

BEFORE THE ARIZONA SUPREME COURT

DAVID S. GINGRAS,

Petitioner,

v.

STATE BAR OF ARIZONA,

Respondent.

Arizona Supreme Court

No. CV-26-236-SA

Office of the Presiding

Disciplinary Judge

No. PDJ2026-9010

RESPONDENT STATE BAR OF ARIZONA'S APPENDIX

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STATE BAR'S APPENDIX

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2	<i>In re Levy</i> , SB-21-0085-AP (PDJ 2019-9044) (2022)	008-039
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C.LOPEZ

DISCIPLINARY CLERK

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

In the Matter of a Member of
the State Bar of Arizona,

DAVID S. GINGRAS,
Bar No. 021097,

Respondent.

PDJ 2026-9010

**STATE BAR'S MOTION TO
STRIKE RESPONDENT'S
*MOTION TO DISMISS AND,
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT***

[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, moves the Presiding Disciplinary Judge ("PDJ") to strike Respondent's *Motion to Dismiss and, Alternatively, Motion for Summary Judgment* ("*Motion to Dismiss*")¹ because that motion creates confusion, as set forth below, and exceeds the 17-page limit for motions pursuant to Rule 7.1(a), Ariz. R. Civ. P.²

¹ Rule 7.1(f), Ariz. R. Civ. P., addressing motions to strike is not directly incorporated into the procedural rules for lawyer discipline cases.

² The State Bar has filed, contemporaneously herewith, a response to Respondent's *Motion for Leave to Exceed Page Limits*.

First, the two alternative grounds upon which Respondent based his *Motion to Dismiss* (a motion to dismiss based on Rule 7.1³ and a motion to dismiss based on Rule 56) have different response deadlines: 10 days to respond to a motion under Rule 7.1(a); and, 30 days to respond to a motion under Rule 56(c). Based on those differing deadlines for response, Respondent's *Motion to Dismiss* should be stricken, and Respondent ordered to file separate motions.

Also leading to confusion is that fact that Respondent's *Motion to Dismiss* was based in part on A.R.S. § 12-751(A) (Arizona's statute prohibiting strategic lawsuits against the public's exercise of Constitutional rights; anti-SLAPP statute). The PDJ's April 14, 2026 order granting in part the State Bar's *Motion for Partial Judgment on the Pleadings* has rendered Respondent's anti-SLAPP arguments moot, at least to the extent that he argues that the State Bar was precluded from prosecuting him for making unprofessional, disparaging comments about Judge Mata.

Finally, A.R.S. § 12-751(B) states that "[a] party is not required to file a response to a motion filed pursuant to subsection A of this section [one of the grounds upon which the Respondent filed his *Motion to Dismiss*] unless and until the court finds that the moving party has established the *prima facie* proof and orders the party to file a response." Based on this Court's April 14, 2026 order, the State

³ All references to rules are to the Arizona Rules of Civil Procedure, which are incorporated into the Supreme Court's lawyer discipline rules, unless otherwise noted.

Bar asserts that Respondent has not established *prima facie* proof that the State Bar's formal complaint "was substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right."

Respondent should be required to file separate motions under Rule 7.1 and 56. Filing separate motions would clarify the specific grounds upon which each motion is based, limit confusion resulting from a single motion, and allow the State Bar to fully respond to the grounds asserted for dismissal based on alternative grounds that may be included in each motion.

Requiring the State Bar to now file a response to Respondent's *Motion to Dismiss* would require bar counsel to attempt to decipher Respondent's arguments based on his alternative grounds for dismissal.

Conclusion

Based on the foregoing, the State Bar moves the PDJ to (a) strike Respondent's *Motion to Dismiss and, Alternatively, Motion for Summary Judgment* as confusing; (b) find that the State Bar is not required to respond to Respondent's motion to dismiss based on A.R.S. § 12-751(A); (c) require Respondent to file separate motions for dismissal pursuant to Rules 7.1 and 56, and, as requested in the State Bar's *Response to Respondent's Motion for Leave to Exceed Page Limits*, (d) enter an order granting Respondent's request to exceed the page limit by an amount deemed reasonable and appropriate by the PDJ, and limiting the number of pages

for Respondent's affidavit and exhibits, which would prohibit the inclusion of irrelevant text and exhibits.

DATED this 20th day of April, 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 20th day of April, 2026.

Copy of the foregoing emailed
this 20th day of April, 2026, to:

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

[REDACTED]

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by: /s/Melissa Duarte
JDL/md

SUPREME COURT OF ARIZONA

In the Matter of a Member of the	)	Arizona Supreme Court
State Bar of Arizona	)	No. SB-21-0085-AP
	)	
DOUGLAS B. LEVY,	)	Office of the Presiding
Attorney No. 16623	)	Disciplinary Judge
	)	No. PDJ20199044
Respondent.	)	
	)	
	)	

FILED 10/26/2022

Decision Order

This appeal of a disciplinary proceeding involves allegations of professional misconduct by Respondent Douglas B. Levy during a lawsuit he brought on behalf of his client, Ms. Esala (the "lawsuit"), and in the resulting State Bar investigation. The case concerns three general categories of conduct by Respondent: (1) alteration of the text of discovery requests propounded by opposing counsel ("Discovery Text Changes"); (2) misconduct involving communications with and about opposing counsel; and (3) ethical violations under Arizona Rule of the Supreme Court 42, Ethical Rule ("ER") 8.2 (false statements about a judge's qualifications or integrity) concerning Pima County Superior Court Judge Brenden J. Griffin. In an earlier proceeding concerning these same allegations, the Hearing Panel ("Original Panel") issued a Decision and Order Imposing Sanctions, SB-20-0010. On February 2, 2021, this Court issued a Decision Order that vacated the Original Panel's decision and remanded for further proceedings. Because the hearing panel on

SBA000008

remand ("**Panel**") found no ER 8.2 violation, only the first two categories are before the Court in this proceeding.

The Court has considered Respondent's testimony from the one-and-a-half-day evidentiary hearing before the Panel, and, in the Court's discretion, denies Respondent's request for oral argument. See Ariz. R. Sup. Ct. 59(i).

A. Discovery Text Changes

First, the Bar contended that in October 2016, opposing counsel in the lawsuit served Respondent with a request for admissions and both uniform and non-uniform interrogatories. In his response to the Request for Admissions, Respondent altered the language used by opposing counsel when reproducing the text of the request. Respondent did not highlight, delineate, or otherwise draw attention to the edits.

For example, request number 2 in Defendant's Request for Admissions reads: "Admit Plaintiff suffered no permanent physical injury or permanent physical impairment as a result of this accident." Request number 2 in Plaintiff's Answers to Defendant's Request for Admissions reads: "Admit Plaintiff suffered no permanent physical injury or permanent physical impairment as a result of this violent rear-end auto collision, which caused \$12,131.42 in damage to Plaintiff's 2011 Hyundai Genesis." Respondent made similar changes in the Non-Uniform Interrogatories, and did not highlight, delineate, or otherwise draw attention to the edits. The civil rules require

the responding party to reproduce the text of the discovery question above the response and require a party to "fairly respond" to the substance of the request.

A year after Respondent made the Discovery Text Changes at a hearing on opposing counsel's motion for sanctions, Respondent was asked why he made the changes and explained, "I just felt it was appropriate to change the word 'accident' to 'collision.' Beyond that I have nothing to say on this matter." The trial court granted the motion for sanctions against Respondent for the amount of attorney fees and costs associated with having the Respondent undo the alterations. Under normal circumstances the immediate correction and an acknowledgment of the wrongdoing would generally have warranted no further investigation by the trial court or the Bar.

In response to a resulting Bar charge, Respondent refused, however, to acknowledge any wrongful conduct, explaining,

This is another silly avenue of inquiry. I did **not** alter defense counsel's language in any discovery requests. In order to alter language one **must** change the **meaning** of the language I **corrected** the language of defense counsel's discovery requests to make them **conform with the evidence**. This is what great lawyers do.

As the Original Panel noted, Respondent maintained his innocence in response to the Bar charge, "It was the 'text' which was altered and not the meaning."

The Original Panel determined that Arizona Rule of Civil Procedure 33(b)(2) mandates that "an answering party must answer each interrogatory separately and fully in writing under oath," and

requires the answering party to "reproduce the text of an interrogatory immediately above its answer to that interrogatory." Because Respondent was required under the rules to reproduce the "text" of the interrogatory, he violated the rule.¹ The Original Panel also observed that The Lawyer's Creed of Professionalism ("Creed") requires an attorney to "identify clearly, for other counsel or parties, all changes [] made in documents submitted" to the attorney for review.² The Original Panel observed that this was intentional misconduct that violated ER 3.4(c) (prohibiting a lawyer from knowingly disobeying a court rule) and ER 4.4(a) (prohibiting a lawyer using "means that have no substantial purpose other than to embarrass, delay, or burden any other person") by failing to reproduce the text of an interrogatory immediately above the answer to the interrogatory. For this violation, the Original Panel imposed the sanction of reprimand with two years of probation under the Membership Assistance program preceded by an evaluation by Dr. Lett, an experienced psychologist, with costs and expenses of the disciplinary proceedings. Respondent appealed the finding and sanction for this violation.

Following remand, the Panel again found that Respondent violated ER 3.4(c) and ER 4.4(a).

¹ Arizona Rule of Civil Procedure 33.1(d)(2) and (f)(3) and Rule 36(a) (2016). Renumbered as Rules 33(b)(2) and Rule 36(a)(5).

² Now Rule 41(c) (Creed) (B)(12).

This Court affirms the Panel's factual findings and conclusions of law. However, the Respondent's perplexing refusal to acknowledge the wrongfulness of his actions and the extent of his efforts to justify his conduct cause the Court great concern.

B. Conduct Towards Opposing Counsel

The Original Panel also considered the Bar's complaint involving unprofessional language Respondent used in his dealings with and about opposing counsel and the trial court judge, and determined that these actions (largely undisputed) were unproven in its January 24, 2020 Decision and Order Imposing Sanctions. The Bar appealed this determination.

On February 2, 2021, this Court reversed and vacated the January 24, 2020 Original Panel's decision and remanded for further proceedings, observing:

As this Court has stated, Rule 41(g) is not merely aspirational. *Matter of Martinez*, 248 Ariz. 458, 465, ¶ 22 (2020). In that case this Court determined, "Although the [P]anel could consider Martinez's subjective motive in evaluating an ER 4.4(a) violation, ultimately it was required to apply an objective standard," citing *In re Alexander*, 232 Ariz. 1, 7 ¶ 23 (2013). Likewise here, the Panel erred in determining that the subjective belief that abusive language is acceptable if it reflects the "honest opinion," and should have applied an objective standard to determine if the demeaning language constituted unprofessional conduct and was objectively and reasonably necessary to advance the Lawsuit and respond to the Bar Charges.

This Court continued:

The Court is mindful that the purpose of professional discipline is to protect the public and deter similar conduct by others. *In re Swartz*, 141 Ariz. 266, 277 (1984).

The heat of litigation may foment anger and result in an occasional poorly-worded epithet. However, a relentless campaign to malign and embarrass opposing counsel and the judiciary is clearly prohibited conduct. If an attorney is unable to discern the difference between the two, the Panel may properly determine that an initial evaluation is needed along with a sanction appropriate to discourage similar behavior in the future. Therefore,

IT IS ORDERED vacating the Decision of the Panel and remanding for proceedings consistent with this decision. On remand, the Panel should allow Respondent to present evidence that the repeated use of demeaning language was objectively and reasonably necessary to advance the litigation and respond to the Bar Charges and also allow him to present mitigating evidence.

On remand, the Panel conducted an evidentiary hearing. As noted below, the Court affirms the Panel's pertinent findings here.

C. The Panel's Findings of Fact³

Conduct Toward Opposing Counsel

7. A settlement conference in the *Esala* case was scheduled for February 1, 2018 in Tucson before Judge Pro Tem Dev Sethi. The day before - on January 31, 2018 - Ms. Bragg sent the following email to Mr. Levy and Mr. Sethi at 8:49 a.m.:

Dear Doug and Dev:

I have a favor to ask . . . our deadline to conduct the settlement conference is February 16th. Is there any way we can push it back by a week or so? The issue is personal . . . I just realized that my son's school play is tomorrow. I miss so much of his school stuff due to work (he is in 2nd grade), and I will feel horrible if I am not there. I hate to ask this as I know you are both very busy as is the plaintiff, but I am falling on my sword and

³ To address Respondent's contentions that his statements were taken out of context, the Court incorporates and restates the findings of fact ¶¶ 7-26 from the Panel's September 1, 2021 Decision and Order Imposing Sanctions.

asking for a "parent" favor. There is no way I can be at the settlement conference at 9:00 a.m. in Tucson and get to my son's play at noon unless I appeared telephonically, which I suspect you will not want.

I apologize for the late request, as well. Another "mom fail" I suppose . . . I forgot about it until he was talking about it on the way to school this morning.

I would appreciate it greatly.

Let me know and thank you.

8. Mr. Levy responded by email to Ms. Bragg and Mr. Sethi at 9:33 a.m., stating:

Dev and Venessa -

So, let's just take a moment to examine how many people are impacted by this typical Venessa Bragg level of incompetence (selfishness?):

1. Plaintiff Christina Esala has blocked this morning for the last six weeks.
2. Plaintiff's counsel, undersigned, has blocked this morning for the last six weeks.
3. Judge pro tem Dev Sethi is a volunteer for the welfare of the Pima County civil justice system.
4. The insurance adjuster on this file.

The attached "settlement conference order" is dated December 18, 2017, which is six weeks ago.

Please take a look at paragraph 11 of Judge Aragon's October 16, 2017 scheduling order (second attachment). This mandates that the settlement conference occur before a trial date will be set (February 26th trial setting conference).

We now have five different calendars of busy people to consider because of Venessa's incompetence.

Clearly, no one loves 2nd graders more than Dev Sethi and Doug Levy and Christina Esala. We all have two children and we love them with all of our hearts.

This is not just a "mom fail." This is yet another "lawyer fail."

Of course, we have time (16 days), and since Dev is such an experienced lawyer, he is familiar with the old boxing adage of "rolling with the punches."

I shall defer to Dev's wise judgment. I will conclude with this. If this were Judge like retired Judge Charles Sabalos, Venessa would be looking at a hefty sanction and the continuance would not be granted.

Dev is not retired Judge Sabalos.

How can a lawyer really oppose the request of a mother who wants to attend the school play of her second grader?

Can I just request that the three of us have a conference call ASAP, so that we can see if another date will work for the five people involved?

Again, I find it the height of incompetence that Venessa's school play issue was not discovered much earlier. This is basic scheduling 101, and this is the pattern for Venessa's conduct in this case. I have to waste my time typing this e-mail, finding another good date within 16 days, and I have to inconvenience my delightful client (just as we did for the IME with Dr. Maric which had to be schedule [sic] at the very last minute because of defense counsel incompetence).

9. Mr. Sethi vacated the February 1, 2018 settlement conference and directed defense counsel to take the lead in coordinating a new date. Mr. Sethi expressed dismay about the "tone and content" of Mr. Levy's email, stating:

We are all busy people trying to do the best we can as life moves by pretty quickly. The goal of my involvement in this case is to help see if we can navigate a hotly disputed case to resolution. This is not a novel or rare occurrence. Big disputes get settled all the time. Injecting personal commentary is not helpful to our end goal.

Doug, I was taken back by the tone and content of your email this morning. I urge you to focus on the merits of the case, and take the wise counsel of A Lawyer's Creed of Professionalism of the State Bar of Arizona.

10. The vituperative comments Mr. Levy made about defense counsel in his January 31, 2018 email were not objectively and reasonably necessary to advance the litigation. Although the last-minute continuance request was a legitimate source of frustration, Mr. Levy could have politely declined Ms. Bragg's request by pointing out the inconvenience associated with it. He instead accused her of incompetence four times, stated she would be "looking at a hefty sanction" if a different judicial officer were deciding the issue, and belittled her by referring to "basic scheduling 101" and a "lawyer fail." Moreover, no legitimate purpose was served by discussing other occurrences Mr. Levy labeled as "incompetence" with Mr. Sethi. Ms. Bragg testified that Mr. Levy's response to her request was "incredibly embarrassing" and "incredibly upsetting," particularly because he copied the settlement judge. She testified that Mr. Levy's communication was "belittling and served no purpose other than to intimidate me or make me feel bad for what I thought had been a fairly polite request." She further stated:

I did not understand how his being so aggressive with me helped his client in any way, or helped us further the case. I could understand his frustration, obviously, about even a request to move the settlement conference, as I knew his client I'm sure was hoping to get it done, but I did not understand why he needed to embarrass me in front of the settlement conference judge.

11. On February 5, 2020, Mr. Levy emailed Mr. Sethi and Ms. Bragg, stating, in pertinent part: "I can report that Venessa has done absolutely nothing to take the lead in order to get this settlement conference re-scheduled. No phone call. No FAX. No email." In a response sent only to Mr. Levy, Ms. Bragg stated:

Doug - Is it impossible for you to be polite? Can you pick up the phone and call me without sending horrible e-mails?

I will send an e-mail regarding my availability.

You do not need to be so cruel.

Mr. Levy responded that there was "nothing remotely cruel nor horrible" about his email and stated: "I am glad that you are actually reading your e-mails this evening."

12. Later in the litigation, the lawyers disagreed about the length of the deposition of plaintiff's treating physician. After Ms. Bragg advised that the deposition would take longer

than one hour, Mr. Levy responded with the following statements, among others: "Nice try." "This is your fault and the fault of James." "Venessa, I think you should take a deep breath. Own this series of mistakes. Do your best today from 1:00 - 2:00 p.m."

13. At the conclusion of the treating physician's deposition, Mr. Levy stated the following on the record about Mr. Chong: "As a professional today, -- today was embarrassing. James was not prepared." In later email correspondence with Ms. Bragg, Mr. Levy stated that the "deposition could have been so simple if you (or James) had just bothered to prepare yourselves" and called the deposition "completely botched." He continued: "Most lawyers could easily have concluded Dr. Davis's deposition during that period of time. It only required a little focus, preparation, and basic knowledge of musculoskeletal medicine." He called one of Ms. Bragg's objections "embarrassing" and told her: "Take a deep breath." He stated, "James did not even know what 'cervicalgia' was, and he did not know what 'loss of cervical lordosis' is, and that it is caused by whiplash injury. This is who you sent to take Dr. Davis's deposition." These statements by Mr. Levy were belittling and unprofessional and were not objectively and reasonably necessary to advance the litigation.

14. During the *Esala* litigation, Mr. Levy interjected other gratuitous, condescending, unprofessional comments that were not objectively and reasonably necessary to advance the litigation, including the following language contained in emails he sent to defense counsel:

"While my suggestion for you to involve Dev was **brilliant**, the import of the suggestion would have been meaningless had Dev not been willing to spend his time listening to you and your needless and demeaning gripes about the *Esala* case."

"It was my hope that you would take Christina's deposition. However, according to James Chong, your adjuster was able to actually watch Christina testify during her deposition. Further, you were on the phone listening and I know that you were texting follow-up questions to James. [I am glad that you refrained from interrupting the actual questioning. That would have been annoying, unprofessional and unacceptable.]"

"You know that silly little deposition questionnaire that you provide to your young associates to help them ask their questions at deposition. James likes to check off the

questions after he asks them. Well, James was working off of your "chiropractor deposition questionnaire" because James asked a series of questions about how Dr. Davis sets his billing rates. Really?"

"Your letters of May 22 and 26 have really been an utter waste of time. I am going to Notice the deposition of [the defendant] for my office for Friday, August 11, 2017, so that we can get you thinking productively about this case."

15. Defense counsel repeatedly asked Mr. Levy to modify his behavior. Mr. Giesler testified: "Our office tried every way we could think of to get the behavior to change, and it simply did not." He described Mr. Levy's conduct as consistently obnoxious, rude, and unprofessional. During cross-examination by Mr. Levy at the first evidentiary hearing, Mr. Giesler testified:

Mr. Levy, I'll be frank with you on it. And I don't mean to hurt your feelings, but I find you as a very rude and obnoxious individual. Your tone is - you have a very demeaning, superior tone that I don't agree with, so virtually every conversation or communication I have had with you or have seen you have with my office, I stand by what I said.

Mr. Giesler further testified that Mr. Levy made two of his law firm's support staff members cry and pushed them "to the edge of their sanity." Ms. Bragg made repeated requests of Mr. Levy to modify his behavior, including in a May 15, 2018 email, where she stated: "I specifically told you over the phone that I do not want to argue with you. I just want us to move forward and finalize this matter civilly. I asked that you please not make snarky remarks to me either over the phone or via e-mail." She also sent Mr. Levy an email on May 23, 2018, stating, "I would again ask that you please refrain from needless and demeaning commentary."

16. On June 22, 2018, defense counsel filed a motion for sanctions against Mr. Levy. In responding to the motion, Mr. Levy called it "just another in a long string of embarrassments to defense counsel," labeled the motion "incompetent," and said it should "shock the conscience of this Court that a motion so devoid of context could be filed by an attorney with more than 10 years at the practice of law." Mr. Levy accused defense counsel of "lying," labeled their arguments "bogus," "nonsense" and "farcical," called the deposition of plaintiff's treating physician "an embarrassing fiasco for defense counsel" and "a pathetic performance by defense counsel," described one of the defense lawyers as "a 'lethal' combination of incompetence and

an abuser of legal process," and called the motion "scurrilous," "utterly frivolous," and "mean." Mr. Levy asserted that his email communications demonstrated he had conducted himself "with the utmost professionalism."

17. Mr. Levy's belittling, unprofessional, demeaning statements in response to the motion for sanctions were not objectively and reasonably necessary to achieve his objective of having the court deny the motion.

18. Judge Griffin heard oral argument on defendants' sanctions motion on July 9, 2018. Near the outset of the hearing, Judge Griffin stated, "I will put Mr. Levy on notice that one of the things I am thinking about is whether I am obligated to report you to the bar or whether it would be appropriate to report you to the bar for things that I have read about your conduct in this case." Judge Griffin called Mr. Levy's January 31, 2018 response to Ms. Bragg's request to continue the settlement conference "beyond the pale." Mr. Levy responded: "I don't feel there's anything remotely close to inappropriate about what I said." That response led to the following colloquy:

THE COURT: So why not just say, I'm sorry, Ms. Bragg. I can't do you this favor. My client is insisting that we have the settlement conference. Here are the reasons why we can't do it. Mr. Sethi, please order her to go forward.

Why call - repeatedly call Ms. Bragg incompetent? Why tell her that this is not just a mom fail, this is yet another lawyer fail? This is basic scheduling 101 you tell her. This is a pattern of practice for her. I just - how is that in any way appropriate to do that sort of behavior?

MR. LEVY: It is appropriate in my view. We had had already two deadline extensions which I stipulated to. And I wasn't refusing to do it. I said, I'm not objecting. I'll let Dev Sethi - we're prepared to go, go forward.

The word mom fail was used by Vanessa [sic] Bragg. I said it's a lawyer fail. For the life of me, I don't see how you can realize that my child has something going on the very next day and you don't know about it until the day before when we had five schedules. We also had her insurance adjustor, Dave [sic] Sethi, my client and me. And I think it was very selfish.

19. Judge Griffin granted defendants' motion for sanctions in part, ordering as follows:

1. Defendants are awarded attorneys' fees and costs associated with having to get Mr. Levy to undo the alterations he made to their discovery responses.
2. Defendants are awarded their fees and costs for any additional time spent dealing with what the Court feels are Mr. Levy's unprofessional comments surrounding getting a settlement conference continued and moved.
3. Defendants are awarded their fees incurred in bringing this motion before the Court.

Judge Griffin concluded the hearing by stating that he would be referring Mr. Levy to the State Bar.

20. Thereafter, the *Esala* case settled, with an agreement that the sanctions Judge Griffin had awarded against Mr. Levy would be waived.

21. Mr. Levy correctly notes that much of his interaction with defense counsel in the *Esala* case was professional and appropriate. Indeed, in their motion for sanctions, defendants acknowledged that "not all communications with Mr. Levy have been negative or cruel. Many have been cordial. That being said, too many have been anything but pleasant despite repeated requests for Mr. Levy to refrain from needless and inappropriate commentary." The defense lawyers further conceded they had "made mistakes or been less than friendly in the past," but stated, "[t]he difference here is that Mr. Levy refuses to stop despite numerous requests and a courteous suggestion by Mr. Sethi. In light of this, it appears Mr. Levy's only purpose can be to, among other things, embarrass, intimidate, harass, and annoy."

Conduct During State Bar Proceedings

22. The Supreme Court's Decision Order makes clear that lawyers' ethical obligations extend to their conduct during State Bar disciplinary proceedings.

23. Judge Griffin filed a bar charge against Mr. Levy dated July 11, 2018. Although Judge Griffin furnished voluminous documentation, his cover letter focused on the Discovery Text Changes and Mr. Levy's conduct in connection with defense counsel's request for a continuance of the February 1, 2018 settlement conference.

24. Mr. Levy filed a 76-page response to the bar charge. Excerpts from that response include the following:

"[L]et me clearly state that I handled the personal injury litigation of *Esala v. Orangutan/Hinderliter* virtually perfectly. I would eliminate the word "virtually," but if no one is perfect There is **nothing** that I would have handled differently. I performed magnificently for Christina Esala at every step of the litigation **and she will readily agree with that**. As with most of my clients, Ms. Esala views me as a hero because of how magnificently I handled her case."

"Judge Griffin's unfortunate and thoughtless (unworthy of a judicial officer) letter of July 11, 2018 **alleges** a violation of ARCP 11(b)(1) . . . Judge Griffin states that this rule was violated and he is wrong."

"Perhaps if Judge Griffin had actually read Plaintiff's discovery responses instead of **blindly** relying upon the falsehoods written by defense counsel, he would have understood how excellent and honest they were."

"It is really pretty sad that Judge Griffin elected to ignore Ms. Bragg's basic rule violations when erroneously electing to sanction me. It is what it is, but it is a really unfortunate commentary on Judge Griffin."

"Given the issues in the *Esala* litigation, it is hard for me to fathom that we are having this discussion about my e-mail to a clearly incompetent Ms. Bragg. Dev Sethi, my friend and colleague, made a **careless** e-mail reply. His careless reply has snow-balled into Judge Griffin's erroneous commentary. As the worst President in U.S. history would say: 'Sad.'"

"Venessa Bragg lies and lies and lies. Until the State Bar disciplines her, she will continue to find justification for her incompetency. The real misfortune is what she does to the young lawyers who have the misfortune of having to work with her and her unfortunate law partners, John Elardo and Mike Rossi."

"I feel sorry for anyone who has to work with the firm of Elardo, Bragg & Rossi because their firm is the epitome of what it means to be unprofessional and uncalled for."

"Before I address what an incompetent and mean lawyer Venessa Bragg is"

"This simply demonstrates that Venessa Bragg and James Chong were incompetent."

"As for the deposition of Dr. Davis on May 15th, it was a total fiasco. Mr. Chong knows very little about the actual medicine involved in a personal injury case. He was not competent to ask Dr. Davis follow-up questions . . . It was a pathetic performance. It was embarrassing for the legal profession."

"Ms. Bragg and her staff are **used to being called liars because they do it so frequently.**"

"JUDGE GRIFFIN NEEDS TO BE FORMALLY INVESTIGATED BY THE COMMISSION ON JUDICIAL CONDUCT AND REPRIMANDED FOR THE UNPREPARED AND THOUGHTLESS WAY HE 'PRESIDED' OVER THE JULY 9, 2108 HEARING."

"I believe it is Judge Griffin's **job** to know that the Phoenix insurance defense firm of Elardo, Bragg & Rossi is horrible."

"[T]he way Judge Griffin conducted the July 9th hearing was a fiasco for which he should be embarrassed and apologize. I shall accept his apology if he is a confident enough person to admit his wrong-doing."

"How could any reasonable person believe they would receive a fair trial from Judge Griffin after his July 9th Minute Entry. What would Judge Griffin care? How many individual Plaintiffs did he represent through a jury verdict during his career as a lawyer?"

"I did not require an unfair advantage to easily defeat an incompetent lawyer like Venessa Bragg at this trial. What I needed was a Judge with common sense and wisdom to separate the merits from the garbage arguments. Judge Griffin was not up to the task. He failed."

"Shame on Judge Griffin."

"I am more than happy to meet with Judge Griffin at the State Bar of Arizona office in downtown Tucson to listen to his apology and more fully discuss all of these issues with him. I am not interested in being lectured. That will be a complete waste of my time. This is a Venessa Bragg issue and a Judge Griffin issue."

25. In later email exchanges with Bar counsel, Mr. Levy stated:

"The only person who should be issuing an apology regarding this matter is Judge Griffin. It is my hope that Judge Griffin learns from how he conducted himself in this case and never treats another lawyer the way he treated me again."

"In this case, Judge Griffin really performed poorly. He obviously does not care."

"If I were Judge Griffin and Venessa Bragg, I would be embarrassed. All I did was prosecute a civil case in an outstanding manner only to watch it be torpedoed by an unprepared Judge at the very end."

In a footnote, the Panel observed:

Throughout these proceedings, Mr. Levy has repeatedly attacked bar counsel Bradley Perry, including making the following statements:

- "At best, your work product on this case is **substandard**. That is a fact."
- "Note, I have not used the word, 'incompetent,' but if I chose to use the word 'incompetent' to describe your investigation, it would not be difficult to justify. I can stick with substandard because after 7.5 months, your submission is what it is; and you understand that better than anyone."
- "To Doug Levy, it appears that you have **never** drafted a JPS, while I have **never** had an issue getting one submitted in my 24 years of trial practice in Arizona."
- "[W]hy does Mr. Perry have to write so many **lies** in his 42-page gibberish of a Supreme Court brief?"
- "The statement that Respondent caused **harm** to Judge Griffin or defense counsel during the *Esala* litigation is another sad **lie** by Mr. Perry. Maybe it makes him feel good to write such nonsense?"

During the second evidentiary hearing, Mr. Levy continued his attack, at one point stating: "Bradley, you are incompetent, and you are a liar, and you're unprofessional."

26. The belittling, unprofessional statements quoted in paragraphs 24-25 were not objectively and reasonably necessary for Mr. Levy to respond to the bar charge.⁴

D. The Panel's Conclusions of Law on Remand

The Panel concluded that unprofessional conduct may result in the imposition of discipline pursuant to Rule 41(g) (now Rule 41(b)(7)). Likewise, the Oath of Admission to the Bar requires 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"; (4) will support "professionalism among lawyers"; and (5) "will at all times faithfully and diligently adhere to the rules of professional responsibility and the Lawyer's Creed of Professionalism."

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. See Rule 41(c). With respect to opposing counsel, lawyers "will be courteous and civil, both in oral and written communication." Rule 41(c)(B)(1). In

⁴ The Panel concluded that the language directed towards Bar counsel was not considered in determining the violations or sanction but observed, "It is once again relevant, though, because Mr. Levy's extreme unprofessionalism appears to occur when he encounters someone who disagrees with him or questions his conduct." Notwithstanding the difficulty a bar investigation and complaint presents to a member of the Bar, Respondent's inability to refrain from calling Bar counsel "incompetent" "a liar" and "unprofessional" at the hearing is likewise of concern.

negotiations, depositions, and other proceedings, lawyers are to conduct themselves "with dignity" and not "be rude or disrespectful." Rule 41(c) (B) (9).

The Panel found that Respondent engaged in substantial and repeated violations of the Oath and the Creed, specifically Rule 41(g) [now 41(b) (7)]:

6. Mr. Levy violated Rule 41(g), which states that lawyers shall "avoid engaging in unprofessional conduct" and shall "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 41(g) "is not merely aspirational." *In re Martinez*, 248 Ariz. 458, 465 (2020). Diligent and competent representation of a client does not require or justify denigrating, disrespectful, belittling language. See, e.g., *Bemis*, 189 Ariz. at 122 ("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."); *Fla. Bar v. Norkin*, 132 So.2d 77, 86 (Fla. 2013) ("[E]ven if one considers opposing counsel to be annoying or unpleasant, that does not provide a license for an attorney to engage in misconduct.").

7. In his communications with and about opposing counsel, Mr. Levy violated ER 4.4(a), which states that, "[i]n 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." Although the hearing panel may consider Mr. Levy's subjective motive in evaluating an ER 4.4(a) violation, it ultimately must apply an objective standard. See Decision Order; *Martinez*, 248 Ariz. at 467. We consider the totality of the circumstances. See *In re Wolfram*, 174 Ariz. 49, 55 (1993) ("We note that some of Respondent's acts and omissions, if viewed independently of one another, are not objectionable and may be explained by legitimate lawyering and trial strategy. Nevertheless, an examination of Respondent's conduct, in the aggregate, tells a much different story."). "[A] lawyer cannot escape responsibility for a violation based on his or her naked assertion that, in fact, the 'substantial purpose' of conduct was not to 'embarrass, delay, or burden' when an objective evaluation of the conduct would lead a reasonable

person to conclude otherwise." *In re Alexander*, 232 Ariz. 1, 7 (2013).

8. ER 8.4(d) states that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice." ER 8.4(d) "does not require a mental state other than negligence." *Alexander*, 232 Ariz. at 11. Mr. Levy's behavior toward opposing counsel violated ER 8.4(d), as did his conduct during the State Bar's investigation. "When lawyers themselves generate conflict, rather than addressing the dispute between the parties they represent, it undermines our adversarial system and erodes the public's confidence that justice is being served." Justice Sandra Day O'Connor, 78 Or. L. Rev. 385 (1999).

Although the Bar sought sanctions under ER 8.2(a) as well, the Panel advised that courts have tended to limit the application of ER 8.2(a) to statements made about judges with actual malice. The Panel concluded that:

We have no difficulty concluding that Mr. Levy violated the Oath, the Creed, Rule 41(g), and ER 8.4(d) by belittling Judge Griffin, accusing him of not reading what he submitted, and directing invectives at him -- none of which were objectively and reasonably necessary. However, we cannot conclude Mr. Levy made statements about Judge Griffin that he knew to be false or with reckless disregard of their truth or falsity, in violation of ER 8.2(a).

E. Aggravating and Mitigating Factors and Sanction.

The Panel observed that Respondent's actions were knowing and intentional and that he was proud of his conduct.

The Panel also observed that his misconduct caused actual harm, including the time and funds litigating the sanctions motion and addressing the Discovery Text Changes and the "scarce judicial resources" that were required to address the matters.

More broadly, opposing counsel were subjected to the type of bullying, belittling, unprofessional conduct that makes the practice of law needlessly stressful and unpleasant -

conduct that also contributes to a negative public perception of lawyers and the legal profession. "[T]he justice system cannot function effectively when the professionals charged with administering it cannot even be polite to one another. Stress and frustration drive down productivity and make the process more time-consuming and expensive. Many of the best people get driven away from the field. The profession and the system itself lose esteem in the public's eyes." *Paramount Commc'ns, Inc. v. QVC Network, Inc.*, 637 A.2d 34, 52, n.24 (Del. 1994) (quoting speech to American Bar Association by Justice Sandra Day O'Connor).

The Panel observed that the most serious charge is the baseline for the punishment and the less serious charges are accorded applicable aggravating weight. *In re Moak*, 205 Ariz. 351, 353 ¶9 (2003) (citations omitted). The Panel determined that the most serious misconduct consisted of the ethical breaches involving opposing counsel and the Bar proceedings and that the Discovery Text Changes were assigned aggravating weight.

Respondent's conduct was intentional, and the Panel looked to ABA Standard 7.2 for this violation and 6.22 for the Discovery Text Changes:

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

6.22 Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

The Panel found the following aggravating factors:

9.22(a)-prior disciplinary offenses. On October 30, 2007, this Court suspended Respondent for 30 days in SB-07-0140-D. The Court

upheld the Disciplinary Commission's determination that he violated ER 3.4(c) and Rules 41(c), 41(g), and 53(c), exhibiting conduct similar to the conduct at issue in these proceedings.

One of the counts in the 2007 proceedings arose out of litigation that was filed against Respondent by his former employees. In court filings in that case, he stated, *inter alia*:

"This Court will quickly realize that this is absolutely the dumbest lawsuit pending in Pima County Superior Court."

"Plaintiff's counsel has truly acted shamefully by agreeing to file such a patently frivolous lawsuit against undersigned."

"Yes, undersigned is amazed that a lawyer in Pima County agreed to lend his name to this litigation."

"Why would Plaintiff's counsel label Count Three as being 'cryptic,' when paragraphs 10-24 can easily be comprehended by a freshman in high school?"

In the same disciplinary proceeding, Respondent was sanctioned for filing a complaint on behalf of a client and alleging that the defendant was an "obnoxious, self-centered and arrogant individual." Respondent also wrote that the opposing lawyers wrote "whiny letters," were "bullying," and filed an "absolutely, positively pathetic Pre-Arbitration Memorandum," conduct that the Commission described thus:

The conduct at issue in this case are not isolated incidents or the result of a momentary loss of temper. They form a pattern which extends to Respondent's treatment of the Judge described above. Respondent has not expressed any shame or remorse for this conduct. To the contrary, he proudly holds himself up as a role model or a "poster boy" in his own words, whose conduct should be emulated by others in the legal profession. The Commission agrees that Respondent is a poster boy, but not one whose conduct should be emulated or tolerated.

The Panel concluded that although this matter took place almost 14 years ago, it was appropriate to consider prior acts of the same or similar misconduct for which the respondent has already been reprimanded.

9.22(g)–refusal to acknowledge wrongful nature of conduct. The Panel believed that in many respects, this aggravating factor was the most troubling. *See, e.g., In re Bemis*, 189 Ariz. 119,122-23 (1997) (“Although respondent has no prior disciplinary record in ten years of practice, he apparently still fails to recognize the wrongful nature of his conduct 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.”).

Mr. Levy has asserted in these proceedings: “I do not apologize for any of my conduct during [the *Esala*] litigation” and stated that “100 percent of the emails, the correspondence that I had with Ms. Bragg, Mr. Giesler and Mr. Chong were professional, a hundred percent.” Mr. Levy maintains that it is Judge Griffin and bar counsel (among others) who owe him an apology. Under these circumstances, there is no reason to believe he will modify his behavior in the future.

Objective, disinterested third parties who have reviewed Mr. Levy’s conduct have found it unprofessional and sanctionable. Additionally, during the first evidentiary hearing, Mr. Levy acknowledged that individuals whom he respects (and who, presumably, are objectively reasonable) would find his conduct problematic, stating:

[T]he biggest person who would criticize me, outside my mom, would be Stanley [Feldman]. I look up to Stanley just like about anybody else, and I know if I would discuss this with Stanley, he would give me one hell of a lecture. But I – I do what I think. I behave in a way that I think is appropriate.

9.22(i)–substantial experience in the practice of law.

Respondent has been practicing law for more than 25 years. Also, Respondent established the following two mitigating factors by reasonable evidence:

9.32(d)–timely good faith effort to rectify consequences of misconduct. This factor applies only to the Discovery Text Changes.

9.32(g)–character or reputation. The Panel observed that Respondent is involved in his community, including numerous charitable, religious, and political activities. In those contexts, he “seems to enjoy a good reputation,” and the Panel pointed out favorable testimony from Ms. Esala, Mr. Daniel Boyan (a videographer who works with Respondent), and attorney Eric Nadler.

The Panel concluded that the appropriate sanction was a 90-day suspension, followed by two years of MAP probation, including standard MAP terms and a psychological evaluation, followed by compliance with any recommendations.

The Court adopts and affirms the hearing panel’s findings of aggravating and mitigating factors.

F. Respondent’s Arguments

Respondent has vigorously opposed the Bar’s efforts to hold him accountable for his language, responding to the Bar charge with a 76-page letter, and, after this Court’s Decision and Order, moving

for reconsideration of this Court's Decision.⁵ He reiterates many of his original arguments in his 50-page opening brief here. The Panel

⁵ Respondent alleged 11 errors in his motion for reconsideration of this Court's February 2, 2021 Decision Order. He contended (1) that the Bar filed a four-count complaint, and this Court characterized it as a one-count complaint. The July 19, 2019 complaint lists its only count: COUNT ONE (File No. 18-0288/Judicial Referral). (2) The Court omitted the date that Venessa Bragg moved for sanctions, which, Respondent contended, was misleading because it ignores the length of time that transpired between the Discovery Text Changes and the hearing. The Panel's findings are accurate. (3) The Court referred to Dr. Davis as "Respondent's expert" when Dr. Davis was the plaintiff's treating doctor. The Court incorporates the Panel's findings. (4) and (5), The Court adopted Bar counsel's language and took it out of context. To avoid any confusion, the Court here incorporates the Panel's findings. (6) The Court stated that "several" attorneys from opposing counsel's firm testified when there were only two who originally testified. At the remand hearing, the Panel considered testimony and affidavits from at least three attorneys who worked at the firm. (7) There was no evidence that opposing counsel repeatedly asked Respondent to stop using this type of language or that they believed the language represented a continuing pattern of intimidation to embarrass the three attorneys involved. Again, the Court incorporates the Panel's findings. (8) The Court was incorrect in its statement, "In *Bemis*, as here, the attorney claimed he would not have behaved as he did if the judge had acted properly." However, Respondent argued he never contended that Judge Griffin acted inappropriately in the *Esala* case but instead "Judge Griffin then wrongfully elected to file this Bar Complaint." Again, the Court incorporates the panel's findings, specifically ¶ 24, *supra*. (9) There was no evidence of substantial or repeated violations of the Oath or the Creed because all Respondent did was "strike hard blows" as allowed in *Martinez*. Again, the Court incorporates the panel's findings. (10) The Court was incorrect in its statement that "However, a relentless campaign to malign and embarrass opposing counsel and the judiciary is clearly prohibited conduct." Again, the Court incorporates the Panel's findings. (11) Respondent contended that there was zero evidence that Respondent repeatedly used demeaning language during the *Esala* litigation. Again, the Court incorporates the Panel's findings.

Respondent also reiterates in his Opening Brief here previous assertions he labels, "11 lies advanced by Bar Counsel, Bradley Perry, in Bar Counsel's Supreme Court Brief." The Court adopts the Panel's findings and rejects the suggestion that Bar counsel misrepresented or mischaracterized the evidence in these proceedings.

observed that he presented 4,000 pages of documents in this proceeding—much of which, we agree with the Panel, is irrelevant to the issues presented here.⁶ And although Respondent argues at length that the Bar, opposing counsel, and two hearing panels erroneously concluded that the language Respondent used was abusive or demeaning, and that the language was acceptable in the context of the proceedings, the Court affirms the Panel's findings and conclusions.

The Panel quoted the following and invited a similar statement from this Court. The Court agrees with these sentiments:

There are proper types of behavior and methods to utilize when aggressively representing a client. Screaming at judges and opposing counsel, and personally attacking opposing counsel by disparaging him and attempting to humiliate him, are not among the types of acceptable conduct but are entirely unacceptable. One can be professional and aggressive without being obnoxious. 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. This Court has been discussing professionalism and civility for years. We do not tolerate unprofessional and discourteous behavior. We do not take any pleasure in sanctioning Norkin, but if we are to have an honored and respected profession, we are required to hold ourselves to a higher standard. Norkin has conducted himself in a manner that is the antithesis of what this Court expects from attorneys. By his unprofessional behavior, he has denigrated lawyers in the eyes of the public . . . His unprofessional conduct is an embarrassment to all members of The Florida Bar.

⁶ For mitigation, Respondent presented evidence of pro bono service and various recognitions and accolades in his community. The Panel admitted some and found others cumulative and irrelevant.

Norkin, 132 So.2d at 92-93 (imposing two-year suspension and public reprimand).

The Court also adds that although Respondent blames Judge Griffin for the settlement of Ms. Esala's case at what Respondent believes to have been less than its value where the terms of the settlement obviated the need to pay any sanctioned amounts, it is Respondent—and not the judge—whose conduct created any such injury.

Likewise, Respondent blames opposing counsel's purported lack of diligence as a justification for his escalating invective. Yet the Creed rejects the notion that professionalism is situational. We are "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 41(b)(7), and the Creed requires, "I will be an honorable advocate on behalf of my client, recognizing, as an officer of the court, that unprofessional conduct is detrimental to the proper functioning of our system of justice." Rule 41(c)(C)(1). "Lawyers, whether or not engaged in the practice of law, should act honorably and treat others with courtesy and respect." Rule 41 cmt. 1. Respondent concedes that a respected judge and colleague would give him "one hell of a lecture" about his conduct here. Respondent's caveat, "But [] I do what I think. I behave in a way that I think is appropriate" ignores the stated responsibilities of a lawyer and places his future career as a lawyer in jeopardy.

G. Objective Standard

Although the Court considers Respondent's subjective perspective (and does so here), "we ultimately apply an objective standard" to determine if there has been a violation. *Alexander*, 232 Ariz. at 7 ¶ 23. As the Kansas Supreme Court reasoned in addressing Kansas' counterpart to ER 4.4(a), "[a] lawyer cannot escape responsibility for a violation based on his or her naked assertion that, in fact, the 'substantial purpose' of conduct was not to 'embarrass, delay, or burden' when an objective evaluation of the conduct would lead a reasonable person to conclude otherwise." See *id.* (alteration in original) (quoting *In re Comfort*, 159 P.3d 1011, 1020 (Kan. 2007)). Also, "the question is not the intent of the sender, i.e., whether the communication was meant to be humorous, but rather how an uninvolved individual would view the language as a whole." *Matter of Member of the Bar In re Hurley*, 183 A.3d 703, 715 (Del. 2018).

H. Sanction

The Court reviews questions of law and the sanctions imposed de novo. Ariz. R. Sup. Ct. 59(j); see *Alexander*, 232 Ariz. at 13 ¶ 48. This Court has jurisdiction over any person engaged in the practice of law in Arizona. Ariz. R. Sup. Ct. 31(a).

This is not Respondent's first disciplinary proceeding arising out of his demeaning language directed towards and about opposing counsel and others. In Respondent's previous disciplinary case, the Court entered a 30-day suspension, which was similar to other cases

involving similar misconduct. *See generally Hancock v. Bd. of Pro. Resp. of Sup. Ct. of Tenn.*, 447 S.W.3d 844, 846 (Tenn. 2014) (imposing a 30-day suspension for attorney who sent an email to bankruptcy judge who denied his fee application, calling the judge a “bully and clown” and demanding that he provide a written apology for denying the fee application).

Here, although Respondent’s earlier sanction was some time ago, it ultimately was not sufficient to dissuade Respondent from repeating the very same behavior by engaging in two years of relentless name calling to and about opposing counsel, the trial judge, the original PDJ, Bar counsel, and now the PDJ on remand.

The sanction imposed by the Court today is intended to directly inform Respondent that his conduct in handling the litigation matter in question was not remotely “perfect.” It was undignified, unprofessional, and cannot be tolerated. Respondent must be able to place the interests of his client and professionalism above his need to speak with such intemperance.⁷

⁷ In his briefing here, Respondent makes 15 references to an incident involving opposing counsel’s purported “temper tantrum,” refers to opposing counsel as “an incompetent ‘no show’” who sent an “utterly incompetent email” and who practices with “incompetent and lying associates,” and Respondent proudly proclaims that he has called Bar counsel a liar at least 50 times at this point. Although these actions are not before us, and to the extent Respondent contends that his conduct cannot be deemed a campaign because “A campaign is a season of 11 football games,” the use of demeaning language designed to embarrass opposing counsel and Bar counsel throughout this proceeding reflects a campaign.

The Court has considered the record and agrees that suspension is warranted but finds the proposed 90-day suspension inadequate given the extent and nature of Respondent's conduct, his refusal to acknowledge the wrongful nature of his conduct, and the fact that he engaged in the same type of conduct for which he was previously sanctioned. See *People v. Brennan*, 240 P.3d 887, 895 (Colo. O.P.D.J. 2009) (entering a one-year-and-one-day suspension for conduct during the course of a trial that began respectfully but "became increasingly obstreperous as the trial proceeded," which conduct was "boorish and insolent to a degree that he impeded the proceedings" and demonstrated that the respondent "uses bullying tactics when he does not get his way"); *Ciardi v. Off. of Pro. Conduct*, 379 P.3d 1287, 1291 ¶ 18 (Utah 2016) (overruling the panel's findings that the respondent should be disbarred and suspending him for two years). In *Ciardi*, the attorney disrupted court proceedings and "expressed his disdain toward the screening panel members and the proceedings before the panel, referring to the hearing as a 'complete sham' and a 'joke proceeding.' He also repeatedly interrupted witnesses and referred to them as liars and idiots." *Ciardi*, 379 P.2d at 1288 ¶ 5. And although we will not sanction Respondent for actions that are not included in the bar complaint (such as his conduct before the Panel and language in his pleadings here), like the Panel, however, we recognize that the public and members of the profession must be protected from Respondent's bullying and demeaning language. It is

critical to note that the degree to which the broader public holds the legal profession in esteem is directly proportionate to the degree that lawyers act as custodians of that esteem and the degree to which we hold lawyers accountable for their unprofessional conduct. And, as Bar counsel notes, in *Alcorn* this Court reiterated the importance of lawyer discipline as a deterrent to other attorneys: "Perhaps more important than rehabilitation of an individual attorney, however, is the value of discipline as a deterrent to other attorneys and as a process that maintains 'the integrity of the profession in the eyes of the public.'" *In re Alcorn*, 202 Ariz. 62, 75 ¶ 48 (2002) (quoting *In re Fioramonti*, 176 Ariz. 182, 187 (2002)).

Respondent objects to being subjected to a psychological evaluation as a condition of discipline. When the Court issued its order remanding the matter to the Panel, we left open the option of requiring an evaluation. Respondent points out that neither the Panel nor the Court are mental health professionals. He is correct—we are not. We believe that the public will be protected if, given the length of the suspension imposed, Respondent demonstrates his rehabilitation in an application for reinstatement. See Ariz. R. Sup. Ct. 65(a); *In re Arrotta*, 208 Ariz. 509, 513 ¶ 17 (2004) (stating, "To show rehabilitation, an applicant must first establish by clear and convincing evidence that he has identified just what weaknesses caused the misconduct and then demonstrate that he has

overcome those weaknesses."); *In re Johnson*, 231 Ariz. 556, 558 ¶ 9(2013) (observing that requiring reinstatement is not meant as further punishment). Respondent may demonstrate rehabilitation however he wishes, including through engaging the services of a mental health professional.

Therefore,

IT IS ORDERED affirming the Panel's findings of fact and conclusions of law.

IT IS FURTHER ORDERED:

1. Douglas B. Levy is suspended from the practice of law for six months and one day, effective 30 days from the date of this Order. Any application for reinstatement pursuant to this Order will not require a written release under Rule 65(a)(1), or the documents required under Rule 65(a)(1)(E), (F), or (G) or 2(C). He will nonetheless need to make the requisite showing of rehabilitation pursuant to the four factors set forth in *In re Arrotta*.
2. Upon reinstatement, Mr. Levy shall be placed on probation for two years with the State Bar's Member Assistance Program under standard MAP terms.
3. Mr. Levy shall pay costs and expenses of these proceedings prior to being reinstated, which include costs incurred by the State Bar and by the Office of the Presiding Judge.

DATED this 26th day of October, 2022.

/s/
ROBERT BRUTINEL
Chief Justice

TO:

Douglas B Levy

Bradley F Perry

Susan Hunt

Sandra Montoya

Maret Vessella

Don Lewis

Beth Stephenson

Mary Pieper

Mary Rose Dominguiano

Princess Mutya Zorilla

Lexis Nexis