, do you
18 recognize what this is?

19 A. Yes.

20 Q. What is it?

21 A. It's the results from the test I took at Any Lab
22 Test Now.

23 Q. And is it your understanding that that result --
24 it says 102H -- is it your understanding that you were
25 testing pregnant at -- still in October, mid October, 2023?

1 A. Yes.

2 MS. ARENA: Objection. Misstates the evidence.

3 THE COURT: Overruled. It can be addressed in
4 cross-examination.

5 BY MR. GINGRAS:

6 Q. So did you -- again, did you do anything at all
7 to tamper with this test, take any drugs, inject yourself
8 with anything at all to effect this?

9 A. No, I did not.

10 Q. And this was a blood draw that came out of your
11 arm?

12 A. Yes.

13 Q. Did you -- did you supply them with the blood
14 yourself, or did a phlebo- -- phlebotomist take it out of
15 your arm?

16 A. A phlebotomist took it.

17 Q. Okay. So two days after this is when you filed
18 the request for mediation, I think, in this case. Right?

19 A. Yes.

20 Q. And -- and after that date, you filed nothing
21 further?

22 A. This was two days -- two days prior to when I
23 filed for mediation.

24 Q. Did -- did you pretty much understand that when
25 you got this test, that that was probably not going to be a

1 viable pregnancy?

2 A. That it was probably not, yeah. But I still saw
3 that it said anything over 4 was pregnant, so . . .

4 MR. GINGRAS: Your Honor, I move to admit
5 Exhibit A9.

6 MS. ARENA: No objection, Your Honor.

7 THE COURT: A9's received.

8 BY MR. GINGRAS:

9 Q. And A11 is going to be -- can you -- can you tell
10 us if you recognize what this is?

11 A. The records from MomDoc.

12 Q. Okay. And this is an OB-GYN facility that you
13 visited?

14 A. Yes.

15 Q. And according to the date here, it says
16 November 14th, 2023. Is that accurate?

17 A. Yes.

18 Q. And so this is when you went in and had a test
19 done that came back negative, correct?

20 A. Yes.

21 Q. Okay.

22 MR. GINGRAS: Move to admit A11 if we haven't.

23 MS. ARENA: No objection.

24 THE COURT: A11's received.

25 ////

1 BY MR. GINGRAS:

2 Q. All right. Laura, let's look at Exhibit A6.

3 Hang on.

4 Okay. There we go.

5 Can you tell us what Exhibit A6 is?

6 A. Yes. That's me showing my pregnant stomach.

7 Q. And when did you create that video? Do you know?

8 A. September the 19th.

9 Q. Okay. Did you -- let me see here.

10 MR. GINGRAS: Your Honor, I'll move to admit A6.

11 MS. ARENA: No objection, Your Honor.

12 THE COURT: A6 is received.

13 BY MR. GINGRAS:

14 Q. And let's look -- look at A7. It's a similar
15 video.

16 Did you -- did you take this video yourself? Or
17 it looks like -- you're obviously --

18 A. Yeah.

19 Q. -- not holding the camera, but, what, you put it
20 on a little stand?

21 A. Yeah, I put it on the stand. Yeah.

22 Q. You took this video. Do you remember the date of
23 this?

24 A. October the 9th.

25 Q. Okay. I don't know if it even showed anything

MARICOPA COUNTY SUPERIOR COURT

1 there, but -- it's real short.

2 Okay. Laura, between May 20th and
3 November 14th -- we've established November 14th you were no
4 longer pregnant -- did you inexperience any pregnancy
5 symptoms?

6 A. Yes.

7 Q. Can you explain what those symptoms were?

8 A. Yeah. I had very bad morning sickness and
9 nausea, and my breasts were very tender.

10 Q. Do you remember how much you weighed when you
11 went to see MomDoc?

12 A. I believe it was 121.

13 Q. Mm --

14 A. I'm sorry. No, not MomDoc. I thought you were
15 meaning in -- in May.

16 I was 133 at -- at MomDoc. I'm sorry about that.

17 Q. So around the time that this was taken, your
18 weight was 133. What do you weigh today?

19 A. 91 pounds.

20 MS. ARENA: Objection. Relevance.

21 THE COURT: Overruled.

22 BY MR. GINGRAS:

23 Q. Will you stand up and show the Court and everyone
24 what you look like now compared to the picture behind you?

25 Can you turn -- can you come out from behind the

1 screen there?

2 And just -- just do a little turn for us.

3 Laura, you --

4 That's enough. Thanks.

5 For the last time, were you pregnant with

6 Clayton?

7 A. Yes.

8 Q. Did you think that you were pregnant with

9 Clayton?

10 A. Yes.

11 Q. Did you have any reason to think that you weren't
12 when you filed this case?

13 A. No.

14 Q. Did you lie about being pregnant with Clayton?

15 A. No.

16 MR. GINGRAS: No further questions, Your Honor.

17 THE COURT: Okay, Counsel. You've used 29

18 minutes and 30 seconds.

19 When you're ready.

20 MS. ARENA: And, Your Honor, is it okay if I
21 proceed from the podium? Will the Court be able to hear me?

22 THE COURT: Yeah, no, that's -- that's absolutely
23 fine.

24 And we have a -- we have a media cam -- we have a
25 media microphone on the podium, correct?

MARICOPA COUNTY SUPERIOR COURT

1 THE COURTROOM ASSISTANT: I believe so.

2 THE COURT: Okay. All right.

3 When you're ready.

4 MR. WOODNICK: Thank you, Your Honor.

5

6 CROSS-EXAMINATION

7 BY MS. ARENA:

8 Q. Good morning, Ms. Owens.

9 A. Good morning.

10 Q. You understand that you're currently under oath
11 and must testify truthfully today, correct?

12 A. Correct.

13 Q. And you understand the difference between the
14 truth and a lie, right?

15 A. Obviously, yes.

16 Q. And you would agree with me that fabricating or
17 doctoring evidence is dishonest and unreasonable behavior,
18 right?

19 A. Right.

20 Q. And you're aware that lying under oath is a crime
21 in the state of Arizona, correct?

22 A. Correct.

23 Q. And the reason I'm asking you these questions,
24 Mr. Owens, is because I've cross-examined you before, right?

25 A. Right.

MARICOPA COUNTY SUPERIOR COURT

1 Q. I cross-examined you in the injunction against
2 harassment hearing before Commissioner Gialketsis on
3 November 2nd of 2023, right?

4 A. Right.

5 Q. And during this hearing, that hearing, you'd
6 recall that I gave you the opportunity to correct the record
7 and come clean about any false information or testimony you
8 may have provided, right?

9 A. Right.

10 Q. And you told me you had nothing to correct,
11 right?

12 A. Correct.

13 Q. And then you proceeded to lie to the Court,
14 correct?

15 MR. GINGRAS: Objection. Argumentative,
16 Your Honor.

17 THE COURT: Sustained.

18 BY MS. ARENA:

19 Q. You testified that you were a hundred percent
20 pregnant on November 2nd, correct?

21 A. Correct.

22 Q. And you testified that you were 24 weeks
23 pregnant, specifically?

24 A. Correct.

25 Q. I'd like you to take a look at your Exhibit A11,

1 please.

2 MS. ARENA: And they're on the screen behind her,
3 Your Honor, so I'm not sure if --

4 THE COURT: She's got them in front of her.

5 THE WITNESS: I can see. Yeah.

6 BY MS. ARENA:

7 Q. Ms. Owens, this appointment that you attended at
8 MomDoc on November 14th of 2023 was 12 days after I
9 cross-examined you, right?

10 A. Correct.

11 Q. And during that cross-examination, I pointed out
12 that you had no legitimate medical records to support the
13 pregnancy, right?

14 A. I mean, you said that, but I don't agree with it,
15 no.

16 Q. At this appointment, Ms. Owens, it was confirmed
17 that you were not pregnant, correct?

18 A. Correct.

19 Q. These MomDoc records also indicate that you were
20 diagnosed with PCOS, which is polycystic ovarian syndrome,
21 right?

22 A. I've had that since I was 17. Yes.

23 Q. Okay. And you'll recall at the hearing on
24 November 2nd, I specifically questioned you about any
25 physical health diagnoses that you had, right?

1 A. I don't remember, but if you say so, I -- then
2 yes.

3 Q. You failed to testify that you had PCOS, right?

4 A. I -- I can't say one way or the other if I did or
5 didn't. I'll take your word for it, but it's not something
6 that I --

7 Q. Ms. Owens --

8 A. -- live with daily.

9 Q. -- you also --

10 THE COURT REPORTER: One at a time.

11 BY MS. ARENA:

12 Q. Ms. Owens, you also failed to tell me that in
13 2016, Drs. Chan and Yee diagnosed you with cancer and
14 apparently removed one of your ovaries.

15 A. They did not.

16 Q. Okay. So as you sit here today, you're denying
17 that that happened?

18 A. I will absolutely deny that that happened.

19 Q. Now, per what you reported, what you
20 self-reported to MomDoc, they listed a spontaneous abortion
21 date of August 12th of 2023 at eight weeks pregnant,
22 correct?

23 A. They listed a lot of things that were inaccurate
24 here. I never told them that I had an abortion that date.

25 Q. Okay. Well, a spontaneous abortion, if I were to

1 tell you, is consistent with a miscarriage. Would you agree
2 with me that they listed a miscarriage date of August 12th
3 of 2023 at 8 weeks pregnant?

4 A. Yes, but they -- I also never was pregnant in
5 2019, so I don't know where that came from.

6 Q. And, Ms. Owens, based on what you know about
7 pregnan- -- pregnancy, as someone who's allegedly been
8 pregnant three or four times in the past, if you miscarried
9 at eight weeks pregnant, that wouldn't line up with your
10 alleged conception date with Mr. Echard, would it?

11 A. I don't know, and I'm telling you I never told
12 them that I was eight weeks pregnant and lost that on -- on
13 August 12th.

14 Q. We'll move on, Ms. Owens.

15 In your MomDoc records and also in your
16 deposition, you self-reported that you passed two sacs which
17 appeared to have a membrane, correct?

18 A. Correct.

19 Q. And I'd like you to take a look at what we've
20 marked as Exhibit 49. This is your deposition transcript.

21 And, Ms. Owens, you recall sitting for a
22 deposition on March 1st of 2024, correct?

23 A. Correct.

24 Q. And your counsel at the time, following that
25 deposition, was provided with a copy of this transcript as

1 well as you, correct?

2 A. Correct.

3 Q. And you didn't take any opportunity to correct
4 this transcript --

5 A. I actually didn't see it until you guys sent it
6 to us. I -- my former counsel never showed this to me.
7 So . . .

8 Q. Okay. Well, you're aware that this has been
9 marked as a copy of your deposition transcript for March 1st
10 of 2024, correct?

11 A. Correct.

12 Q. And this is a true and accurate copy of the
13 transcript that you received, correct?

14 A. From your office, yes. I did not get one prior
15 to that.

16 MS. ARENA: I move for the admission of
17 Exhibit 49, Your Honor.

18 THE COURT: Any objection?

19 MR. GINGRAS: No objection.

20 THE COURT: Is that A or B, Counsel? I
21 apologize.

22 MS. ARENA: I -- I guess it would be B, Your
23 Honor.

24 THE COURT: B49 is received.

25 ////

1 BY MS. ARENA:

2 Q. And, Ms. Owens, during your deposition,
3 specifically on page 149, lines 18 through 21, you testified
4 that you started spotting, meaning you were having a light
5 period, in August or September of 2023, correct?

6 A. I wasn't having a light period. It didn't -- I
7 didn't end up getting a period until November.

8 Q. Well, in your deposition --

9 A. I said light spotting, but --

10 THE COURT REPORTER: Excuse me. One at a time.

11 THE WITNESS: Sorry.

12 I said light spotting, but that wasn't a period.

13 BY MS. ARENA:

14 Q. Okay. In your deposition, page 151, line 24, you
15 claim you passed the two sacs which appeared to have a
16 membrane in September or October, correct?

17 A. Correct.

18 Q. But in the MomDoc records, you claim you passed
19 the two sacs a few weeks after your alleged ultrasound at
20 Planned Parenthood, right?

21 A. Several weeks after.

22 Q. Okay. Well, you would agree with me there's an
23 inconsistency there, right?

24 A. Right. I wasn't sure --

25 Q. Ms. Owens --

1 A. -- what the date with.

2 Q. -- no OB-GYN or qualified medical professional
3 conducted an ultrasound, performed a physical examination,
4 or performed a blood test to confirm your alleged pregnancy
5 on or before August 1st of 2023, right?

6 A. Wrong.

7 Q. Okay. Let's talk about that. Because I
8 suspected you would answer that this way.

9 You claim that you had an alleged ultrasound at
10 Planned Parenthood in Southern California, correct?

11 A. Correct.

12 Q. And you testified during your deposition that the
13 alleged ultrasound with Planned Parenthood was in
14 Mission Viejo, California, on July 7th of 2023 --

15 A. Mm-hm.

16 Q. -- right?

17 A. I did say it was there. That's where I was
18 staying at the time, at -- in Mission Viejo.

19 Q. And while being examined by your attorney,
20 Mr. Gingras, you said that you went to Planned Parenthood
21 under a fake name, right?

22 A. Right.

23 Q. But you didn't bother to provide our office with
24 the alleged name that you went to Planned Parenthood under,
25 right?

1 A. Right.

2 Q. And you knew that we were seeking your records
3 from Planned Parenthood specifically because of the alleged
4 ultrasound that you had there, right?

5 A. Right.

6 Q. So wouldn't it have made sense for you to provide
7 our office with a copy -- or of the name that you allegedly
8 went to Planned Parenthood under?

9 A. I felt like the whole purpose of going to
10 Planned Parenthood is to remain anonymous and that that's
11 one of my protections.

12 Q. Okay. I want you to take a look at Exhibit 28.

13 MS. ARENA: And this is B28, Your Honor.

14 BY MS. ARENA:

15 Q. Is this a true and accurate picture of the
16 ultrasound you claim you received at Planned Parenthood in
17 California in July of 2023?

18 A. That looks like it, yes.

19 MS. ARENA: I'd move to admit Exhibit B28,
20 Your Honor.

21 THE COURT: Any objection?

22 MR. GINGRAS: No objection.

23 THE COURT: B28's received.

24 BY MS. ARENA:

25 Q. And, Ms. Owens, this ultrasound image does not

1 say Planned Parenthood. It says SMIL, which I'll call
2 "smile" for purposes of court today, correct?

3 A. Correct.

4 Q. And in your deposition, you admitted you altered
5 this ultrasound picture to say SMIL instead of
6 Planned Parenthood, right?

7 A. Correct.

8 Q. And you admitted in your deposition to altering
9 this picture on the Adobe Acrobat program at your house,
10 right?

11 A. Correct.

12 Q. During your deposition, you testified that the
13 date listed here of July 7th of 2023 was correct and hadn't
14 been edited by you, right?

15 A. Correct.

16 Q. But you later admit that you lied about this
17 July 7th ultrasound date, right?

18 A. Correct.

19 Q. And you executed an affidavit on April 16th of
20 2024 claiming the correct date for this already doctored
21 ultrasound was actually July 2nd of 2023, correct?

22 A. Correct.

23 Q. So I want to get this straight, Ms. Owens. You
24 initially claimed you had an ultrasound at
25 Planned Parenthood on July 7th, which you doctored to say it

1 was from SMIL, right?

2 A. Correct.

3 Q. Then the story changes again, and you claim that
4 the ultrasound image should actually be dated July 2nd of
5 2023, right?

6 A. Correct.

7 Q. So you changed the date on the ultrasound from
8 July 2nd to July 7th, correct?

9 A. Correct.

10 Q. And you utilized this altered or fake ultrasound
11 to try to convince Mr. Echard and the Court and the media
12 that you were pregnant with Mr. Echard's twins, correct?

13 A. This was -- this was never submitted to the
14 Court.

15 Q. You're aware that Planned Parenthood has no
16 record of an ultrasound for you, correct?

17 A. Under my real name, yes, and more.

18 Q. Okay. And again, we've established you didn't
19 provide our office with the name of your -- that you
20 allegedly went to Planned Parenthood under, correct?

21 A. Correct.

22 Q. You never attended an appointment with
23 Planned Parenthood in this case, Ms. Owens.

24 A. Yes, I did.

25 Q. Can you take a look at Exhibit B29?

1 This is a true and accurate copy of our request
2 and the response from Planned Parenthood regarding your
3 records dated April 26th of 2024, correct?

4 A. Correct. I don't believe I've seen this, but I
5 have no idea.

6 THE COURT: And, Counsel, I'm so sorry. I'll
7 stop the clock, like I've done for the others.

8 We're going to give you a microphone because, as
9 I anticipated, there was a problem picking up your -- your
10 cross-examination.

11 MR. WOODNICK: Audio-check?

12 THE COURTROOM ASSISTANT: I think it's just if
13 it's on there. That would be great.

14 THE COURT: We work with what we have. Right?

15 THE COURTROOM ASSISTANT: Yeah.

16 THE COURT: All right. Go ahead. Thank you.

17 MS. ARENA: And I'll ask that question one more
18 time, Your Honor.

19 BY MS. ARENA:

20 Q. Ms. Owens, Exhibit 29 is a copy of our request
21 and the response from Planned Parenthood regarding your
22 records dated April 26th of 2024, correct?

23 A. Correct.

24 MS. ARENA: Move for the admission of
25 Exhibit B29, Your Honor.

1 THE COURT: Any objection?

2 MR. GINGRAS: No objection.

3 THE COURT: B29's received.

4 BY MS. ARENA:

5 Q. And while you've indicated today that you went to
6 Planned Parenthood under a fake name, this letter actually
7 indicates that you had scheduled an appointment for
8 July 2nd, but that you failed to attend?

9 A. Correct.

10 Q. It also indicates that the ultrasound image that
11 you claimed was from Planned Parenthood was not from
12 Planned Parenthood because it was not consistent with
13 ultrasound images generated by their practice, right?

14 A. Not by the one in Mission Viejo, correct.

15 Q. Ms. Owens, these are yes or no questions.

16 This document states that the ultrasound image
17 you have claimed is from Planned Parenthood is not
18 consistent with ultrasound images generated by their
19 practice, right?

20 A. By that practice. But as they said, it -- I
21 could have been seen by another -- different ent- -- entity.

22 Q. Ms. Owens, you're well aware that this request
23 covered all of Orange County and San Bernardino, Cal- --

24 A. It didn't cover Los Angeles, though.

25 Q. So now you're saying you went to

MARICOPA COUNTY SUPERIOR COURT

1 Planned Parenthood in Los Angeles?

2 A. Yes.

3 Q. So you're telling us you went to
4 Planned Parenthood in Los Angeles on the day of trial,
5 today?

6 A. Yes.

7 Q. Okay. When did you go to Planned Parenthood in
8 Los Angeles?

9 A. Exactly when I said I went.

10 Q. When was that?

11 A. July 2nd.

12 Q. Okay.

13 I'd like to go back to the two sacs you passed.
14 So again, in your deposition, you claimed you passed them in
15 September or October, right?

16 A. Yes.

17 Q. But then you changed the date and claimed that
18 you passed these two sacs on July 23rd of 2023, right?

19 A. Right.

20 Q. And you actually had an appointment scheduled
21 with Dr. Makhoul, who you've claimed is your high-risk
22 perinatologist, for July 24th of 2023, right?

23 A. Right. That I canceled days prior.

24 Q. Okay. So you canceled that appointment --

25 A. Days prior.

1 Q. -- and then you rescheduled it to August 7th,
2 right?

3 A. Yes, if that's the date that I did.

4 Q. So wouldn't you agree with me that for someone
5 who has had miscarriages in the past and who has an alleged
6 high-risk pregnancy, it would be prudent to attend an
7 in-person appointment shortly after passing two sacs?

8 A. Well, that's why I asked the doctors online.

9 Q. Ms. Owens, these are yes or no questions.

10 A. I'm -- I'm --

11 Q. I see you're looking at your attorney, but you
12 need to look at --

13 A. He's shaking --

14 Q. -- me and answer the question for me.

15 A. Okay. Can you ask the question again?

16 Q. Wouldn't you agree that as someone who has a
17 high-risk pregnancy, that allegedly passed two sacs on
18 July 23rd of 2023, it would have been important for you to
19 see your high-risk perinatologist immediately after that
20 happening?

21 A. Well, that's why I scheduled the -- that's why I
22 immediately contacted telemedicine.

23 Q. You would --

24 A. It was at night.

25 Q. You contacted a telemed provider instead of

1 attending the appointment with your high-risk
2 perinatologist?

3 A. It had already been canceled days prior.

4 Q. Ms. Owens, you had four appointments scheduled
5 with Dr. Makhoul that you never attended, right?

6 A. Correct.

7 Q. And you intentionally failed to attend those
8 appointments because all of those appointments would have
9 resulted in a medical record that stated you were not
10 pregnant, right?

11 MR. GINGRAS: Objection. Argumentative.

12 THE COURT: Sustained. To the form of the
13 question, but you can ask the question a different way.

14 MS. ARENA: I'll move on, Your Honor.

15 BY MS. ARENA:

16 Q. During the November 2nd hearing, you denied that
17 the DNA test results came back with little to no fetal DNA,
18 right?

19 A. What?

20 Q. During the November 2nd hearing --

21 A. I said that the -- the -- the test --

22 Q. Can I finish the question, Ms. Owens?

23 During the November 2nd hearing, you denied that
24 the DNA test results came back with little to no fetal DNA.

25 Ms. Owens, I see you continue to --

1 A. No.

2 Q. -- look to your attorney.

3 A. I didn't -- I never said it didn't --

4 MR. GINGRAS: I'm confused --

5 THE WITNESS: I said it came back inconclusive.

6 MR. GINGRAS: I'm confused about what date she's
7 referring to. What --

8 MS. ARENA: November 2nd.

9 MR. GINGRAS: November 2nd hearing?

10 MS. ARENA: Yes. The November 2nd hearing.

11 MR. GINGRAS: Okay. Again, before my time, so
12 that's why I'm confused. I apologize.

13 BY MS. ARENA:

14 Q. You can answer the question.

15 A. I said it was inconclusive and it was little to
16 no fetal DNA. I never said it came back anything but that.

17 Q. Okay. Well, today you've admitted that there was
18 little to no D- -- little to no fetal DNA, right?

19 A. I've never said it was anything else.

20 Q. You also ordered and took a blood hCG test
21 through Any Lab Test Now on October 16th of 2023, correct?

22 A. Correct.

23 Q. And I'd like you to take a look at Exhibit 36,
24 Bates page 201.

25 Actually, this has already been admitted, so

1 we'll move past that.

2 By the time of this test on November 16th, you
3 had claimed you were previously seen at Banner,
4 Planned Parenthood, Dr. Makhoul, Dr. Hidley -- Higley, and
5 even Dr. Zieman, right?

6 MR. GINGRAS: Your Honor, objection. She
7 misstated the date. She said September [sic] 16th, I
8 believe. It's October 16th.

9 THE COURT: That can be addressed in redirect.

10 THE WITNESS: I -- I said that Dr. Makhoul's my
11 doctor. I did not say that I had seen him. I said I had
12 seen Dr. Higley and the rest, correct.

13 BY MS. ARENA:

14 Q. Okay. And we'll talk about Dr. Higley soon here.
15 But your answer is --

16 Would you like me to repeat the question,
17 Ms. Owens?

18 A. Sure.

19 Q. Okay. I'm going to stand here because it seems
20 like you're looking at Mr. Gingras quite a bit for guidance.
21 So --

22 A. No, I don't need -- I don't need guidance
23 from Mis- -- from my attorney. I know how to answer the
24 questions.

25 Q. By the time of your appointment, or this test, on

1 October 16th of 2023, you claimed you were previously seen
2 at Banner, Planned Parenthood, Dr. Higley, and even
3 Dr. Zieman, right?

4 A. Yes.

5 Q. But instead of going to any of those providers
6 for this test, you went to an entirely new provider,
7 correct?

8 A. I just went on my way home from taking the Ravgen
9 test, actually.

10 Q. These are yes or no questions, Ms. Owens.

11 A. Well, I didn't -- it wasn't a provider. It was a
12 self-paid test, so . . .

13 Q. Okay. So you didn't go to any of your prior
14 listed providers for this test, right?

15 A. Correct.

16 Q. Okay. By your own admission in your affidavit
17 signed April 16th of 2024, this result of an hCG level of
18 102 was not consistent with pregnancy, right?

19 MR. GINGRAS: Objection. Misstates the
20 testimony.

21 THE COURT: Overruled.

22 You can answer.

23 THE WITNESS: Oh.

24 Can you say it again? I'm sorry.

25 ////

1 BY MS. ARENA:

2 Q. By your own admission, the test result of 102 for
3 the level for hCG was not consistent with a pregnancy?

4 MR. GINGRAS: Objection.

5 THE WITNESS: I -- I --

6 MR. GINGRAS: Withdrawn.

7 Go ahead.

8 THE WITNESS: I learned that it was.

9 BY MS. ARENA:

10 Q. You learned that it was consistent with pregnancy
11 or was not consistent with pregnancy?

12 A. Well, the test results said anything above 4 was
13 pregnant, so I thought 102 was pregnant. But then I learned
14 it was not.

15 Q. Okay. So you would agree with me that this was
16 not consistent with pregnancy?

17 A. No, I wouldn't.

18 Q. Okay. You doctored this particular test twice,
19 Ms. Owens, correct?

20 A. I doctored the test once.

21 Q. Okay. And when was that?

22 A. When I tried to send it to Dave Neal to get him
23 to stop creating harassing videos of me.

24 Q. And what amount did you doctor the hCG level to
25 for that particular --

1 A. I -- it was, like, 102,000, I believe.

2 Q. Okay.

3 MS. ARENA: Isabel, can you please pull up
4 Exhibit 17, Bates page 113?

5 BY MS. ARENA:

6 Q. Ms. Owens, you'll recognize this, as it looks
7 like the same test from October 16th, but it has an hCG
8 level different than what you just indicated, and it says
9 131,902.

10 A. Okay.

11 Q. Correct?

12 A. Yes, that's --

13 Q. So you also doctored this test?

14 A. No. I didn't know what the number was that I had
15 made it to.

16 Q. Well, Ms. Owens, I agree with you. You doctored
17 this test twice. One to say 102,000 and again to say
18 131,902, right?

19 A. I doctored it, I guess, to say 131,902.

20 Q. Okay. As of October 17th, 2023, when you
21 received this test result, you had reason to believe you
22 were not pregnant, right?

23 A. Yes. After doing some research, yes.

24 Q. Okay. But then you proceeded to lie under oath
25 at hearings before this Court on October 24th, October 25th,

MARICOPA COUNTY SUPERIOR COURT

1 and November 2nd, correct?

2 A. That's not correct, no.

3 Q. Instead of telling the truth, you tampered with
4 this hCG test to increase the level and offered that as
5 support for a pregnancy?

6 A. To a content creator. Not to the Court.

7 Q. You also testified on November 2nd unequivocally
8 that your OB-GYNs were Dr. Makhoul and Dr. Higley, right?

9 A. Right.

10 Q. In fact, you went so far as to state that your
11 main OB-GYN is the perinatologist Dr. Makhoul, right?

12 A. Correct.

13 Q. You further testified on November 2nd that you
14 had last seen Dr. Higley on last Friday, right?

15 A. Right.

16 Q. You lied to the Court when you made those
17 statements?

18 A. I had the appointment scheduled, which --

19 Q. Ms. Owens --

20 A. -- you guys have.

21 Q. -- these are yes or no questions.

22 A. I know, but they -- it needs to be answered
23 correct- -- it needs to be answered.

24 I had an appointment scheduled with him that I
25 did not attend, but I did have an appointment scheduled.

1 Q. Okay. So when you say you were seen by a doctor,
2 that's not the same as having an appointment sche- -- an
3 appointment scheduled, correct?

4 A. Correct.

5 Q. So we would agree that you were dishonest when
6 you said you were physically seen by Dr. Higley the Friday
7 before the November 2nd hearing?

8 A. Correct. That's a very minor thing.

9 MR. WOODNICK: Hey. Stop. Stop.

10 THE WITNESS: Yeah. Really.

11 BY MS. ARENA:

12 Q. Ms. Owens --

13 A. You know --

14 Q. -- you've never been seen by --

15 A. -- I mean, if this is going to -- I -- I'm not
16 comfortable if this -- if the JFC crew is going to be --

17 Q. Ms. Owens --

18 A. -- having reactions, honestly.

19 THE COURT: Okay. I'm going to stop the clock at
20 this time.

21 Counsel, you ask questions. Ma'am, you answer
22 the questions.

23 I could ask the gallery to please keep your --

24 THE WITNESS: You know, I think I can't --

25 THE COURT: -- reactions --

1 I'm still talking, ma'am.

2 Keep your comments to a minimum, or you will be
3 asked to leave.

4 Go ahead, Counsel.

5 BY MS. ARENA:

6 Q. Ms. Owens, you've never been seen by Dr. Makhoul
7 or Dr. Higley for any medical appointment, correct?

8 A. Correct.

9 Q. And the records from Dr. Makhoul's office
10 indicate that you made four appointments that you never
11 attended, correct?

12 A. Correct.

13 Q. And the records from Dr. Higley's office that we
14 obtained indicate that they have no records for you from
15 August 2020 through the present, right?

16 A. I'm -- I'm sorry. You said Dr. Higley or
17 Dr. Makhoul? I'm --

18 Can I, like, take a minute?

19 MR. GINGRAS: Your Honor, can we have just a -- a
20 five-minute recess?

21 THE COURT: Sure. At this time --

22 MS. ARENA: Your Honor, I --

23 THE COURT: Oh. No, go ahead. What were you
24 going to say, Counsel?

25 MS. ARENA: I -- I'm just concerned about our

MARICOPA COUNTY SUPERIOR COURT

1 time constraint. That's all, Your Honor. So --

2 THE COURT: Well, we factored in a ten-minute
3 break, so what we'll do is we'll take it now. And then when
4 we come back, there will be no further breaks, so that's
5 just something for the parties to keep in mind.

6 We'll stand in recess.

7 (WHEREUPON, a recess was taken.)

8 THE COURT: All right. Welcome back, everybody.
9 I do remind our witnesses that you are still
10 under oath.

11 Counsel, if your client would like to resume the
12 witness stand.

13 MR. WOODNICK: Can we get a quick time-check,
14 Judge?

15 THE COURT: Sure. Petitioner's at 29 minutes and
16 30 seconds. Respondent's at 22 minutes and 1 second.

17 You ready?

18 MS. ARENA: I'm ready, Your Honor. Thank you.

19 BY MS. ARENA:

20 Q. Ms. Owens, you testified at the November 2nd
21 hearing that you had a due date of February 14th of 2024,
22 which is Valentine's Day, correct?

23 A. Correct.

24 Q. But you don't have a single medical record to
25 support that alleged due date, right?

1 A. No. I do. I was -- I was trying to say I do
2 have a record. That's what I was told by Tamara Lister at
3 Banner Health, was that it would be Valentine's Day.

4 Q. And you're aware that the record that you've
5 provided from Banner does not indicate any due date, right?

6 A. It was in conversation with her as to when the
7 due date would be.

8 Q. Ms. Owens, these are yes or no questions.

9 You're aware that the record you provided from
10 Banner lists no such due date, right?

11 A. It can't be answered in a yes or no manner.
12 It's -- I'm saying I --

13 THE COURT: You can answer "yes," "no," or "I
14 don't know."

15 THE WITNESS: So then can you please repeat the
16 question?

17 BY MS. ARENA:

18 Q. Ms. Owens, you're aware that the record from
19 Banner that you provided that your attorney just admitted
20 into evidence does not have an alleged due date of any kind
21 on it, right?

22 A. Okay. Then yes.

23 Q. I want you to take a look at what's our
24 Exhibit 17, page 110. And this is the same as your
25 Exhibit A1.

1 This is a picture you took of a portion of a page
2 from Banner, correct?

3 A. Correct.

4 Q. Where is the rest of the document, Ms. Owens?

5 A. Clayton had it.

6 Q. I'm asking you, where is the rest of the document
7 in this particular exhibit?

8 A. I -- I don't know, but there's nothing I was
9 trying to hide from it. Clayton got the entire thing.

10 Q. Ms. Owens, you recognize you've been accused of
11 faking records in this case, right?

12 A. Yes.

13 Q. And you expect the Court to accept a picture of a
14 portion of an alleged record?

15 A. You guys got the results yourselves, so --

16 Q. Ms. Owens, these are yes or no questions. Your
17 attorney --

18 A. That's not fair.

19 Q. -- is going to have --

20 A. That's --

21 Q. -- the opportunity to conduct redirect
22 examination, and you can elaborate then.

23 THE COURT REPORTER: And again, one at a time.

24 THE WITNESS: I mean, that's not fair. You guys
25 know that you have the results of this that show the same

1 thing. So I wasn't hiding anything here. That's not --
2 that's not fair.

3 MS. ARENA: Your Honor, I have to move on, so I'd
4 ask that the Court find this nonresponsive.

5 THE COURT: Court will designate it as
6 nonresponsive.

7 BY MS. ARENA:

8 Q. For someone who's been involved in court cases
9 nonstop since at least 2016 --

10 A. You know what? That's not accurate. I have not
11 been involved nonstop since 2016.

12 Q. Ms. Owens --

13 THE COURT: I'm going to stop the clock for a
14 moment, and I'm going to remind the parties.

15 Counsel, you ask a question. Ma'am, you answer
16 the question. Otherwise, we -- we move into a different
17 area that I don't think anyone wants to go into.

18 Counsel, resume.

19 BY MS. ARENA:

20 Q. Ms. Owens, you have been involved in court cases
21 since at least 2016, correct?

22 A. Nonstop or are you saying since 2016?

23 Q. Ms. Owens --

24 A. Can you just rephrase the question?

25 Q. -- please answer the question as I've asked it.

1 You've been involved in court cases since 2016,
2 correct?

3 A. No.

4 Q. Okay. This particular document, Exhibit A1, has
5 three different types of highlighting on it, correct?

6 A. I see two.

7 MS. ARENA: And, Isabel, if you can please put
8 our Exhibit 17, page 110.

9 BY MS. ARENA:

10 Q. You'll see this is the same document, but I
11 believe maybe when your office scanned it in, you can't see
12 all the highlighting. So I'm going to show you ours.

13 Do you see there's three different types of
14 highlighting?

15 A. Yes.

16 Q. And you highlighted this on the same Adobe
17 Acrobat program that you used to alter the other records,
18 correct?

19 A. This was -- the doctor highlighted "point of
20 care," "test results," and then I highlighted "first
21 trimester pregnancy" and "encounter for pregnancy test" on
22 my iPhone, but it wasn't Adobe Acrobat.

23 Q. Okay. But you would agree with me there's three
24 different types of highlighting on this document, correct?

25 A. Yes.

1 Q. And I want to talk to you about the date of this
2 alleged hCG test.

3 We can agree that a woman typically takes a
4 pregnancy test when they've missed their menstrual period,
5 right?

6 A. Well, my case was different.

7 Q. Ms. Owens, these are yes or no questions.

8 A. I think the answer depends. I don't get a
9 period, so I don't -- I don't know how to answer that.

10 Q. Okay. So you don't get a regular period, right?

11 A. I don't.

12 Q. So you took this test before even missing a
13 period, right?

14 A. Correct.

15 Q. And between 2014 and the present, you have
16 alleged that you were pregnant by four different men,
17 correct?

18 A. Correct.

19 Q. And all four of those men told you, one way or
20 another, that they believed you fabricated those
21 pregnancies, right?

22 A. The first was not so specific about that.

23 Q. And three of them are here today, right?

24 A. Correct.

25 Q. And they also believe that you doctored medical

1 records, right?

2 MR. GINGRAS: Objection. Foundation.

3 THE COURT: Sustained.

4 MS. ARENA: I'll move on, Your Honor.

5 BY MS. ARENA:

6 Q. Ms. Owens, each time that one of these three men
7 refused to be in a relationship with you and questioned your
8 preg- -- pregnancy narrative, you obtained an order of
9 protection against them, right?

10 A. False.

11 Q. Okay. Well, you have an order of protection
12 against Mr. Greg Gillespie, correct?

13 A. Correct.

14 Q. And he didn't believe that you were ever pregnant
15 with his child, right?

16 MR. GINGRAS: Objection.

17 THE WITNESS: No, that's wrong.

18 MR. GINGRAS: Foundation --

19 THE WITNESS: That's --

20 MR. GINGRAS: -- and hearsay.

21 THE WITNESS: He had me -- I went to a doctor.
22 He had me -- he told me I needed to go to the specific
23 doctor to confirm a pregnancy, which I did, who spoke to
24 him.

25 THE COURT: Okay. Stop. I'm striking that

1 response.

2 The court reporter has been very clear.
3 Everyone's talking over each other. For appellate purposes,
4 and the fact that one of the parties is paying for the court
5 reporter, implore you, please, to talk one at a time.

6 With regards to the objection, it's overruled.

7 Go ahead, Counsel.

8 MS. ARENA: And, Your Honor, I'll move on in the
9 interest of time.

10 BY MS. ARENA:

11 Q. Ms. Owens, you didn't file an affidavit of
12 financial information in this case, did you?

13 A. I did.

14 Q. When did you file that?

15 A. August or September. It's with the Court.

16 Q. Okay.

17 A. It's on the record.

18 Q. Well, consistent with your deposition testimony
19 and your April 16th affidavit, you would agree with me that
20 you make approximately \$200,000 a year and then have
21 approximately \$500,000 in, like, a money market account,
22 right?

23 A. I don't have \$500,000 in a money market account.

24 Q. Okay. But you would agree with me that you make
25 approximately \$200,000 a year?

MARICOPA COUNTY SUPERIOR COURT

1 A. It's with businesses I have with my mom, so it's
2 proportional to us.

3 Q. Okay.

4 A. With our companies. Yeah.

5 Q. Ms. Owens, I want to give you one more
6 opportunity. The media is here. You know that this case
7 has gone viral. You have an opportunity right now to come
8 clean and start fresh. So I'm going to ask you one final
9 time.

10 You were never pregnant by Clayton Echard,
11 correct?

12 A. That is absolutely incorrect.

13 MS. ARENA: I have no further questions,
14 Your Honor.

15 THE COURT: Okay.

16 MR. WOODNICK: Time, Judge?

17 THE COURT: Time-check, 28 minutes, 46 seconds.
18 Redirect when you're ready.

19 MR. GINGRAS: Your Honor, I've got about three
20 questions.

21

22 REDIRECT EXAMINATION

23 BY MR. GINGRAS:

24 Q. First of all, Laura, looking at Exhibit A0 --

25 MR. GINGRAS: Are we on -- on my screen?

1 THE COURTROOM ASSISTANT: Yeah.

2 BY MR. GINGRAS:

3 Q. -- this is the timeline that we talked about
4 before. Can you just go back over that real quick?

5 And does that accurately reflect the testimony
6 you gave earlier regarding the -- your version of the
7 events?

8 A. Yes.

9 MR. GINGRAS: Your Honor, I move to admit
10 Exhibit A0 under -- it's a Rule 1006. It's a summary of
11 testimony.

12 MS. ARENA: Your Honor, I would object. I don't
13 believe this is an accurate summary of her testimony today.

14 MR. GINGRAS: That's for the find- -- sorry.

15 THE COURT: Over objection, the Court will
16 receive what's been marked as A30 [sic], giving it the
17 weight that it deserves.

18 MR. GINGRAS: Okay.

19 THE COURT: It does appear to be a
20 demonstratively --

21 MR. GINGRAS: Right.

22 BY MR. GINGRAS:

23 Q. Laura, regarding Banner, there was some comment
24 just a minute ago that -- that you didn't produce records
25 from Banner.

1 To your knowledge, did you authorize Mr. Woodnick
2 or his firm to gets records from Banner?

3 A. Yes.

4 Q. And looking at Exhibit A1, it's not just a photo
5 of -- the first page is a photo of something, but can you
6 tell us what the second page here is?

7 A. That's from my patient portal showing that I was
8 positive through -- for Banner.

9 Q. Okay. And to your knowledge, did Mr. Woodnick
10 actually receive records from Banner? Did he ask for them?

11 A. Yes.

12 Q. And did he get them?

13 A. Yes.

14 Q. Okay.

15 One final thing. You said before on dir- -- on
16 cross-examination that when you saw that hundred -- 102 hCG
17 test from -- from October 16th, that you believed that meant
18 you were not pregnant.

19 Do you understand the difference between a viable
20 pregnancy and a nonviable one?

21 A. Yes.

22 Q. Do you believe that the 102 number that you got
23 in -- October 16th of 2023 meant that you were not pregnant
24 at all?

25 MS. ARENA: Objection. Leading.

1 THE COURT: Sustained.

2 BY MR. GINGRAS:

3 Q. What was your understanding of that 102 number?
4 What did it mean to you?

5 A. That I was still pregnant, as it was over 4, was
6 what it said.

7 Q. Okay.

8 MR. GINGRAS: No further questions, Your Honor.

9 THE COURT: Okay.

10 All right, ma'am. You can go sit back down.

11 MR. WOODNICK: One more time-check, Judge.

12 THE COURT: Sure. Respondent's at 28 minutes, 46
13 seconds. Petitioner is at 31 minutes, 14 seconds. Of the
14 50.

15 You can call your next witness when you're ready.

16 MR. GINGRAS: Your Honor, Petitioner calls
17 Dr. Michael Medchill.

18 THE COURT: All right.

19 Doctor, if you'd like to bring water with you,
20 you may.

21 MR. GINGRAS: Did we swear him already? We did.

22

23 MICHAEL MEDCHILL,
24 called as a witness herein, having been first duly sworn,
25 was examined and testified as follows:

MARICOPA COUNTY SUPERIOR COURT

DIRECT EXAMINATION

BY MR. GINGRAS:

Q. Good -- good morning, Dr. Medchill.

State your name, please.

A. Dr. Michael Medchill.

Q. We have -- we have about 15 minutes, so I've got to go really, really quick here.

I know you're retired now. Can you tell the Court what you did before you retired?

A. I was the chairman of the department of obstetrics and gynecology at St. Joseph's Hospital. I was in private practice at the same time, and I was also on the teaching faculty of the Phoenix integrated residency program in obstetrics and gynecology.

Q. Okay. So you have a medical doctorate degree?

A. Yes.

Q. And you practiced medicine in Arizona for about 30 years; is that right?

A. That's correct.

Q. And according to the Arizona Medical Board, it -- it says that you were first licensed in Arizona in 1992, and your medical license expired on March 7th, 2022. Is that accurate?

A. Yes.

Q. It was about two years ago?

MARICOPA COUNTY SUPERIOR COURT

1 And you -- you retired from medicine in good
2 standing with the medical board?

3 A. That's correct.

4 MR. GINGRAS: Your Honor, I tender Dr. Medchill
5 as an expert in the area of obstetrics and gynecology.

6 MR. WOODNICK: No objection.

7 THE COURT: All right. So stipulated.

8 BY MR. GINGRAS:

9 Q. Okay. Dr. Medchill, in front of you there, we've
10 got your CV, I guess. This is Exhibit A12.

11 And everything in your CV is accurate?

12 A. Yes.

13 Q. Is that up-to-date and current?

14 A. Yes.

15 Q. Okay. And like you said, you served as the
16 chairman of the obstetrics -- obstetrics and gynecology
17 department at St. Joseph's Hospital in Phoenix?

18 A. Yes, for four years.

19 Q. In that capacity, how many children did you
20 personally deliver?

21 A. I delivered over 20,000 babies.

22 Q. And I think when we were talking, you explained
23 that the success rate of a pregnancy when a woman becomes
24 pregnant and then delivers a baby, not all of them make it;
25 is that right?

1 A. Almost half of all pregnancies end in a
2 miscarriage.

3 Q. Okay. And so if you delivered 22- -- or 20,000
4 children, how many patients did you see that didn't deliver
5 healthy babies?

6 MR. WOODNICK: Objection. Relevance, Judge.

7 THE COURT: Sustained.

8 MR. GINGRAS: Goes directly to the -- I'm sorry?

9 THE COURT: Sustained.

10 BY MR. GINGRAS:

11 Q. In addition to women that did not deliver a
12 healthy baby, did you -- or I'm sorry. In addition to women
13 who delivered healthy children, did you have patients who
14 had miscarriages?

15 A. Thousands.

16 Q. And -- and so you have extensive training and
17 experience with -- with regard to women that have non-normal
18 pregnancies?

19 A. Correct.

20 Q. All right. Dr. Medchill, in -- in your report
21 here, which, again, is Exhibit A12, you summarize --

22 There's a -- there's a written report, and it's
23 going slow. Let me see here.

24 Did you -- did you review some records as part of
25 your retention in this case?

1 A. Yes.

2 Q. And your report has an index of exhibits that you
3 looked at. There's a Banner pregnancy test, an image of
4 some tissues. They're all attached to your report.

5 Other than what is listed there, did you review
6 anything else?

7 A. Just the ones that I've listed.

8 Q. Okay. And after you performed that initial
9 review, you asked for some records. You had a question
10 regarding medications?

11 A. Yes.

12 Q. And did you get those records?

13 A. Yes, I did.

14 Q. Do you recall where they're from?

15 A. From Barrow Neurologic Institute.

16 Q. And you're familiar with Barrow?

17 A. Very familiar. They're at St. Joseph's Hospital.

18 Q. That's part of the same hospital where you used
19 to work?

20 A. Yes.

21 Q. Dr. Medchill, based on your review of Laura's
22 medical records that you've identified in your report, did
23 you form any opinions at all regarding whether or not she
24 was pregnant in 2023 at any time?

25 A. Absolutely, I believe she was pregnant, with over

1 99 percent probability.

2 Q. Okay. And can you explain what facts support
3 that conclusion? That you -- the facts that you considered,
4 anyway?

5 A. I am kind of -- of the Sergeant Friday of
6 Dragnet. I only take in the facts, the bare facts, that
7 I -- are known to be proveable.

8 Number one, there was intimacy of some -- some
9 type. Disputed what exactly it was.

10 Number two, she had a positive pregnancy test at
11 a lab at Banner, which means that there's a 99 percent
12 chance that that's a positive pregnancy.

13 Number three, she had a negative test, or little
14 or no fetal DNA, found on a test in late September looking
15 for fetal DNA in the blood. What that tells me is that by
16 that point, at the end of September, the pregnancy had
17 failed. That even though she still had a positive pregnancy
18 test, it was no longer a viable pregnancy.

19 The fourth thing is, is that she still had a
20 positive pregnancy test in the blood of 102 on October 16th,
21 which, again, greater than 99 percent positive that she was
22 pregnant.

23 And the fact that between June 1st and
24 October 16th, she's got two laboratory-proven pregnancy
25 tests. That indicates that all of the urine pregnancy

1 tests, any other pregnancy tests that she had done, likely
2 are also demonstrably positive.

3 And the final thing is, is when she had bleeding
4 in Sep- -- in November and then a couple of days later had a
5 negative pregnancy test at the MomDoc, it also illustrates,
6 one, that the pregnancy finally was completed. So what
7 happened was she had a pregnancy. It failed at some point.
8 There's no way of knowing exactly when. Frequently, very
9 frequently, when people miscarry, they're incomplete. Some
10 of it miscarries, the fetus is no longer alive, but you
11 still contain -- continue to have a positive pregnancy test
12 because there's still tissue there that hasn't been
13 expelled. That finally happened in November when that
14 pregnancy was completed, when that miscarriage was
15 completed.

16 Q. Okay. Dr. Medchill, Mr. Echard has said that he
17 doesn't believe that a pregnancy was possible here because
18 there was no intercourse.

19 Do you have an opinion about that? Regarding
20 general. Not regarding him or her, but in general.

21 A. Well, it's said that men are like basketball
22 players. They dribble before they shoot. They also dribble
23 afterwards. And if you are rubbing genitalia together, it
24 is possible to get pregnant.

25 Q. How much weight would you assign to the fact that

1 Mr. Echard denied sexual intercourse? Is that -- is that
2 significant to the question of whether she was pregnant or
3 is it a minor point?

4 A. It has nothing to do with whether she was
5 pregnant.

6 Q. Okay.

7 THE COURT: Hold on one second, Counsel.

8 MR. WOODNICK: I'll withdraw it.

9 THE COURT: Withdrawn? Okay.

10 MR. WOODNICK: I'll withdraw it.

11 BY MR. GINGRAS:

12 Q. Dr. Medchill, I think you said earlier that it's
13 impossible to know for sure when Laura's pregnancy ended.

14 Do you have an opinion about -- based on the
15 records that you've seen and the information that's been
16 provided to you, do you have a theory about when?

17 A. It -- it actually ended in November when her
18 pregnancy test was negative. When it failed -- in other
19 words, when it was no longer viable -- there's no way of
20 knowing exactly when that happened.

21 Q. Okay. Dr. Medchill, somebody online, I think,
22 made a comment -- it's just a theory, obviously -- that --
23 that Laura may have injected herself with hCG. I think that
24 we talk- -- we talked about a trigger shot or something like
25 that.

1 First of all, what is an hCG trigger shot?

2 A. It's used in trying to help somebody get
3 pregnant. And it's by prescription. It's an injection.

4 And I saw no records that indicated that anybody
5 would have given her a prescription for hCG.

6 Q. Okay.

7 A. Nor would there be a reason to give her one.
8 Especially if she was already pregnant.

9 Q. Right.

10 Dr. Medchill, Clayton in his pretrial statement
11 objected to your testimony on a couple of grounds. And I
12 know you and I talked about this. I'll -- I'll just read
13 one of his objections: That you have relied on an
14 admittedly-tampered-with data set.

15 Do you feel that you've relied on admittedly
16 tampered data in any way, shape, or form in forming your
17 conclusions?

18 A. Absolutely not. All I've included were the fact
19 that they both admitted that there was some type of
20 intimacy, that there were -- all the other things that I
21 used to make my decision was based on laboratory tests.

22 Q. And -- and the Planned Parenthood sonogram that
23 we've spoken about -- and I think you -- you were sitting
24 here and saw and heard that testimony -- did you rely on
25 that Planned Parenthood sonogram in any way?

1 A. No.

2 Q. And the -- the hCG test from Any Lab Test Now
3 that Laura did not send to any Court, the one that said
4 130-something-thousand, did you rely on that in any way?

5 A. No.

6 Q. Does the fact that Laura has those credibility
7 problems and that she did some things that we all agree are
8 dumb, does that change your opinion on whether or not she
9 was pregnant?

10 A. No.

11 Q. Why not?

12 A. The lab tests, like I said, are 99-plus percent,
13 and they were repeated over and over and over. And so she
14 was pregnant.

15 Q. One other objection that Clayton made to your
16 testimony, Dr. Medchill, is that you, with zero scientific
17 or DNA basis, made a conclusion that Clayton was the father
18 of twins. Have you reached that opinion at all?

19 A. No. That's preposterous.

20 Q. I mean, I don't -- I don't see it in your report.
21 I'm just wondering if you -- you agree that you can't make
22 any conclusions at all because we don't have DNA?

23 A. Correct.

24 Q. And you're -- you're familiar with the Ravgen
25 test process?

1 A. Yes.

2 Q. Can you think of any reason why a woman who is
3 not pregnant would want to take a test like that?

4 MR. WOODNICK: Objection. Foundation.

5 THE COURT: Sustained.

6 BY MR. GINGRAS:

7 Q. Dr. Medchill, if Laura was not pregnant and she
8 took -- and she submit- -- submitted a sample to Ravgen,
9 would Ravgen be able to confirm that she wasn't pregnant?

10 MR. WOODNICK: Objection. Foundation.

11 THE COURT: Sustained.

12 BY MR. GINGRAS:

13 Q. Dr. Medchill, you're -- you're familiar with
14 Ravgen. You just said that.

15 A. Yes.

16 Q. Did you -- did you ever use them in your practice
17 or something like that? A similar service?

18 A. Yes.

19 Q. And as part of using a DNA testing service like
20 that, does the service confirm that the woman is or isn't
21 pregnant? Can they come back and say, "This woman's not
22 pregnant"?

23 MR. WOODNICK: Objection. Foundation.

24 THE COURT: Sustained.

25 ////

1 BY MR. GINGRAS:

2 Q. Did you ever have that happen? Did you -- when
3 you used DNA testing as a doctor, did you ever have a test
4 come back that said a woman was not pregnant?

5 MR. WOODNICK: Objection. Foundation. And also,
6 Ravgen's only been around for a few years, and I think he's
7 been retired for a few.

8 MR. GINGRAS: I'm asking about the process
9 generally, Your Honor.

10 THE COURT: Overruled. He can answer the
11 question.

12 THE WITNESS: Free-cell DNA, which Ravgen is a
13 type, has been around for a number of years. I used it
14 frequently. It not only tells you if you're pregnant, it
15 tells if it's a boy or a girl, it'll tell you if it has
16 genetic defects. It's incredib- -- it's the biggest, best
17 new technology that we've had in the last 20, 30 years.

18 BY MR. GINGRAS:

19 Q. I -- I was looking at my notes when you answered.
20 So a Ravgen-type test, or Ravgen itself, can tell whether
21 it's a boy or girl?

22 A. Yes.

23 Q. And tell -- then necessarily can tell whether the
24 woman's pregnant at all?

25 A. Yes, obviously.

1 Q. Okay.

2 Dr. Medchill, one -- one final question. One
3 series.

4 Can you see the picture behind you there --

5 A. Yes.

6 Q. -- of Laura's body?

7 As a physician and as a man -- or a doctor who's
8 delivered lots of healthy babies and maybe some that didn't
9 end healthy, can you explain how Laura's body could be that
10 size, and she never said that she passed any dead fetus?

11 MR. WOODNICK: Objection. Exceeds the scope of
12 his presentation. He didn't review the photo as part of the
13 exhibits.

14 THE COURT: Overruled. He can answer if he has
15 an opinion. The Court will give it the weight it deserves,
16 which could be a little, a lot, or none at all.

17 MR. GINGRAS: That -- that photo's actually one
18 of the things that --

19 BY MR. GINGRAS:

20 Q. Did you look at this photo as part of your
21 review?

22 A. I saw that photo earlier, yes.

23 Q. And regarding the size of Laura's belly, which
24 clearly is not here anymore, is that -- does that show you
25 anything regarding whether or not she was pregnant?

1 A. It could indicate that she was pregnant. Could
2 indicate other things.

3 Q. The fact that Laura didn't -- didn't claim to
4 pass a large fetus, is that something surprising to you, or
5 is that something that could logically be explained
6 medically?

7 A. The fact that this pregnancy, in all likelihood,
8 was no longer viable early in this -- this pregnancy,
9 doesn't surprise me that she didn't pass much tissue at all.

10 Q. How -- how does that happen? Does the body --

11 A. What happens is the fetus starts to grow. At
12 some point, the fetus stops growing, there's no longer a
13 heartbeat. If it's very early, they may just get a period.
14 If it's -- if they miscarry, they may pass a little tissue.
15 Maybe not. And some of that tissue remains enough that it
16 continues to produce hCG. That's why she continued to have
17 the positive pregnancy tests. And that's why we call it an
18 incomplete abortion once we know that there's no longer a
19 viable pregnancy there, but the pregnancy doesn't end until
20 that -- all that tissue is gone, at which time it is a
21 completed miscarriage.

22 Q. Okay. Two more questions, Dr. Medchill.

23 Have you reviewed the expert report of Dr. Deans,
24 who's Clayton's expert?

25 A. Yes.

1 Q. Do you disagree with anything that Dr. Deans
2 said?

3 A. Not really. The only thing that was amusing to
4 me was the fact that they're relying on a clinical
5 pregnancy. There's an old adage, either you're pregnant or
6 you're not. The adage isn't you're either clinically
7 pregnant or not. And the reason for that is because to be
8 clinically pregnant, that means that you have to have
9 prenatal care. Laura did not have prenatal care.

10 I took care of hundreds of women who had no
11 prenatal care, so technically were not clinically pregnant,
12 walked into the hospital, and I delivered a nine-pound baby.
13 Even though they weren't clinically pregnant.

14 Clinical pregnancy only means that they've gotten
15 prenatal care that you could see on ultrasound or you could
16 hear with an instrument. And so a clinical pregnancy is not
17 relevant here. It's either you're pregnant or you're not.

18 Q. And -- and your opinion is that Laura was
19 pregnant? Even if it wasn't a clinical pregnancy, she was
20 pregnant?

21 A. Correct.

22 MR. GINGRAS: Thank you. No further questions.

23 THE COURT: All right, Counsel. You're at 45
24 minutes and 43 seconds.

25 Counsel, you have 28 minutes, 46 seconds.

CROSS-EXAMINATION

BY MR. WOODNICK:

Q. Thank you, Doctor.

You consider yourself a scientist, correct?

A. Yes.

Q. And so you know that when collecting data, it's garbage in, garbage out. If you're not relying on good data, the opinion you're going to give is not going to be credible. Is that correct?

A. I -- that's why I only re- -- relied on the data that I thought was totally credible.

Q. And that was the data that Mr. Gingras gave you, correct?

A. That was the data that was presented to me.

Q. I saw when you drove into the parking lot you walked in with Laura's mom in the parking lot. Are you friendly with -- with her mother?

A. That -- I just met her this morning.

Q. Okay. That's nice.

Did you -- in -- well, let's go here.

Mr. Gingras asked you whether or not you relied on the ultrasound, but you're aware that the ultrasound was a fake, correct?

A. I've been told that, and that's why I didn't rely on it.

1 Q. Okay. But knowing that the ultrasound was a
2 fake, doesn't that cause you to be incredulous about the
3 other data that Ms. Owens presented you?

4 A. That's precisely why I only used the data that
5 was laboratory-proven.

6 Q. Well, you actually sat in here and are relying on
7 a photocopy or a picture of a medical record that Laura
8 gave. That was the Banner with the three colors of
9 highlighter. Do you remember seeing that?

10 You were just sitting here. That exam.

11 A. Yeah, I -- I saw that. Yes.

12 Q. And you understand Laura has admitted to faking
13 medical records in this case?

14 A. Yes.

15 Q. She faked ultrasounds by putting other lab names
16 on them; she faked the two versions of the hCG test that you
17 relied on, correct?

18 MR. GINGRAS: Objection. Misstates the
19 testimony.

20 MR. WOODNICK: That's exactly what --

21 THE COURT: Overruled.

22 MR. WOODNICK: -- she testified to.

23 THE COURT: It can be addressed -- it can be
24 addressed in redirect.

25 ////

1 BY MR. WOODNICK:

2 Q. You know she --

3 A. The -- the data that I relied on was stuff that
4 was verified from the laboratory itself.

5 Q. That's not true. You relied on a photocopy that
6 Laura took a picture of and provided you. It's in your
7 file.

8 A. The Sonora Quest test done October the 16th was,
9 I believe, derived directly from Sonora Quest.

10 Q. Okay. Let me --

11 A. I think the --

12 Q. -- pause you.

13 Does it concern you as a scientist if three men
14 have accused Laura of fabricating medical doctor --
15 documents?

16 A. That has nothing to do with the data.

17 Q. Does it concern you as a --

18 Doesn't have anything to do with the data?
19 Doesn't -- doesn't it mean that you should do a deeper dive
20 to verify the authenticity of the data?

21 A. If you have proof that the -- the tests from
22 Banner or from Ravgen or from the quantitative hCG were
23 fake, I -- I'm willing to take a look at them, but --

24 Q. We --

25 A. -- that's what I have.

MARICOPA COUNTY SUPERIOR COURT

1 Q. But, Doctor, we have proof. She changed the
2 sonogram and she changed the hCG levels in one of the tests
3 that you relied on.

4 A. I didn't rely on the h- -- on the ultrasound, and
5 I didn't rely on the faked 100-and-whatever-thousand.

6 Q. Okay. You know that Laura testified that she --
7 Well, we can agree you reviewed absolutely zero
8 records from Laura's PCP, correct?

9 A. I don't know who her PCP is.

10 Q. Well, that's a problem. Wouldn't you have wanted
11 to talk to her PCP and see what drugs she was on?

12 A. I saw what drugs she was on from -- on Barrow.

13 Q. No, you saw what drugs she was on from a
14 neurologist that she had telemed visits with. You didn't
15 request, Doctor, records from her PCP, correct?

16 A. I did not.

17 Q. And you would agree that --

18 Thank you.

19 You would agree that it would have been helpful
20 had you reviewed her historic gynecological records,
21 correct?

22 Correct?

23 A. The testing of -- of her -- whether she was
24 pregnant or not had nothing to do with her gynecological
25 records.

1 Q. Well, you have no idea whether or not she had
2 elevated hCG in her system in the years before with any of
3 the other litigation, do you?

4 A. The fact that she had a negative hCG at the end
5 of her pregnancy tells me that she didn't have familial hCG
6 in her system.

7 Q. Okay, Doctor. Let's really quickly talk about
8 other things that could have caused Laura's hCG to be
9 elevated.

10 As a physician and a scientist, you would agree
11 that hCG could be elevated due to pituitary gland issues,
12 correct?

13 A. Yes.

14 Q. It could be elevated due to cancer, correct?

15 A. Yes.

16 Q. Ovarian cysts?

17 A. Depending on if it was cancer.

18 Q. And you're aware that Dr. Yee and Dr. Chan both
19 provided medical record- -- well, both indicated that Laura
20 had ovarian cancer?

21 A. I saw those records.

22 MR. GINGRAS: Objection. Foundation.

23 THE WITNESS: I didn't --

24 MR. GINGRAS: Objection. Foundation.

25 MR. WOODNICK: I'll move on.

1 THE COURT: Sustained.

2 BY MR. WOODNICK:

3 Q. Let's go back.

4 It could be -- elevated hCG could be caused by
5 weight loss drugs?

6 A. I'm not aware of weight loss, but there are drugs
7 that can alter hCG results.

8 Q. Let's talk about that a little bit more.

9 How about anxiety medications?

10 A. Yes.

11 Q. How about antidepressants?

12 A. Yes.

13 Q. And you -- you have no idea whether or not Laura
14 was on any of those medications because you didn't review
15 her historic medical records other than what was provided to
16 you by telemed at Barrow's, correct?

17 A. I saw that she was on some of those medicines.

18 Q. What medicines?

19 A. The antianxiety med- -- medicines.

20 Q. An antianxiety medicine that you just said could
21 elevate her hCG.

22 A. (No oral response.)

23 Q. Last, Doctor. IVF drugs also cause escalated
24 hCG, do they not?

25 A. Certain types.

1 Q. Laura could have been on Novarel or Pregnyl,
2 correct? Pregnyl?

3 A. I saw no records of that, and there would be no
4 reason why, if she was pregnant, that she'd be on those.

5 Q. One last question, Doctor. The antipsychotic
6 clozapine causes elevated hCG, does it not?

7 A. It's been reported to.

8 MR. WOODNICK: Thank you, Judge.

9 THE COURT: All right.

10 Redirect?

11 MR. GINGRAS: One question.

12

13 REDIRECT EXAMINATION

14 BY MR. GINGRAS:

15 Q. Dr. Medchill, regarding the potential of some
16 issue other than pregnancy being the source of Laura's hCG
17 in her blood, her -- are you aware that after November 14th,
18 she -- or on November 14th, she tested negative twice?

19 A. Yes.

20 Q. If Laura had drugs or tumors or cysts or anything
21 else that was causing an elevated hCG level, would she have
22 tested negative for pregnancy twice on November 14th?

23 A. No. They would have still been positive.

24 MR. GINGRAS: That's it.

25 THE COURT: Okay.

MARICOPA COUNTY SUPERIOR COURT

1 Before you sit down, Doctor, I just have a few
2 questions.

3 So you said that hCG requires a prescription,
4 correct?

5 THE WITNESS: The injection, yes.

6 THE COURT: Okay. Does Planned Parenthood have
7 the authorization to write those prescriptions, as far as
8 you know? In Arizona, anyway?

9 THE WITNESS: I can't imagine any reason why they
10 would. It's a drug that's used to induce ovulation, so it's
11 in -- used in infertility patients.

12 THE COURT: Okay.

13 THE WITNESS: Planned Parenthood doesn't normally
14 do infertility.

15 THE COURT: I understand, but that wasn't my
16 question. My question was: At -- are the medical doctors
17 there able to write a prescription for it if they chose to,
18 if they deemed it medical -- medically necessary?

19 THE WITNESS: Yes.

20 THE COURT: Okay.

21 Did you review either the Planned Parenthood
22 records from Mission Viejo or Los Angeles?

23 THE WITNESS: No.

24 THE COURT: Okay.

25 Follow-up to the Court's questions?

1 MR. WOODNICK: Nothing. Thank you, Judge.

2 THE COURT: Follow-up to Court's questions?

3 MR. GINGRAS: No.

4 THE COURT: Thank you, Doctor. You can step
5 down.

6 And, Counsels, before we call the next witness
7 up, just so that I'm -- I point this out to the parties,
8 we've explored B9, B31, and A12 that have not been moved.
9 So I don't know if that was just an oversight or if the
10 parties are intending to move those.

11 MR. GINGRAS: I'm sorry. Could I have those
12 numbers again?

13 THE COURT: Sure. B9, B31, and A12 were
14 addressed but not moved.

15 MR. GINGRAS: I would move to admit A- -- A12 is
16 Dr. Medchill's report.

17 THE COURT: Okay.

18 MR. WOODNICK: And no objection to that.

19 And we move to admit B9 and B31.

20 THE COURT: All right.

21 Any -- and I assume no objection, Counsel?

22 MR. GINGRAS: I just wanted to look what they
23 were. I didn't --

24 THE COURT: You explored them with your client on
25 direct.

1 MR. WOODNICK: Those are his, actually, so --

2 MR. GINGRAS: Yup. No objection there.

3 THE COURT: Okay. The Court will receive what's
4 been marked as B9, B31, and A12. Thank you.

5 You can call your next witness.

6 MS. ARENA: And, Your Honor, if we can get a
7 time-check again, if you don't mind.

8 THE COURT: Sure. Respondent's at 34 minutes, 36
9 seconds. Petitioner is at 46 minutes and 6 seconds.

10 MR. GINGRAS: Your Honor, I'm going to reserve
11 the rest of my time, so I'm done.

12 THE COURT: Okay. All right.

13 Counsel?

14 MR. WOODNICK: Judge, with some technological
15 help, and hopefully we're not on the clock, we're going to
16 call Dr. Deans.

17 THE COURT: Okay. All right. So you're on the
18 clock for her testimony, but getting her set up is not.

19 MR. WOODNICK: Thank you.

20 THE COURT: Okay. Dr. Deans, are you able to
21 hear me?

22 THE WITNESS: Yes, I can.

23 THE COURT: Okay.

24 Counsel?

25 MR. WOODNICK: Before we go on the clock,

1 Dr. Deans, can you hear me? It's the voice of
2 Gregg Woodnick.

3 THE WITNESS: Yes. I can see you too.

4 MR. WOODNICK: Oh.

5 THE COURT: Counsel --

6 MR. WOODNICK: There you are. Thank you.

7 All right. We're ready, Judge. Thank you.

8 THE COURT: Hold on one second. I want to make
9 sure she can hear everybody.

10 Counsel, will you do a test, please?

11 MR. GINGRAS: Hi, Dr. Deans. Good morning.

12 THE COURT: Okay.

13 THE WITNESS: Good morning. I can hear you.

14 MR. GINGRAS: Can you see me?

15 THE WITNESS: I can.

16 THE COURT: All right. And, Doctor, before we
17 get started -- and I -- I give this advisory whenever we
18 have virtual witnesses -- is if you need -- I understand
19 we've all got multiple screens going. If you need to look
20 at a report or your notes or something different, I need you
21 to let me know that you're going to do that. We'll give you
22 an opportunity to do it. Wherever that document is located,
23 once your reflect- -- once your recollection has been
24 reflected, please look away from that screen and let us know
25 that you're ready.

MARICOPA COUNTY SUPERIOR COURT

1 Additionally, you should be able to see, once we
2 put it up, any exhibits that either counsel will ask you to
3 review. Please let me know if you can't see it. Okay?

4 THE WITNESS: I will. Thank you.

5 THE COURT: You're welcome.

6 When you're ready, Counsel.

7
8 SAMANTHA DEANS,
9 called as a witness herein, having been first duly sworn,
10 was examined and testified as follows:

11
12 DIRECT EXAMINATION

13 BY MR. WOODNICK:

14 Q. Hi, Dr. Deans. I'm going to go lightning-fast.
15 Introduce yourself to the Court, please.

16 A. Hi. I'm Dr. Samantha Deans.

17 Q. Where did you go to medical school?

18 A. Indian University, School of Medicine.

19 Q. Are you board-certified?

20 A. Double board-certified, yes.

21 Q. What's your first board?

22 A. Obstetrics and gynecology.

23 Q. And your second board?

24 A. Complex family planning.

25 Q. You have two fellowships?

MARICOPA COUNTY SUPERIOR COURT

1 A. Just one fellowship.

2 Q. Thank you.

3 Do you teach?

4 A. I do.

5 Q. Medical students and -- and physicians?

6 A. Medical students and resident doctors, yes.

7 Q. You teach them gynecological and early family
8 planning?

9 A. Yes. Complex family planning, yes.

10 Q. All right. Thank you, Professor Deans.

11 You've provided us with your CV, which is
12 Exhibit 39.

13 MR. WOODNICK: I'd move to admit.

14 THE COURT: Any objection?

15 MR. GINGRAS: No objection.

16 THE COURT: B39's received.

17 BY MR. WOODNICK:

18 Q. You also did a report for us. It's Exhibit 41,
19 which we'll pull on the screen.

20 Did you have an opportunity to review the medical
21 records for Laura Owens?

22 A. Yes, the ones I was provided with.

23 Q. Exhibit No. 41, did you know that that was
24 published online on a website?

25 A. Just to confirm, I'm looking at my report. And,

1 no, I did not know that was published on a website.

2 Q. Did you -- did you give Ms. Owens permission to
3 publish your report on a website?

4 A. I did not.

5 Q. Okay.

6 MR. WOODNICK: Judge, I'm tendering Dr. Deans as
7 a -- as an expert here.

8 THE COURT: Any objection?

9 MR. GINGRAS: I -- no. I have one voir dire
10 question for her.

11 THE COURT: Sure. Go ahead.

12

13 VOIR DIRE EXAMINATION

14 BY MR. GINGRAS:

15 Q. Dr. Deans, hi. Good morning. How many doc- --

16 A. Good morning.

17 Q. How many children have you delivered as an
18 OB-GYN?

19 A. Probably too many to count, but I would say at
20 least 3,000 at this point.

21 MR. GINGRAS: Okay. I stipulate to her
22 expertise.

23 THE COURT: All right. So stipulated.

24

25 ////

DIRECT EXAMINATION CONTINUED

BY MR. WOODNICK:

Q. All right. Basic question, Dr. Deans. I'm going to go fast here.

Do you have concerns regarding the legitimacy of some of the records you reviewed?

A. I do.

Q. If this Court were to assume that the June 1st hCG test actually came from Laura, would that confirm pregnancy?

A. No.

Q. What is the medical standard of care to confirm a pregnancy?

A. That would have to be either serial hCG's, showing a trend over time, or a pregnancy test and/or an ultrasound, or a physical exam that confirms an intrauterine pregnancy.

Q. And we had none of that here, correct?

A. Correct.

Q. All right. I'm showing you Exhibit No. 28.

Are you aware that -- that's the ultrasound from Laura. Are you aware that that was altered?

A. Yes, I am.

Q. Laura claimed it was anonymous and from Plan -- Planned Parenthood. Any thoughts about that?

MARICOPA COUNTY SUPERIOR COURT

1 A. Patients cannot be seen anonymously at
2 Planned Parenthood. Planned Parenthood -- I -- having been
3 a former medical director of Planned Parenthood, PPFA, which
4 is our national guidelines, require identification at the
5 time of a visit to confirm the identity of the patient. The
6 patient can't be seen anonymously.

7 Q. Thank you.

8 Laura claims she was pregnant with twins.
9 Anything you reviewed in any of the medical records confirm
10 that Laura was pregnant with twins?

11 A. No.

12 Q. Laura claimed that the twins were boy- and
13 girl-gendered. Anything that you reviewed that confirms
14 that?

15 A. No.

16 Q. Do you recall reviewing the October 16th hCG
17 test? I think it had a hundred, or three-digit, hCG level
18 on it.

19 A. I do.

20 Q. Do you -- are you aware that there's actually two
21 other versions of that exact same test in circulation?

22 A. I've heard that. I have not seen them.

23 Q. If I told you there was another version with a
24 thousand times higher hCG level, would that cause you
25 concern?

1 A. Yes, it would.

2 Q. Are there alternate causations for a positive hCG
3 test, as we have here?

4 A. Yes, there are.

5 Q. Did you review the --

6 Well, I'm going to skip over the photos.

7 Did you review Dr. Medchill's report?

8 A. I did.

9 Q. You're aware that Laura first claimed she
10 miscarried in September, October, and then the photos that
11 are in your report indicate that it happened in the third
12 week of July, correct?

13 A. Correct.

14 Q. Pursuant to Dr. Medchill's report, he
15 concluded -- well, do you agree with his conclusion that the
16 data here warrants that Laura was 99 percent pregnant?

17 A. No, I do not agree with that assessment.

18 Q. Do you agree with Dr. Medchill that the record
19 confirms -- this is from his report -- a May 20th conception
20 date?

21 A. Absolutely not. There's no data to confirm a
22 conception date at this point. That would require an
23 ultrasound, dating of a pregnancy.

24 MR. WOODNICK: Professor Deans, thank you.

25 Judge, I just move to admit Exhibit 41 if I

1 didn't already.

2 THE COURT: Any objection?

3 MR. GINGRAS: No objection.

4 THE COURT: B41's received.

5 Cross-examination when you're ready.

6

7

CROSS-EXAMINATION

8 BY MR. GINGRAS:

9 Q. Dr. Deans, you reviewed records that showed that
10 Laura had hCG in her blood October 16th, 2023. Are you
11 familiar with those?

12 A. Yes.

13 Q. Where did that hCG come from?

14 A. It could come from a variety of sources.

15 Q. Okay. And your report mentions some of those
16 sources. I -- I'm just going to ask about specific things.

17 Exogenous injection. I'm assuming that's a fancy
18 word -- way of saying sticking yourself with a needle.

19 A. Correct. Exogenous would be an hCG source from
20 outside of the body.

21 Q. And do you have any information or have you seen
22 any records that suggest that that happened here?

23 A. I don't.

24 Q. Okay.

25 Heterophilic antibodies, which I did a little

1 reading on that. Some sort of allergic response, it sounds
2 like, maybe?

3 A. Correct. An autoimmune response can be triggered
4 by exposure to animals and create positive tests.

5 Q. Okay. But the fact that Laura tested po- --
6 te- -- sorry -- tested negative for pregnancy November 14th
7 would appear to be inconsistent with at least the
8 heterophilic antibody theory. Would you agree with that?

9 A. I -- it depends on the type of test. A urine
10 pregnancy test might be positive, but a blood test could
11 still be positive. It depends on the assessment and the --
12 the level of hCG at the time of the test.

13 Q. Okay. And I think Dr. Medchill said, and I think
14 you also said, that cancer can cause elevated hCG levels.
15 That -- that's a fact, right?

16 A. Correct.

17 Q. And have you seen any records to suggest that
18 Laura has cancer presently or that she did in 2023?

19 A. Not presently, no. I know there's a discussion
20 of a prior history of ovarian cancer.

21 Q. I understand that. But regarding 2023, if Laura
22 had cancer in 2023 that caused positive pregnancy te- --
23 false positive pregnancy tests between May and October, when
24 the last one was, how can you explain her testing negative
25 in November?

1 A. I mean, I think it makes that less likely, unless
2 she had treatment in the meantime.

3 Q. And -- and another option that you wrote about in
4 your report was something called familial hCG syndrome as
5 being a -- a way that someone could test positive, have hCG
6 in their blood not from pregnancy, correct?

7 A. Correct.

8 Q. Do you know how rare that is?

9 A. Very rare.

10 Q. I read that it was about ten cases in the planet.
11 Does that sound about --

12 A. Mm-hm.

13 Q. -- right to you?

14 A. That's correct.

15 Q. And again, if -- if Laura had familial hCG
16 syndrome, that would explain some false positive tests in
17 the middle of the year, but it wouldn't explain the negative
18 at the end, would it?

19 A. That is correct.

20 Q. Dr. Deans, in your report you talked about
21 objective evidence of pregnancy. On the first page in
22 particular, you said that the only objective evidence of
23 pregnancy is a Banner Urgent Care serum quantitative hCG
24 from -- well, I think that's actually a misstatement. The
25 October 16th wasn't at Banner. But there was a serum hCG.

1 And you've referred to that as objective evidence of
2 pregnancy. Is that true?

3 A. Correct.

4 Q. And in the absence of some other explanation --
5 cancer, familial, horse tranquilizers, or whatever -- in the
6 absence of some other explanation, you would agree, and
7 Dr. Medchill, I think, said, that hCG test from October 16th
8 is objective evidence of pregnancy, right?

9 A. It is objective evidence, and one of the
10 possibilities of that objective evidence is pregnancy.

11 Q. Right. And if a woman is pregnant, regardless of
12 how much or how little prenatal care she has, she's still
13 pregnant, right?

14 A. If they are pregnant, yes.

15 Q. I mean, a woman -- a woman could be pregnant and
16 have no ultrasound until the day the baby comes out, and
17 she's still pregnant, right?

18 A. Yes, and the objective data would be the baby
19 coming out of her body.

20 Q. Right. And, Dr. Deans, you worked -- or your
21 report and your resume indicated that you worked at Planned
22 Parenthood for a while?

23 A. That's correct.

24 Q. In that capacity, did you counsel women regarding
25 terminating their pregnancies?

1 A. Correct.

2 Q. And just for the record, I'm strongly pro-choice,
3 strongly Planned Parenthood.

4 If a woman was choosing or was thinking about
5 choosing to terminate her pregnancy, why would she have
6 prenatal care?

7 A. Oftentimes, patients seek care first to confirm
8 their pregnancy before they make their decision about how to
9 end it.

10 Q. But in a lot of states --

11 THE COURT: Counsel, I'm sorry to cut you off,
12 but you ran out of time.

13 MR. GINGRAS: I'm out of time?

14 Thank you very much. Thank you.

15 MR. WOODNICK: No redirect.

16 Thank you, Professor Deans. We appreciate your
17 help.

18 THE COURT: All right. Any --

19 THE WITNESS: Thank you.

20 THE COURT: -- objection to the professor
21 disconnecting?

22 MR. WOODNICK: No.

23 MR. GINGRAS: Nope.

24 THE COURT: All right.

25 Thank you, Dr. Deans. If you'd like to

MARICOPA COUNTY SUPERIOR COURT

1 disconnect, you may. If you'd like to stay and listen, you
2 absolutely may.

3 THE WITNESS: Thank you very much.

4 THE COURT: You're welcome.

5 MR. WOODNICK: Time-check, Judge?

6 THE COURT: 38 minutes, 57 seconds.

7 MR. WOODNICK: We're going to call Clayton
8 quickly.

9
10 CLAYTON ECHARD,
11 called as a witness herein, having been first duly sworn,
12 was examined and testified as follows:

13
14 DIRECT EXAMINATION

15 BY MR. WOODNICK:

16 Q. Clayton, I'm going to be lightning-fast.

17 State your name to the Court.

18 A. Clayton Echard.

19 Q. Did you participate and sign the pretrial
20 statement that we provided to Judge Mata?

21 A. Yes.

22 Q. Are those statements true and accurate?

23 A. Yes.

24 Q. Are we asking the Court, in light of our very
25 limited time today, to consider our pretrial statement as

MARICOPA COUNTY SUPERIOR COURT

1 part of your testimony today?

2 A. Yes.

3 Q. How did you meet Laura?

4 A. Laura targeted me on LinkedIn. She asked to do
5 real estate. We ended up exchanging contact info.
6 She became -- she became flirtatious, sent me a provocative
7 photo, I told her to come over, and then we saw homes the
8 next day.

9 Q. Did you have sex with Laura?

10 A. Absolutely not. I've said time and time again
11 she performed oral on me twice. That's it.

12 Q. Have you heard two other versions about what
13 happened?

14 A. Absolutely. Many versions. She's claimed that
15 she was raped by me. She also claims I was too high to
16 remember what happened that day.

17 Q. I'm going to repeat what you just said. She
18 claimed you were -- she was raped by you and that you were
19 too high to remember?

20 A. That's correct.

21 Q. Were you too high to remember?

22 A. No, that's incorrect. I remember every single
23 thing from that night.

24 Q. Did you rape her?

25 A. No, I did not.

1 Q. You stated that -- that she had -- gave you oral
2 sex twice that evening; is that correct?

3 A. That's correct.

4 Q. Where did you complete?

5 A. Her mouth both times.

6 Q. What happened the second time?

7 A. She ran straight to the bathroom.

8 Q. Were your fluids ever down there, as Laura has
9 claimed?

10 A. No.

11 Q. What happened the next days?

12 A. The next day, we went and saw houses. I told her
13 that I crossed a professional boundary. I told her that
14 that was a one-time thing, it would not happen again. She
15 became very agitated at that point, was crying, and asked
16 for me to give her a chance.

17 Q. Hang on for a second. She came over to your
18 house, she gave you oral sex twice. The next day, you told
19 her you weren't interested in her?

20 A. That's correct. I rejected her, yes.

21 Q. And then four days later, what happened?

22 A. Four days later, she started making claims that
23 she could possibly be pregnant.

24 Q. Hang on. Did your penis ever go inside her
25 accidentally, inadvertently, or anything --

1 A. No.

2 Q. -- like that?

3 A. No.

4 Q. You're a public figure. You're the Bachelor.
5 That's why everyone's watching today.

6 Are you embarrassed to say who you've had sex
7 with, Clayton?

8 A. I think I'm the last person to -- to lie about
9 who I've been intimate with.

10 Q. Were you -- did you have penile-vaginal sex
11 whatsoever with Laura Owens?

12 A. No. Absolutely not.

13 Q. Has that been your story since day one?

14 A. It's been my story. My story's been consistent
15 since day one.

16 Q. I'm going to show you Exhibit No. 3.

17 MR. WOODNICK: Just put that up on the screen.
18 Thanks, Isabel.

19 BY MR. WOODNICK:

20 Q. Did Laura start communicating with you more after
21 she said she thought she was pregnant at four days?

22 A. Yes. Nonstop. She sent me over 500 e-mails and
23 text messages. Thirteen different phone numbers.

24 Q. Thirteen phone numbers?

25 A. Thirteen phone numbers.

1 Q. How many messages?

2 A. Over 500.

3 Q. Exhibit 3, is that a sample of those texts and
4 e-mails that were shown to Judge Gialketsis in the
5 injunction against harassment hearing from November 2nd,
6 2023?

7 A. Yes.

8 MR. WOODNICK: I move to admit Exhibit 3. And,
9 Judge, you already took notice because you watched the
10 videos.

11 THE COURT: I assume no objection?

12 MR. GINGRAS: No objection.

13 THE COURT: B3's received.

14 BY MR. WOODNICK:

15 Q. At some point, did she start calling your mom,
16 who's in the courtroom?

17 A. She started reaching out to my parents, she
18 started reaching out to my work organizations, she started
19 reaching out to people -- women I talked to in the past.
20 She went for everybody.

21 Q. Was she claiming anything in particular?

22 A. She was claiming that I was, yeah, a deadbeat
23 that's not supporting her through her pregnancy.

24 Q. Well, hang on. It was more than that, Clayton.
25 It was a deadbeat who was not supporting her through her

1 pregnancy of what?

2 A. With twins.

3 Q. Twins?

4 A. Yes.

5 Q. Did she reach out to the Sun Magazine?

6 A. She did, yes.

7 Q. Did she ever tell you what genders the imagined
8 twins were?

9 A. A boy and a girl.

10 Q. Did she ever tell you -- well, drawing your
11 attention to some motions Laura filed, and for purposes of
12 attorney's fees, she filed a motion to communicate on
13 August 8th; a motion to compel communication on August 23rd;
14 and August 29th, a few days later, an expedited motion to
15 communicate; and then shortly thereafter, she filed an order
16 of protection against you, correct?

17 A. Yes.

18 Q. And you're aware that she's filed orders of
19 protection against two other individuals seated in the back
20 of the courtroom, correct?

21 A. That's correct, yes.

22 Q. They are on the left?

23 A. Yes. Well, my right, but yes. Your left.

24 Q. Thank you. Greg Gillespie and?

25 A. Michael Marraccini.

1 Q. I want to look at Exhibit No. 7, Clayton.

2 Is that a true and accurate copy of e-mail
3 communication between you and Laura from July 1st, 2023?

4 A. Absolutely. Yes.

5 Q. You received it?

6 A. I did, yes.

7 Q. And she sent it?

8 A. She sent it, yes.

9 Q. You heard her testify with Ms. Arena from my
10 off- -- or excuse me -- with Mr. Gingras denying the e-mails
11 exchange were from her. She seems to be blaming, I guess,
12 Greg Gillespie, for faking her e-mails. Did you remember
13 her testimony?

14 A. Yes. Yeah, she said that. But nothing she says
15 is true.

16 Q. She's actually sent you e-mails with videos
17 attached to them, and you've had -- and you've responded
18 back to them, correct?

19 A. That's correct, yes.

20 Q. All right. Specifically, Exhibit No. 7. I think
21 you stated that it was a true and accurate copy.

22 I think the caption -- I'm going to try to read
23 it on the caption. The top. I think it says, "The final
24 opportunity to consider abortion."

25 Do you remember getting this from Laura?

1 A. Yes.

2 MR. WOODNICK: Move to admit Exhibit 7.

3 THE COURT: Any objection?

4 MR. GINGRAS: Yeah, no objection, Your Honor.

5 THE COURT: 7's received.

6 BY MR. WOODNICK:

7 Q. Further down in that e-mail, Clayton -- and
8 this'll get awkward. But further down in that e-mail on
9 July -- from July 1st, which was weeks after the alleged
10 encounter, Laura references her tight vagina. Why is that
11 both uncomfortable and relevant to the Court today?

12 A. Because she's stating that if I would have felt
13 how tight her vagina was, I might change my mind. Which is
14 her stating that I never penetrated her. We never had
15 penetrative sex.

16 Q. Wait. The exhibit that the Court just received
17 has Laura saying that her vagina was tight, as if you hadn't
18 been in there before?

19 A. That is correct.

20 Q. Well, had you been in there before?

21 A. I had not, no.

22 Q. All right. She also sent you communications in
23 Exhibit No. 7 talking about wanting to have sex with you
24 during a week. A trial week. What was that about?

25 A. Yeah. She said that she would be the safest

1 person to have sex with since she was already pregnant.

2 Q. Hang on for a second. She told you she wanted to
3 have sex with you because she was already pregnant?

4 A. That's correct.

5 Q. How did you feel when you read that e-mail,
6 Clayton?

7 A. I mean, sick to my stomach. All of this has made
8 me sick.

9 Q. Did you feel like she was trying to trap you?

10 A. Absolutely.

11 Q. You heard the testimony with Dr. Medchill
12 concerning that Laura was on IVF medications trying to get
13 pregnant. Is that consistent with those concerns?

14 A. Yeah, I believe that she was taking medications.

15 Q. I'm going to show you Exhibit No. 6.

16 And let me restate that question.

17 You heard my question to Dr. Medchill about IVF
18 medications, which are used to cause pregnancy. And -- and
19 you share concerns that she was using those to trap you; is
20 that correct?

21 A. Absolutely. Yes.

22 Q. All right.

23 MR. WOODNICK: Exhibit No. 6, Isabel.

24 BY MR. WOODNICK:

25 Q. Exhibit No. 6 is another e-mail dated June 28th,

1 2023. Is that a true and accurate copy of the
2 correspondence between you and Laura?

3 A. Yes, it is.

4 Q. You remember reading this?

5 A. I remember reading this, yes.

6 Q. Do you remember reading it on June 28th-ish when
7 you received it?

8 A. I do, yes.

9 Q. And the title of this -- can you read the title
10 of this out loud for the Court?

11 A. "Having the baby if I don't hear back tonight."

12 Q. "Having the baby if I don't hear back tonight."

13 MR. WOODNICK: Move to admit Exhibit 6.

14 THE COURT: Any objection?

15 MR. GINGRAS: No objection.

16 THE COURT: Exhibit 6 is received.

17 MR. WOODNICK: Thank you.

18 BY MR. WOODNICK:

19 Q. I'm going to show you Exhibit 11.

20 Did Laura send you ultrasounds during this time
21 period?

22 A. Yes, she did.

23 Q. Is Exhibit 11 an image of an ultrasound you
24 received from Laura?

25 A. Yes.

1 Q. She's going to claim that she didn't send this to
2 you, but how do you know this came from Laura?

3 A. Because I was interacting with her from that same
4 e-mail address. I also took a screen-record showing that it
5 was from her e-mail address, and that's where all my other
6 communications have come from her.

7 Q. Real quick, so on October No. 11, this one
8 says -- the caption on it says "Ultrasound Video Proof,"
9 correct?

10 A. That's correct.

11 Q. And the signature block on there and the picture
12 is the exact same signature block and picture from the other
13 e-mail, which is also not favorable to Laura, which she
14 claims is not hers, correct?

15 A. Yes, that's --

16 MR. WOODNICK: Move to admit Exhibit 11.

17 THE COURT: Any objection?

18 MR. GINGRAS: No objection.

19 BY MR. WOODNICK:

20 Q. On Exhibit 11 -- well, do you know where the
21 video came from on Exhibit No. 11?

22 A. Yeah. From a YouTube video from seven years ago.

23 Q. YouTube video from seven years ago?

24 A. Correct.

25 Q. On that -- this is the one that says SMIL, right?

1 A. Yes.

2 Q. Okay.

3 A. Yeah. Yeah.

4 Q. This one says GE.

5 A. Now this one's a different one, yes.

6 Q. Okay. Because how many are there? How many
7 ultrasounds have you seen?

8 A. Three.

9 Q. Okay. This one, I think, on the -- on the
10 caption says, "And here's my hundred million percent real
11 ultrasound"?

12 A. Yeah. A lot of zeros, yeah.

13 Q. Do you remember --

14 I don't know if my math is right on that.

15 Do you remember receiv- -- receiving that?

16 A. Yes. I received it from Laura, yes.

17 Q. Court already admitted it.

18 I'm going to show you Exhibit No. 28.

19 You recall receiving this ultrasound?

20 A. Yes. I saw this from Bonnie Platter.

21 Q. Okay. I'm going to be real clear about this.

22 Ms. Owens just testified that she did not use this
23 ultrasound in a court proceeding, but it was actually
24 admitted as an exhibit by Laura through her counsel at the
25 February 2nd, 2024, deposition of you, correct?

1 A. Correct.

2 Q. All right. That video deposition of you, have
3 you seen that recently?

4 A. Yes, I have.

5 Q. Where did you see the video deposition of
6 yourself, Clayton?

7 A. It was posted on YouTube by either her counsel or
8 herself.

9 Q. Wait. Laura or her counsel posted your video
10 deposition on YouTube?

11 A. That's correct.

12 Q. How many paternity tests did you take, Clayton?

13 A. Three.

14 Q. I'm going to show you Exhibit No. 36.

15 You know what? I'm going to skip past that.

16 That was the -- Dr. Medchill's -- I'll skip past that,
17 but --

18 Well, you know what? Real quickly, how many
19 versions of the -- of the hCG test have you seen?

20 A. I -- two, I believe. Yeah. The 102 and 102,000.

21 Q. The one with more digits on it?

22 A. Yes. Yes.

23 Q. All right.

24 I'm going to show you Exhibit No. 46.

25 Would you agree that Exhibit No. 46, for

1 attorney's fees, is a blog from Mr. Gingras where he
2 acknowledges his client faked some of the science tests?

3 A. Yes, that's correct.

4 Q. I'm going to show you, to move this along,
5 Exhibit No. 55.

6 Exhibit No. 55 was right before your March 1st
7 deposition. Or right before -- excuse me -- Laura's
8 March 1st deposition.

9 Actually, did she show up at her earlier
10 deposition?

11 A. No, she didn't.

12 Q. And the Court ordered her compel to attend, and
13 we're still waiting for the Court to order on attorney's
14 fees for that; is that correct?

15 A. Correct.

16 Q. But at her -- right before, what happened a day
17 or two, related to Exhibit 55, a day or two before your
18 deposition?

19 A. She threatened to extort me for -- to the tune of
20 \$1.4 million in order for me to drop the deposition and the
21 case entirely.

22 Q. Wait a minute. She sent you a letter a day
23 before, trying to get out of the deposition?

24 A. Yes. She threatened me.

25 Q. Threatened you with what?

1 A. Monetary -- monetary means.

2 Q. Is everything that we've talked about today so
3 far, other than the YouTube videos, which are more recent,
4 is everything addressed in prior pleadings already before
5 Judge Mata?

6 A. Yes.

7 Q. Really quickly, for attorney's fees purposes,
8 Exhibit No. --

9 Well, let me get in a few exhibits real quick.

10 MR. WOODNICK: Exhibit 29, 37, and 59, these are
11 the medical records from -- pursuant to subpoena from
12 Drs. -- for Planned Parenthood, Dr. Makhoul, and Dr. Higley.
13 We move to admit. They've all been considered by the
14 experts.

15 THE COURT: I'm sorry. You said 37?

16 MR. WOODNICK: Strike that. Sorry. 29, 37, and
17 59.

18 THE COURT: Any objection?

19 MR. GINGRAS: Not to those. Did we talk about
20 Exhibit 54 yet?

21 THE COURT: Hold on. One second.

22 29, 37, and --

23 What was the other one, Mr. Woodnick?

24 MR. WOODNICK: 59.

25 THE COURT: -- 59 are received.

MARICOPA COUNTY SUPERIOR COURT

1 We'll talk about that one after, Counsel.

2 MR. WOODNICK: And then I'll go back.

3 It's Exhibit No. 55, which is the letter that
4 Laura sent you suing you -- to sue you for \$1.4 million
5 before the deposition.

6 Move to admit.

7 MR. GINGRAS: I -- now, that one, I'll object to.
8 That's a Rule 408 settlement offer, Your Honor. He's
9 offering to prove that the claim's not valid. That's
10 absolutely inappropriate.

11 THE COURT: Over --

12 MR. WOODNICK: Judge, just -- sorry.

13 THE COURT: Over objection, the Court's going to
14 receive it for the purposes of attorney's fees only.

15 Counsel, you have run out of time.

16 MR. WOODNICK: I'm out of time?

17 THE COURT: You're out. You're at 50.

18 MR. WOODNICK: I'm at 50?

19 THE COURT: Sir, you can go sit back down.

20 Okay. So, Counsel, what exhibit were you asking
21 me about? You -- yeah, you said it has something, then
22 move.

23 MR. WOODNICK: 54. We just cured that, Judge.

24 THE COURT: Oh. All right. I just wanted to
25 make sure.

1 Okay. So at this time, what the Court's going to
2 do is I'll take this under advisement. What that means is
3 I'm going to go back, I'm going to review the notes that I
4 took today, I'm going to review the evidence that was
5 admitted to the Court, and then everyone will receive my
6 order in writing.

7 MR. GINGRAS: Your Honor, I -- I have one
8 housekeeping matter.

9 I'm leaving the country tonight. I am not back
10 until June 28th. If the Court issues something that
11 requires a quick response, I'm going to be on a boat, and I
12 may not have the ability to respond. So I would just ask
13 either -- that you grant me some extension if I need it. I
14 return back to the country June 28th. So just advising you.

15 THE COURT: Okay. And -- and I'm sorry, Counsel.
16 When do you leave?

17 MR. GINGRAS: Tonight.

18 THE COURT: Okay. All right. So June 10th to
19 the 28th --

20 MR. GINGRAS: Correct.

21 THE COURT: -- you will be unavailable. Okay.

22 MR. GINGRAS: I should have e-mail part of the
23 time, but not all of it.

24 THE COURT: Yeah. You can't really be held
25 accountable for that. I understand.

1 Any other thing -- anything else administrative?

2 MR. WOODNICK: No. Thank you, Judge.

3 THE COURT: All right.

4 So how this'll work now at this point is I have
5 relinquished all security to court security and any
6 underlying law enforcement that are present. They will be
7 escorting people out in the manner that they deem to be
8 appropriate. If there's competing orders against harassment
9 or orders of protection, then we can take those things into
10 consideration.

11 And I just ask that if the people in the gallery
12 are able, any conversations, if you could just take them out
13 into the hall, that would be great for our other people who
14 are here for other matters.

15 Thanks.

16 (Matter concluded.)

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C E R T I F I C A T E

I, NICOLE TATLOW, Official Certified Reporter
herein, hereby certify that the foregoing is a full, true
and accurate transcript of all proceedings had in the
foregoing matter, all done to the best of my skill and
ability.

Dated at Phoenix, Arizona, this 5th day of
July, 2024.

/s/Nicole Tatlow
Nicole Tatlow, RPR
Certified Reporter No. 50671
Official Court Reporter
Maricopa County Superior Court

MARICOPA COUNTY SUPERIOR COURT

Exhibit 19

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

08/13/2024

HONORABLE RONDA R. FISK

CLERK OF THE COURT
R. Stannard
Deputy

IN RE THE MATTER OF
LAURA OWENS

DAVID S GINGRAS

AND

CLAYTON ECHARD

GREGG R WOODNICK

DEANDRA ARENA
JUDGE FISK
JUDGE MATA

MINUTE ENTRY

This Court has considered Petitioner Laura Owens' **Notice of Change of Judge for Cause: Memorandum & Affidavit of Support** (hereafter, the "Rule 6.1 Motion") and the separate **Affidavit of David S. Gingras In support of Petitioner's Notice of Change of Judge for Cause** (hereafter, the "Affidavit") (both filed 07/08/2024) and Respondent Clayton Echard's **Response to Notice of Change of Judge for Cause** (filed 07/11/2024). Pursuant to Rule 6.1, Arizona Rules of Family Law Procedure (ARFLP), the Rule 6.1 Motion was referred to the Family Department Presiding Judge Ronda Fisk (this Court) for ruling.¹ For the reasons set forth herein, the Rule 6.1 Motion is denied.

¹ The Rule 6.1 Motion was filed after Judge Mata's 06/17/2024 Ruling (filed 06/18/2024) and days before Petitioner filed various post-trial motions. Judge Mata prematurely ruled on the post-trial motions; that ruling was withdrawn via an 07/19/2024 Minute Entry Ruling (filed 07/23/2024). Now that this Court has ruled on the Rule 6.1 motion for change of judge, Judge Mata may rule on the pending motions. *See, e.g.*, Rule 6.1(d)(5) ("If the court determines that the party who filed the affidavit is not entitled to a change of judge, the named judge may proceed with the action.")

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

08/13/2024

Petitioner's Rule 6.1 Motion seeks to disqualify for cause the assigned Family Court Judge, Judge Julie Mata, "on the basis of bias and prejudice within the meaning of A.R.S. § 12-409(5) [sic]." See Rule 6.1 Motion at 2. Specifically, Petitioner alleges that Judge Mata purportedly did the following: (1) performed an independent investigation into the facts of the case and in so doing considered and relied upon information posted on the Internet about the case; and (2) engaged in *ex parte* communications regarding this case with her father, Harry L. Howe, who appeared at the trial as a spectator. See Rule 6.1 Motion at 1, 12.²

As a threshold matter, this Court apologizes to the parties for the delay in issuing this ruling. The Court had technical difficulties opening the compilation CD included with the Affidavit. When opened with Windows Media Player, the file entitled produced an error message; "We can't open Judge Mata's dad compilation. It uses unsupported encoded settings." With technical assistance, the Court finally was able to open and review the compilation CD using VLC Media Player. After reviewing the CD, the Court prepared this ruling.

1. Timeliness of the Rule 6.1 Motion

Respondent contends that the Rule 6.1 Motion is time-barred under A.R.S. § 12-409(B)(5) on the basis that "it was filed after final trial and final judgment under Rule 78." See Response at 4. This Court finds that the analysis as to timeliness is more nuanced than Respondent suggests. A Rule 6.1 motion for change of judge for cause must be filed "within 20 days of discovering that grounds exist for a change of judge." Rule 6.1(c), ARFLP. This Court must at least consider the factual allegations to determine whether they are time barred.

The Rule 6.1 Motion and Affidavit allege as follows: Judge Mata held an evidentiary hearing on 06/10/2024 (hereafter, the "June 10 Hearing"). See Ex. E to Affidavit. Judge Mata's father, Harry Howe, attended the June 10 Hearing as a spectator and spoke to other people in attendance. See Affidavit ¶¶ 66-67. Individuals Dave Neal and Megan Fox, among others, live-streamed and posted on social media various interviews with people who spoke to Mr. Howe at the hearing. See *id.* and accompanying compilation CD. On or about 06/17/2024 at 10:10 AM, Petitioner's counsel emailed Judge Mata's division and Respondent's counsel that the statements

² The Rule 6.1 Motion alleges that these two actions "separately violated Rules 2.9(A) [initiating, permitting, or considering *ex parte* communications outside the presence of the parties or their lawyers] and 2.9(C) ["a judge shall not investigate facts in a matter independently"] of the Arizona Rules of Judicial Conduct. It is not for this Court to determine whether Judge Mata has violated the Arizona Rules of Judicial Conduct. Moreover, the Rule 6.1 Motion makes vague allegations of violations of Petitioner's right to due process of law under both the United States and Arizona Constitutions. See Rule 6.1 Motion at 1, 11. Again, it is not within this Court's purview to determine whether Judge Mata made errors in her findings of fact and/or conclusions of law that violated due process and/or warrant a new trial.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

08/13/2024

made on social media had “just come to [his] attention” and warranted a change of judge for cause. See Ex. A to Affidavit. At 11:58 AM, Judge Mata’s division sent a response email instructing counsel to file an appropriate motion to bring any issue to the court’s attention. See Ex. B to Affidavit.

On 06/18/2024 at 8:00 AM, Judge Mata’s 06/17/2024 Under Advisement Ruling was filed (hereafter, the “June 17 Ruling”). See Ex. C. to Affidavit. The June 17 Ruling contained detailed findings of fact, including the following finding: “[Dr. Samantha Deans] further testified that Planned Parenthood is not open on Sundays, when Petitioner testified, she sought care July 2, 2023.” *Id.* at 10. The trial transcript from the June 10 Hearing reflects that Dr. Deans did not testify that “Planned Parenthood is not open on Sundays.” See Ex. E to Affidavit.

Based on the foregoing, the Court finds that the Rule 6.1 Motion—filed 07/08/2024—was timely filed. In making this finding, the Court acknowledges that “within 20 days” of 06/17/2024 is Sunday, 07/07/2024. Given the circumstances of this case (including the fact that Petitioner’s counsel was on a previously disclosed vacation from 06/10-28/2024), the Court finds that the filing of the motion on the next business day, *i.e.*, Monday, 07/08/2024, was timely.

The Affidavit also details various facts and rulings that Petitioner’s counsel alleges constitute a “summary of pre-trial judicial bias,” see Affidavit at 9-12, ¶¶ 37-51 and a “summary of judicial misconduct & bias at trial,” *id.* at 12-15, ¶¶ 52-64; see also Rule 6.1 Motion at 13 (alleging Judge Mata “manifested clear prejudice and/or bias early in the proceedings, in the form of multiple, unexplained adverse rulings”). The Court finds that these events that Petitioner contends constitute “misconduct” and “bias” occurred and were known to the Petitioner more than 20 days before she filed her Rule 6.1 Motion. The Court will limit its evaluation of the Rule 6.1 Motion solely to the two allegations identified in the second paragraph of this ruling.

2. Request for Hearing.

Petitioner has requested that this Court hold a hearing and order subpoenas *ad testificandum* for Judge Mata and Harry Howe. A presiding judge reviewing a Rule 6.1 motion for a change of judge as a matter of right has discretion as to whether to hold an evidentiary hearing. See Rule 6.1(d)(2) (“The presiding judge may hold a hearing to determine the issues raised in the affidavit or may decide the issues based on any affidavits and memoranda filed by the parties.”) This Court denies Petitioner’s request and will decide the Rule 6.1 Motion on the Affidavit and memoranda filed by the parties, as well as those items on the docket of which this Court takes judicial notice.

3. Analysis of Cause for Change of Judge

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

08/13/2024

A party seeking a change of judge for cause must establish grounds by affidavit. Rule 6.1(a), ARLFP. One of the grounds which may be alleged for change of judge is “that the party filing the affidavit has cause to believe and does believe that on account of the bias, prejudice, or interest of the judge he cannot obtain a fair and impartial trial.” A.R.S. §12-409(B)(5). “The sufficiency of any ‘cause to believe’ must be determined by an objective standard, not by reference to the affiant's subjective belief.” Rule 6.1(d)(5), ARLFP.

Case law instructs that “[i]n Arizona, ‘[a] party challenging a trial judge's impartiality must overcome the presumption that trial judges are ‘free of bias and prejudice.’” *Stagecoach Trails MHC, L.L.C. v. City of Benson*, 232 Ariz. 562, 568, ¶ 21 (App. 2013) (quoting *Simon v. Maricopa Med. Ctr.*, 225 Ariz. 55, 63 ¶ 29 (App. 2010)). “Judicial rulings alone do not support a finding of bias or partiality without a showing of an extrajudicial source of bias or a deep-seated favoritism... A change of judge for cause is not warranted if based merely on speculation, suspicion, apprehension, or imagination.” *Id.* (internal punctuation and citations omitted). Instead, the party seeking to notice the judge for cause “must prove bias or prejudice by a preponderance of the evidence.” *In re Aubuchon*, 233 Ariz. 62, 66 ¶ 14 (2013) (quoting *State v. Carver*, 160 Ariz. 167, 172 (1989)); *see also* Rule 6.1(d)(4), ARLFP (“[t]he presiding judge must decide the issues by the preponderance of the evidence”).

The Court will separately consider Petitioner’s two claims of bias and/or prejudice.

a. Allegation of Independent Investigation by Judge Mata.

Petitioner correctly points out that Judge Mata’s July 17 Ruling contains a factual error, *i.e.*, the transcript from the June 10 Hearing shows that Dr. Samantha Deans did not testify “that Planned Parenthood is not open on Sundays.” *See* Ex. E to Affidavit. “[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion.” *State v. Ellison*, 213 Ariz. 116, 128, ¶ 40 (2006) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)). This factual error can be corrected through a post-trial motion or appellate proceeding; it does not, standing alone, indicate bias. *See, Stagecoach Trails MHC, L.L.C. v. City of Benson*, 232 Ariz. at 568, ¶ 22.

To demonstrate bias, Petitioner asks this Court (Rule 6.1 Motion at 7) to infer that Judge Mata’s erroneous finding constitutes “irrefutable evidence” that she performed “a secret, undisclosed investigation in the facts of this matter,” Affidavit ¶ 93, and “copied that finding from posts on social media.” *Id.* ¶ 85. In support of this position, the Affidavit includes snips of a 06/10/2024 comment on Petitioner’s counsel’s website (“Planned Parenthood isn’t even open on Sundays in LA”) and comment posted by an anonymous Twitter user on 06/10/2024 at 5:08 PM (“It was a Sunday and all LA Planned Parenthood locations are CLOSED on a SUNDAY”). *Id.* ¶¶ 90-92.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

08/13/2024

The Court finds Petitioner relies on mere speculation and suspicion when alleging that Judge Mata engaged in a “secret, undisclosed investigation” and therefore is biased. The record evidence reflects conflicting testimony about the day, date, and location that Petitioner obtained an ultrasound—admitted as Ex. B28—which Petitioner admitted to altering. Petitioner testified that when she was in California on a “weekend” she had an ultrasound done under a “fake name” at a Planned Parenthood. *See* Ex. E 17:20-19:8. Before trial, Petitioner had provided a declaration stating that the ultrasound occurred on 07/02/2023; at trial, she changed her testimony to say it was an unspecified weekend in late June 2023. *Id.* Petitioner further testified that she had altered the ultrasound to reflect the incorrect date of 07/07/2023 and the incorrect provider (SMIL instead of Planned Parenthood). *See id.* 55:19-58:21.

Dr. Deans testified that she had reviewed the altered ultrasound and available medical records to prepare a report (admitted as Ex. B41). Dr. Deans expressed concern about the legitimacy of Petitioner’s medical records. *See id.* 112:5-114:23. Dr. Deans confirmed that Planned Parenthood’s national guidelines “require identification at the time of a visit to confirm the identify of a patient. The patient can’t be seen anonymously.” *See id.* 112:20-113:6. Dr. Deans testimony did not address which days of the week the Planned Parenthood offices were open.

Based on the foregoing, the Court finds that when “determined by an objective standard, not by reference to the affiant’s subjective belief,” Rule 6.1(d)(5), ARFLP, Petitioner has failed to show by a preponderance of the evidence that Judge Mata’s finding that “Planned Parenthood is not open on Sundays” reflects bias or prejudice against Petitioner. Moreover—although not dispositive of the issue—the Court further finds that this singular factual finding is of little to no importance given the rest of the findings in the July 17 Ruling.

b. Allegation of Improper *Ex Parte* Communication with Harry Howe

Petitioner alleges that “Judge Mata’s father, Harry L. Howe, was present in the overflow room during the trial” and “spoke with several of [Respondent’s] supporters during and after the trial.” *See* Affidavit ¶ 66. Petitioner’s counsel admits that “the mere fact Judge Mata’s father attended the trial (if true) is not the primary concern.” *See id.* ¶ 68. For purposes of deciding the Rule 6.1 Motion, this Court accepts these allegations as true and finds that if they occurred, was not improper for Judge Mata’s father to attend a public trial as a spectator and speak to other courtroom observers.

Petitioner asks this Court to infer that various statements made by courtroom observers about Mr. Howe confirm that Judge Mata was biased or prejudiced against Petitioner. Petitioner’s counsel acknowledges that his “personal view (based on the past several months) is that Clayton’s followers are generally not honest or reliable.” *See id.* ¶ 73. Nevertheless, Petitioner’s counsel asks this Court to find that an edited compilation of these individuals’ comments about Judge Mata’s father are “clear extra-judicial evidence” showing that Judge Mata had “a hostile feeling or spirit

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

08/13/2024

of ill-will, or undue friendship or favoritism towards one of the litigants [*i.e.*, Respondent].” Rule 6.1 Motion at 13-14.

Applying an “objective standard, not by reference to the affiant’s subjective belief,” Rule 6.1(d)(5), ARFLP, the Court carefully reviewed the compilation CD and considered in context each of the comments identified in Petitioner’s counsel’s Affidavit. Given the seriousness of the allegations, the Court has made best efforts to provide both the context and verbatim language of the various statements, though admittedly the audio of the compilation CD is very difficult to understand at times.

1. Statements by Hava Darby.

Petitioner alleges that “Ms. Derby [who speaks between 0:00 and 0:40 in the compilation CD] also made statements which appear to imply that Judge Mata told her father that she intended to rule in favor of Clayton before the case was tried.” Affidavit at ¶ 69.

The first video clip on the compilation CD depicts a virtual meeting among nine participants with screen names, including one woman with the screen name “Hava Derby.” Ms. Derby holds up her phone and makes the following statement:

I ran into Judge Mata’s dad in the parking lot afterwards and I asked him like “Well, what did you think?” He was like “I gotta show you something....” [Female voice: What?] So he whips out these papers in his hand... and did anybody... I haven’t been online really today... but did anybody... I saw kind of briefly that it was denied... this request for findings of fact and conclusions of law proposed findings? [Male voice: That wasn’t denied.] That was not denied? OK, so anyway, did anybody get a copy of this? He was saying, “Julie told me... This is just... you... dad, you gotta read this,” and printed out a copy [unintelligible].

For purposes of deciding the Rule 6.1 Motion, this Court accepts that the scenario recounted by Ms. Derby might have occurred, though Ms. Derby appears not to be clear as to exactly what she is talking about. This Court finds that the fact that a trial judge might have told a family member that she was presiding over a case and might have provided a copy of a publicly available filing—*e.g.*, the Request for Findings of Fact & Conclusions of Law and Proposed Findings (filed 06/03/2024)—neither proves by a preponderance of the evidence that the judge was biased or prejudiced, nor proves that she told her family member how she intended to rule before the case was tried.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

08/13/2024

2. Statements of Dave Neal and Individuals Speaking With Him.

Petitioner's counsel's Affidavit further alleges that an individual named Dave Neal made remarks "to signal to the person speaking that they should not disclose further information regarding the comments they claim to have received from Judge Mata's father, because her [sic] believed they would expose judicial misconduct and bias on Judge Mata's part, requiring a new trial if those facts were exposed." Affidavit ¶ 71.

The second video clip on the compilation CD depicts a group of people standing under an awning. The bottom left corner of the screen says "Dave Neal – Rush Hour Podcast." In the foreground there are two men talking, one in a red shirt and the other in a hat (identified in the Affidavit as Dave Neal). While the two men are talking, a woman in a hat approaches and joins their conversation. A woman on left in a black shirt chimes in, and a second woman on the right in a black shirt follows up:

Male in Red Shirt: Judge Mata's dad was in the court with us...

Dave Neal (Male in Hat): Judge Mata's dad. No way...

Male in Red Shirt: It's in the... in the court with... in the side room where we were. Judge Mata's Dad was sitting there.

Dave Neal: She did fantastic.

Woman in Hat (0:51) [interjecting]: I said "Harry, that's really nice you wanna be here to support your daughter." He said "Oh, no, no. I've been hearing about this. I'm here for the circus." [Group laughs as woman in hat walks away.]

Dave Neal (0:59) [chuckling]: Hold on. We don't need a mistrial. [Additional group laughter.]

Male in Red Shirt: We could get him some scones...

Dave Neal: Yes, scones...

[10 seconds of video deleted per podcast timestamp].

Woman on Left: I was [inaudible] waiting to get in.

Dave Neal: We just heard...

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

08/13/2024

Woman on Left: “You don’t look like the [inaudible] demographic. How did you hear about this case?” [inaudible] “My daughter.”

Dave Neal: There you go. Hey, hey, that’s uh...

Woman on Left: And he was reading case files...[inaudible]

Dave Neal: I’m sure... he was... I mean, he was probably a judge... I feel like it runs in the family.

Woman on Right: [inaudible] He did not tell me any information about her thoughts. [Female voice: “Yes, Judge Mata’s dad...”] and I was sitting right next to him.

Dave Neal: Oh, I’m sure, yeah...

Again, for purposes of deciding the Rule 6.1 Motion, this Court accepts that certain facts recounted by these courtroom observers might have occurred, *i.e.*, Mr. Howe might have informed an observer before the hearing that he heard about the case from Judge Mata; Mr. Howe might have told an observer he considered the hearing and additional goings-on to be a “circus”; and Mr. Howe might have been reviewing paperwork related to the case. When viewed by an objective standard, Mr. Howe’s alleged statements and actions do not prove by a preponderance of the evidence that **Judge Mata** was biased or prejudiced, or that she told her family member how she intended to rule before the case was tried.

This Court also finds that certain statements made by the courtroom observers reflected nothing more than mere conjecture, like Mr. Neal’s statement that Mr. Howe “was probably a judge... I feel like it runs in the family.” The Court further finds that the video reflects that Mr. Neal’s remark “we don’t need a mistrial” after the speaker started walking away was made in jest, as evidenced by his and the onlookers’ laughter and his agreement with another bystander that they should “get him a scone.”

The Court concurs with Petitioner’s counsel’s subjective belief that Respondent’s supporters gleefully celebrated Judge Mata’s father’s attendance at the hearing, *see* Rule 6.1 Motion at 12, and that the supporters’ actions—and perhaps even Mr. Howe’s alleged actions—can be perceived to have “made a mockery of these proceedings.” *Id.* This Court declines, however, to impute bias or prejudice to Judge Mata based on statements made by Respondent’s supporters (whom Petitioner’s counsel characterizes as “generally not honest

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

08/13/2024

or reliable,” Affidavit ¶ 73) about Judge Mata’s father, or even statements made by Judge Mata’s father himself.

IT IS ORDERED DENYING Petitioner’s motion for change of judge for cause.

IT IS FURTHER ORDERED DENYING Respondent’s request for leave to file a supplemental affidavit of attorney fees and costs.

IT IS FURTHER ORDERED DENYING Respondent’s request for this Court to enter further orders pursuant to Rule 8.2(a) of the Arizona Rules of Professional Conduct.

IT IS FURTHER ORDERED returning this matter to Judge Mata to rule on all pending post-trial motions.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: https://superiorcourt.maricopa.gov/llrc/fc_gn9/