

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 RESPONSE TO
PETITIONER'S PETITION FOR SPECIAL ACTION**

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Introduction

The State Bar of Arizona, by undersigned bar counsel, submits this response to the *Petition for Special Action (Appellate)* (“Petition”). Based on the arguments set forth below, this Court should decline jurisdiction over this special action because, on balance, the factors for declining jurisdiction set forth in [Rule 12, Ariz. R.P. Spec. Act.](#),¹ outweigh the factors for accepting jurisdiction.

The Petition raises primarily fact-specific issues, decided in interlocutory rulings that are *not*, and could not be, case dispositive (*i.e.*, some allegations of misconduct have not yet been adjudicated), and Petitioner David S. Gingras (“Mr. Gingras”) has an equally plain, speedy, and adequate remedy by appeal following a hearing on the merits of the allegations *not* yet addressed by Presiding Disciplinary Judge Lisa A. VandenBerg (PDJ).

Procedural Posture of the Case

The State Bar of Arizona filed a one-count complaint against Mr. Gingras on February 17, 2026, which included multiple allegations of misconduct (violation of a court order, efforts to preclude a potential witness from testifying at a court hearing, making disparaging comments about a judge and members of the public, meritless claims, false information in an affidavit, non-meritorious appeal).

¹ All rules identified in this response are to the Rules of Procedure for Special Actions unless otherwise noted.

Mr. Gingras filed an answer on February 17, 2026. Based on concerns expressed by the PDJ, an amended complaint was filed on February 25, 2026, Pet. Exh. 1,² and Mr. Gingras filed a *Respondent's Amended Answer* on March 6, 2026, Pet. Exh. 2.

On March 9, 2026, the State Bar filed a *Motion for Partial Judgment on the Pleadings*, Pet. Exh. 3, and on March 18, 2026, Mr. Gingras filed a *Response to State Bar's Motion for Partial Judgment on the Pleadings*, Pet. Exh. 4. On March 23, 2026, the State Bar filed a *Reply to State Bar's Motion for Judgment on the Pleadings*. Pet. Exh. 6.

On April 14, 2026, Mr. Gingras filed a *Motion to Dismiss and, Alternatively, Motion for Summary Judgment*. Pet. Exh. 8. That motion was based on Arizona's anti-SLAPP statute, A.R.S. § 12-751. The State Bar filed a motion to strike that *Motion to Dismiss* on April 20, 2026. SB Exh. 1. On April 30, 2026, the PDJ entered an order directing the parties to simultaneously submit briefs addressing "whether the Court's supremacy [clause] precludes this [anti-SLAPP] legislation's application in discipline proceedings." Pet. Exh. 12. On April 15, 2026, both the State Bar and Mr. Gingras filed briefs. Pet. Exh. 13 and 14. On May 20, 2026, Mr. Gingras filed a *Response to State Bar's Brief re: Applicability of A.R.S. § 12-751 to Lawyer Discipline Proceedings*. Pet. Exh. 15.

² References to Mr. Gingras' exhibits are identified as "Pet. Exh. ____," while references to the State Bar's exhibits are identified as "SB Exh. ____."

On June 22, 2026, the PDJ entered an order denying Mr. Gingras’ motion to dismiss based on Mr. Gingras’ failure to demonstrate that the anti-SLAPP statute does not “unduly hamper” the Court’s authority over the practice of law in Arizona, noting that in the absence of such a showing, she is unable to determine how to apply the statute in a manner consistent with the Court’s rules regarding attorney discipline. Pet. Exh. 16.

On July 22, 2026, Mr. Gingras filed his *Petition for Special Action (Appellate)*. This is the State Bar’s response to that Petition.

Issues Properly Before this Court

Mr. Gingras, through counsel, identified four issues in his *Petition for Special Action*: (1) Must attorneys surrender their First Amendment and Arizona free speech rights by becoming members of the Arizona Bar?; (2) Do Arizona attorneys retain the same First Amendment and Arizona constitutional protections as other citizens³ and, if so, did the State Bar establish that Petitioner’s speech falls within a recognized exception permitting discipline?; (3) Did the Presiding Disciplinary Judge err by granting judgment on the pleadings when the material facts were disputed and by applying an erroneous legal conclusion that the First Amendment and Arizona Constitutional protections for speech do not apply to lawyers?; and (4) Does Arizona’s newly-expanded anti-SLAPP law, [A.R.S. § 12-](#)

³ The issue of a citizen’s Constitutional rights is *not* addressed in this case.

[751](#), apply in attorney discipline proceedings and, if so, does it “unduly hamper” this Court’s authority to regulate the practice of law in Arizona and therefore violate separation of powers principals?

The State Bar contends that the issues identified by Mr. Gingras do not fairly and accurately identify the issues this case actually presents. Mr. Gingras’ first and second issues are significantly overbroad and, even if answered, would not resolve any issue in this case. And, Mr. Gingras’ third issue lacks specificity.

The case actually presents the following issues: (1) Should the Court accept jurisdiction to review the PDJ’s interlocutory ruling granting partial judgment on the pleadings, where a reversal would not result in judgment in Mr. Gingras’ favor, but a remand for additional fact-finding?; (2) Should the Court accept jurisdiction to review the PDJ’s interlocutory ruling denying Mr. Gingras’ motion to dismiss based on Arizona’s anti-SLAPP statute?

If this Court accepts special action jurisdiction, the issues then become: (1) Whether the PDJ properly granted, in part, the State Bar’s motion for partial judgment on the pleadings, finding that Mr. Gingras violated [Rules 41\(b\)\(3\) and \(7\)](#), and Rule 42, Ariz. R. Sup. Ct., specifically [ER 4.4\(a\)](#), [ER 8.2\(a\)](#) and [ER 8.4\(d\)](#), by making disparaging comments about Maricopa County Superior Court Judge Mata; and (2) Whether the PDJ properly concluded that Arizona’s anti-SLAPP statute, [A.R.S. § 12-751](#), does *not* apply in lawyer discipline proceedings

absent evidence that the statute does not interfere with this Court’s constitutional authority to regulate the practice of law.⁴

Additional Facts Not Included in the Petition

The State Bar alleged in its amended complaint that Mr. Gingras made public, disparaging comments about Judge Mata. Pet. Exh. 1. The Bar alleged that Mr. Gingras made disparaging comments in a *Notice of Change of Judge for Cause*, Pet. Exh. 1, p. 22; internet postings, Pet. Exh. 1, p. 23-26; and, a podcast he posted on the internet, Pet. Exh. 1, p. 26.

Mr. Gingras’ Petition for Special Action inaccurately asserted that the State Bar “acknowledged factual disputes existed but argued they were legally irrelevant because constitutional free speech protections are not a valid defense in attorney disciplinary proceedings.” Petition, p. 6. The State Bar acknowledged that Mr. Gingras did not admit every allegation in the complaint, Pet. Exh. 3, p. 3, and argued that lawyers have limited First Amendment rights when they make statements while engaged in the practice of law. Clearly, lawyers retain some free speech rights that may not be adjudicated in lawyer discipline proceedings. *See* ER 3.6(b) and (c) (permissible extrajudicial statements regarding general facts about a

⁴ In denying Mr. Gingras’ motion to dismiss, the PDJ stated: “The movant, Respondent Gingras, has failed to demonstrate that the Statute [[A.R.S. § 12-751](#)] does not ‘unduly hamper’ the Court’s exercise of its constitutional 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.”

case and statements “required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer’s client”).

Lawyer Conduct Rules

Unprofessional conduct occurring while engaged in the practice of law may result in the imposition of disciplinary sanctions. [Rule 41\(b\)\(7\), Ariz. R. Sup. Ct., cmt 1.](#)

[Ethical Rule 8.2\(a\)](#) states: “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.”

[Rule 41, Ariz. R. Sup. Ct.](#), requires lawyers to (1) “maintain the respect due to courts of justice and judicial officers”; (2) “avoid engaging in unprofessional conduct.”

The [Oath of Admission to the Bar](#) 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 responsibility and [A Lawyer's Creed of Professionalism of the State Bar of Arizona](#).”

The [Creed of Professionalism of the State Bar of Arizona](#) requires lawyers to conduct themselves in accordance with the Code of Professionalism 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.”

ARGUMENT

I. This Court Should Decline Jurisdiction of this Special Action⁵

Factors Supporting Declining Jurisdiction Outweigh Those Supporting Accepting Jurisdiction

This Court has special action jurisdiction in State Bar disciplinary proceedings. See [Phillips v. O'Neil, 243 Ariz. 299, 407 P.3d 71 \(2017\)](#) (special action jurisdiction accepted to address application of Evidence Rules [408](#) and [613](#) in a State Bar proceeding). The decision to accept appellate special action jurisdiction, however, is discretionary. [Rule 12\(a\)](#).

⁵ The State Bar's arguments in this response are not presented in the same order or format that Mr. Gingras presented his arguments. The State Bar believes the issues and arguments are more limited than those identified by Mr. Gingras.

[Rules 12\(b\) and \(c\)](#) identify several factors this Court should consider in determining whether to accept or decline appellate special action jurisdiction.

Jurisdiction for this appellate special action should be declined based on the factors set forth in [Rule 12](#) because the factors that support declining jurisdiction outweigh the factors that support accepting jurisdiction.

Factors that Support Special Action Jurisdiction

[Rule 12\(b\)\(1\)](#): This special action was *not* designated for review under Rule 13.

[Rule 12\(b\)\(2\)](#): Mr. Gingras does *not* assert any legal or evidentiary privilege or immunity from suit.

[Rule 12\(b\)\(3\)](#): The applicability of the First Amendment and [Article II, Section 6 of the Arizona Constitution](#) to lawyers engaged in the practice of law is *not* a matter of first impression. See, e.g., [In re Riley](#), 142 Ariz. 604, 691 P.2d 695 (1984) (“A lawyer may be disciplined if his public comments threaten a significant state interest. . . . The good standing of the judicial system is such a significant interest. . . . Generally, . . . a lawyer may accurately criticize a sitting judge, but may not impugn the integrity of the judicial system or question the decisions of the judge.” (citations omitted)); [In re Ziman](#), 174 Ariz. 61, 847 P.2d 106 (1993) (lawyer violated Rule 41(g), Ariz. R. Sup. Ct., the precursor to [Rule 41\(b\)\(7\), Ariz. R. Sup. Ct.](#), by making a profane and insulting remark in an *ex parte*

communication with an arbitrator); *In re Levy*, SB-21-0085-AP (PDJ 2019-9044) (2022) (Arizona Supreme Court affirmed a hearing panel’s conclusions of law, which included findings that the lawyer “violated the Oath, the Creed, Rule 41(g) [the precursor to [Rule 41\(b\)\(7\), Ariz. R. Sup. Ct.](#)], 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”), SB Exh. 2; *In re Gagic*, SB-22-0085-AP (PDJ 2022-9050) (2023) (Arizona Supreme Court affirmed a hearing panel’s conclusions of law, which included findings that the lawyer violated “the Oath, the Creed, [Rule 41\(b\)\(7\), \[Ariz. R. Sup. Ct.,\]](#) [ER 3.5\(d\)](#), [ER 8.2\(a\)](#), and [ER 8.4\(d\)](#)” based on statements made in pleadings and motions while representing a client), SB Exh. 3.

The applicability of Arizona’s anti-SLAPP statute in lawyer discipline cases *is* an issue of first impression, but it is one that can be resolved based on the specific facts in this case. *See* [Rule 12\(c\)\(1\)](#).

[Rule 12\(b\)\(4\)](#): Although the applicability of the First Amendment, Article II, Section 6 of the Arizona Constitution, and Arizona’s anti-SLAPP statute, as they pertain to lawyers engaged in the practice of law, are issues of statewide importance, this case raises as-applied challenges to certain ethical rules that are specific to the facts of this case. The issues this case presents, therefore, are not issues of statewide importance.

[Rule 12\(b\)\(5\)](#): Constitutional limitations imposed on lawyers engaged in the practice of law do not raise issues that tend to evade review or become moot before an appeal.

[Rule 12\(b\)\(6\)](#): This case does *not* involve the welfare of children.

[Rule 12\(b\)\(7\)](#): This Court's special action resolution of constitutional restrictions on lawyers' speech will *not* materially advance the efficient management of this case. The PDJ's granting, in part, of the State Bar's *Motion for Partial Judgment on the Pleadings* did *not* resolve all allegations in the amended complaint. Therefore, the remainder of the allegations of misconduct (*e.g.*, alleged violation of a court order and non-meritorious claims made on appeal) will be addressed by a hearing panel, regardless of this Court's decision whether to accept or decline special action jurisdiction. Following a hearing on the merits, one or both parties may appeal. [Rule 59\(a\), Ariz. R. Sup. Ct.](#)

[Rule 12\(b\)\(8\)](#): This special action does *not* raise an issue concerning the PDJ's decision that cannot be justified under any rule of law. As noted below, the PDJ appropriately granted in part the State Bar's *Motion for Partial Judgment on the Pleadings* and denied Mr. Gingras' *Motion to Dismiss*.

Factors that Support Declining Special Action Jurisdiction

[Rule 12\(c\)](#): Mr. Gingras unreasonably delayed seeking special action review of the PDJ's granting of the State Bar's *Motion for Partial Judgment on the*

Pleadings. The PDJ entered an order granting, in part, the State Bar’s *Motion for Partial Judgment on the Pleadings* on April 14, 2026. He did not file a petition for special action review until July 22, 2026. Had Mr. Gingras promptly sought and obtained special action relief regarding that issue, the parties could have timely undertaken discovery into his disparaging comments about Judge Julie Mata.

[Rule 12\(c\)\(1\)](#): Mr. Gingras argues that he raised material factual disputes that should have precluded judgment as a matter of law. Special action jurisdiction, however, is *not* appropriate to resolve disputed facts. [State ex rel. Montgomery v. Rogers, 237 Ariz. 419, ¶ 6, 352 P.3d 451, 453 \(App. 2015\)](#) (special action jurisdiction appropriate when issue “does not turn on the resolution of disputed facts”). Thus, if this Court were to accept jurisdiction based on disputed facts, this Court would simply result in a remand for further factual development, not in the resolution of the constitutional issues that Mr. Gingras claims make this matter an issue of statewide importance.

[Rule 12\(c\)\(2\)](#): The PDJ resolved the constitutional and anti-SLAPP issues under [Rule 12\(c\), Ariz. R. Civ. P.](#), which are incorporated into the lawyer discipline procedural rules by [Rules 47\(d\)](#) and [48\(b\)](#), Ariz. R. Sup. Ct. That fact supports declining special action jurisdiction.

[Rule 12\(c\)\(3\)](#): To the extent that Mr. Gingras argues that lawyers have the same First Amendment protections as members of the public, that issue has been

clearly resolved by settled law. See above for cases addressing limitations on lawyers' First Amendment rights.

[Rule 12\(c\)\(4\)](#): The issues raised by Mr. Gingras are equally appropriate to address on appeal. Mr. Gingras' claims that partial judgment on the pleadings was improper because he denied various allegations in the complaint. Because the PDJ found sufficient factual grounds, based solely on the pleadings, to conclude that Mr. Gingras engaged in misconduct, the sufficiency of the admitted allegations is a matter more appropriate for appeal.

[Rule 12\(c\)\(5\)](#): This Court's resolution of the issues raised by Mr. Gingras will *not* materially advance the efficient management of this case. As noted above, this Court's resolution of the issues raised by Mr. Gingras will *not* resolve all allegations of misconduct, thus necessitating a substantive hearing before a hearing panel to address the remaining allegations of misconduct.

In addition to the factors set forth in [Rule 12\(c\)](#), if this Court determines there are factual disputes that preclude it from determining whether the PDJ appropriately granted, in part, the State Bar's *Motion for Partial Judgment on the Pleadings*, the appropriate remedy is to remand the matter to the PDJ. If this Court declines special action jurisdiction, Mr. Gingras may appeal the PDJ's ruling on the constitutional issues, the applicability of the anti-SLAPP statute to lawyer discipline proceedings, and the State Bar's *Motion for Partial Judgment on the*

Pleadings following a hearing on the merits of the remaining allegations of misconduct. Mr. Gingras could raise all issues on appeal, both those the PDJ has already addressed and those that may arise during a hearing on the merits. It is more efficient in this case for this Court to decline special action jurisdiction than to bifurcate the issues for this Court's consideration: once in this special action and thereafter on appeal.

As noted in [Rule 12\(b\)](#), this Court is not required to accept special action jurisdiction simply because one or more factors support accepting jurisdiction, especially when factors that support declining jurisdiction outweigh those factors in support of accepting jurisdiction.

Mr. Gingras noted in his Petition that this Court has held that interlocutory review is especially appropriate when a case presents a substantial First Amendment issue for which a party has a case-dispositive First Amendment defense. As set forth below, Mr. Gingras does not have a case-dispositive First Amendment defense to the allegations in the State Bar's complaint. He is also incorrect in his assertion that if this Court declines jurisdiction, he will be required to litigate the remainder of the case under a fundamentally incorrect legal standard that is inconsistent with controlling state and federal Constitutional precedent. As noted above, lawyers' First Amendment rights may lawfully be limited while engaged in the practice of law.

Based on the foregoing analysis, this Court should decline special action jurisdiction.

**II. The Presiding Disciplinary Judge Properly Granted, in Part,
the State Bar’s *Motion for Partial Judgment on the Pleadings*,
Finding that Mr. Gingras Violated Ethical Rules
by Making Disparaging Comments about Judge Mata**

Mr. Gingras admitted numerous allegations in the State Bar’s complaint, partially admitted other allegations, and denied still others. Pet. Exh. 2. The denied allegations were unnecessary to establish a violation of [Rules 41\(b\)\(3\) and \(7\), Ariz. R. Sup. Ct.](#), and Rule 42, Ariz. R. Sup. Ct., specifically [ER 4.4\(a\)](#), [ER 8.2\(a\)](#) and [ER 8.4\(d\)](#). See April 14, 2026 *Order in re: Motion for Partial Judgment on the Pleadings*, Pet. Exh. 11.

Mr. Gingras asserts that “[t]he State Bar’s primary position is that attorneys surrender their First Amendment rights upon admission to the bar.” The State Bar has never taken such a broad position. The State does, however, assert that Bar members’ free speech rights are limited when they are engaged in the practice of law. For example, lawyers’ free speech rights are limited when, as here, they make disparaging comments about the judge during the pendency of a case in which they are involved.

Mr. Gingras incorrectly asserts in his petition that the PDJ granted the State Bar’s motion for partial judgment on the pleadings because his First Amendment and constitutional defenses failed as a matter of law “because attorneys do not

enjoy the same constitutional protection for speech as other citizens.” The PDJ, rather, found that Mr. Gingras had not asserted that the language he used in disparaging Judge Mata “was objectively and reasonably necessary to advance his client’s matter.” Pet. Exh. 11, p. 10. She also noted that the Oath of admission to the Bar and the Lawyer’s Creed of Professionalism require lawyers to, among other things, treat judicial officers with respect, avoid engaging in unprofessional conduct, be courteous and civil (both in oral and written communication), conduct themselves with dignity, and not be rude or disrespectful. Pet. Exh. 11, p. 9-10.

Mr. Gingras generally argues that the Rules of Professional Conduct must yield in all circumstances to the First Amendments’ free speech rights. That is not an accurate summary of the current state of the law.

“[T]he First Amendment, like every other Amendment, is not absolute.” [*State v. Brown*, 207 Ariz. 231, 234, 85 P.3d 109, 112 \(App. 2004\)](#). See also [*In re Sawyer*, 360 U.S. 622, 79 S.Ct. 1376, 3 L.Ed.2d 1473 \(1959\)](#) (lawyers in pending cases are subject to ethical restrictions on speech to which an ordinary citizen would not be).

Lawyers’ disparaging comments about judges, particularly when they are involved in proceedings before the judge, may result in the public losing confidence in the impartiality of the courts. See [*Matter of Terry*, 271 Ind. 499, 502-03, 394 N.E.2d 94, 96 \(1979\)](#) (“Unwarranted public suggestion by an attorney that

a judicial officer is motivated by criminal purposes and considerations does nothing but weaken and erode the public's confidence in an impartial adjudicatory process.”); [*Standing Comm. on Discipline v. Yagman*, 55 F.3d 1430, 1437-38 \(9th Cir. 1995\)](#) (“[F]alse statements impugning the integrity of a judge erode public confidence without serving to publicize problems that justifiably deserve attention”); [*Notopoulos v. Statewide Grievance Comm’n.*, 277 Conn. 218, 236, 890 A.2d 509, 521 \(2006\)](#) (“[F]alse statements or statements made in reckless disregard of the truth that disparage a judge erode the public confidence in the judiciary and thereby undermine the administration of justice.”); [*Atty. Grievance Comm’n. v. McDowell*, 439 Md. 26, 39, 93 A.3d 711, ____ \(2014\)](#) (“Generally, a lawyer violates [Ethical Rule] 8.4(d) where the lawyer’s conduct negatively impacts the public’s perception of the legal profession.”).

The U.S. Supreme Court has held that a state may adopt lawyer conduct regulations that may limit lawyers’ First Amendment rights. In [*Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1031, 111 S. Ct. 2720, 2722, 115 L. Ed. 2d 888, ____ \(1991\)](#), the Court stated:

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.”

In *Gentile*, the U.S. Supreme Court found Nevada’s trial publicity ethical rule void for vagueness, as interpreted by the Nevada Supreme Court. In Mr. Gingras’ case, the State Bar did not allege that Mr. Gingras violated [ER 3.6](#), Arizona’s trial publicity ethical rule. *Gentile* nevertheless reflects that lawyers’ First Amendment rights may be limited while engaged in the practice of law.

The Arizona Court of Appeals has addressed the limitations on lawyers’ free speech rights, stating, “[R]esort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution.” [State v. Brown](#), 207 Ariz. 231, 234, ¶ 8 (App. 2004) (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, 571-72, 62 S.Ct. 766, 769, 86 L.Ed. 1031, 1035 (1942) (in the context of a criminal proceeding, the Court stated, “There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem.”); [State v. Starsky](#), 106 Ariz. 329, 332, 475 P.2d 943, 946 (1970) (in a criminal case, the Arizona Supreme Court found that Arizona’s disorderly conduct statute was not unconstitutionally void for vagueness and did not unconstitutionally infringe on First Amendment rights).

This Court has also addressed limitations on free speech in the context of the practice of law. In [In re Riley](#), 142 Ariz. 604, 613, 691 P.2d 695, 704 (1984), this

Court stated:

Lawyers [who are candidates for judicial office] may make fair comment on the [sitting] judge's fitness so long as the comment does not call into question decisions of the court or question the integrity of the judicial system. For example, a lawyer may criticize a judge for unnecessary delay in reaching a decision, but may not question the decision itself except on appeal. This is not to say, however, that a lawyer may not publicly disagree with a judge's decision. Proper avenues for questioning a decision include the appellate route and disciplinary proceedings where appropriate. What we condemn is conduct which denigrates the judicial system as a whole and undermines the public's confidence in it. The dissent in this case notwithstanding, we believe that our opinion here today in no way diminishes the First Amendment freedoms enjoyed by lawyers.

Mr. Gingras' comments about Judge Mata outside the courtroom are properly subject to Supreme Court Rule 41 and the Rules of Professional Conduct because they were made while he was counsel of record in the case, which was still pending. In one instance, one of Mr. Gingras' disparaging comments was included in a document he filed with the court on his client's behalf. Pet. Exh. 1, p. 21-22.

Mr. Gingras' disrespectful and disparaging comments about Judge Mata were unnecessary. He could simply have commented on the proceeding without editorializing about Judge Mata or asserting as fact matters for which he had no or limited information. The PDJ noted in her April 14, 2026 order that it was not necessary for Mr. Gingras to disparage Judge Mata to competently and diligently represent his client.

Mr. Gingras claims he did not violate the ethical rules because he was

diligently representing his client. That belief, however, is without merit. This Court has stated:

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.

[*In re Bemis*, 189 Ariz. 119, 122, 938 P.2d 1120, 1123 \(1997\)](#). This Court noted that it was “most concerned with [Bemis]’s refusal to accept that his conduct cannot be justified by any perceived unfairness in the judges’ rulings.” *Id.*

This Court has addressed that issue in other cases. In [*In re Fee*, 182 Ariz. 597, 601, 898 P.2d 975, 979 \(1995\)](#), this Court stated: “‘Zealous advocacy’ has limits. It clearly does not justify ethical breaches.” The U.S. Supreme Court has also addressed this issue, stating that the Model Rules of Professional Conduct “confirm that the legal profession has accepted that 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.” [*Nix v. Whiteside*, 475 U.S. 157, 168, 106 S. Ct 988, 995, 89 L.Ed.2d 123, ____ \(1986\)](#).

The State Bar is not required to prove that Mr. Gingras *knew* that his comments about Judge Mata were false; rather, the Bar need only prove that he acted with *reckless disregard* for the truth or falsity of his statements. [ER 8.2\(a\)](#). The inquiry to be made is whether Mr. Gingras’ factual basis for making the comments was objectively reasonable. [*In re Martinez*, 248 Ariz. 458, 465, ¶ 22](#)

[\(2020\)](#) (an objective standard is used to determine if demeaning language constitutes unprofessional conduct).

Mr. Gingras claims the PDJ's granting, in part, of the Bar's *Motion for Partial Judgment on the Pleadings* was inappropriate because he denied (in his answer) that he made any statement that was false or made any statement with reckless disregard for the truth. To sustain an allegation that Mr. Gingras violated ER 8.2(a), the State Bar must prove that Mr. Gingras knowingly made false statements or made statements with reckless disregard for the truth, [ER 4.4\(a\)](#) and [ER 8.4\(d\)](#), and [Rules 41\(b\)\(3\) and \(7\), Ariz. R. Sup. Ct.](#), do *not* require proof that Mr. Gingras made false statements or made statements with reckless disregard for the truth. Therefore, the PDJ's findings that he violated [ER 4.4\(a\)](#), [ER 8.4\(d\)](#) and [Rules 41\(b\)\(3\) and \(7\), Ariz. R. Sup. Ct.](#), may nevertheless be affirmed.

The cases cited by Mr. Gingras in support of his argument that the U.S. Supreme Court has repeatedly rejected limitations on a lawyer's First Amendment right pertained to (a) a Bar applicant's refusal to answer a question whether she had ever been a member of the Communist Party or any organization "that advocates overthrow of the United States Government by force or violence" ([Baird v. State Bar](#), 401 U.S. 1, 91 S.Ct. 702, 27 L.Ed.2d 639 (1971)); (b) commercial speech ([Bates v. State Bar of Arizona](#), 433 U.S. 350, 97 S.Ct. 2691 (1977)); and (c) a lawyer's right to defend his/her client during the pendency of litigation when

comments have been made by an opposing party ([*Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1031, 111 S. Ct. 2720, 2722, 115 L. Ed. 2d 888, ____ \(1991\)](#)).

In [*Matter of Olin*, 2024 WL 6881775, p. 172 \(Rev. Dept., State Bar Court of Calif. 2024\)](#), cited by Mr. Gingras, the Bar Court found that attorney Olin engaged in misconduct by making statements with “reckless disregard for the truth while disrespecting judges by making derogatory and false statements which were not protected speech.” The Bar Court stated, “Although attorneys are ‘entitled to the protection of the First Amendment, even as participants in the administration of justice,’ disparaging statements amounting to an attack on the honesty, motivation, integrity, or competence of a judge may subject an attorney to discipline.” [*Id.* at 173 \(citation omitted\)](#).

The Bar Court in *Olin* stated that other courts had “noted that reasonable speech restrictions may be imposed—under certain circumstances—upon attorneys given their special status as officers of the court.” [*Olin* at 8 \(citation omitted\)](#). That court also stated, “[S]tatements characterized as ‘rhetorical hyperbole’ and statements of opinion that are incapable of being proven as true or false are not sanctionable unless such statements could reasonably be understood as declaring or implying actual facts which themselves are false.” [*Id.* at 9 \(citation omitted\)](#). Although the Bar Court stated that “[t]ruth is an absolute defense to any statement

made by an attorney that impugns the honesty or integrity of a judge,” [*Id.* \(citation omitted\)](#), at least some of Mr. Gingras’ comments were *not* truthful.

Also warranting a finding that Mr. Gingras engaged in unethical conduct is the demeaning and disparaging manner in which he asserted that Judge Mata acted inappropriately. For example, Mr. Gingras included the following on a social media post:

Annoyingly, but not surprisingly, [Judge] Mata screwed up the form of final judgment - it doesn’t contain stuff required by the rules (shocker). We could ask her to fix this, but that would be a waste of time.

Pet. Exh. 1, p. 44.

The last sentence of that post implies, without any evidence, that Judge Mata would refuse to correct an incorrect rule citation if it was brought to her attention. That implication is disparaging insofar as it presupposes that she would violate the Code of Judicial Conduct by refusing to correct an incorrect citation in a judgment, which had been brought to her attention.

Mr. Gingras also alleged that Judge Mata committed a crime. Mr. Gingras failed to thoroughly research whether an Arizona Superior Court judge may modify the terms of a domestic violence restraining order issued in California.

He further posted on the internet that “Google is not a valid legal source of evidence. . . .unless your case is assigned to Judge Mata.” That statement implied

actual facts that were without a factual basis or amounted to an opinion that could be proven false.

Finally, Mr. Gingras stated the following during a podcast: “If Judge Mata was a person who cared about the rules, . . . she would have sanctioned [opposing counsel] for making a false statement about the law.” That statement either implied that Judge Mata did not care about court rules, or expressed an opinion that could be proven false.

Mr. Gingras’ comments stated and implied actual—but false—facts about Judge Mata. Just as in [Olin](#), Mr. Gingras’ statements were nothing more than mere conjecture. In [Olin](#), the Bar Court found that attorney Olin violated his duty to “maintain the respect due to the courts of justice and judicial officers,” in violation of § 6068(b). [2024 WL 6881775, p. 8. Arizona Supreme Court Rule 41\(b\)\(3\)](#) is identical to Section 6068 of California’s Business and Professions Code, which was the rule discussed in *Olin*.

III. The Presiding Disciplinary Judge Properly Denied
Mr. Gingras’ Motion to Dismiss based on
Arizona’s Anti-SLAPP Statute

Arizona’s anti-SLAPP⁶ law, [A.R.S. § 12-751](#), allows a person other than a state actor or an intervenor to file a motion to dismiss a legal action if it “was substantially motivated by a desire to deter, retaliate against or prevent the lawful

⁶ “SLAPP” is an acronym for Strategic Lawsuit Against Public Participation.

exercise of a constitutional right.”

Lawyers retain First Amendment rights, but their free speech rights are limited while engaged in the practice of law (*i.e.*, lawyers engaged in the practice of law do not always enjoy the same rights that nonlawyers enjoy). 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), SB Exh. 4; [*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), SB Exh. 2; [*In re Martinez*, 248 Ariz. 458, 465, ¶ 22 \(2020\)](#) (an objective standard is used to determine whether demeaning language constitutes unprofessional conduct); *In re Gagic*, SB-22-0085-AP (PDJ 2022-9050) (2023) (dec. order) (misconduct found based in part on unsubstantiated contentions about judges), SB Exh. 3.

Assuming that the anti-SLAPP statute applies in lawyer discipline cases, Mr. Gingras nevertheless may not rely on it for dismissal of the State Bar’s complaint because lawyers do not have a constitutional right to disparage judges in pending cases in which they are involved (the statute requires the “*lawful* exercise of the right of petition, the right of speech, . . .”; emphasis added). See discussion above.

Furthermore, Mr. Gingras has not established *prima facie* proof that the State Bar’s complaint was “substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right.” [A.R.S. § 12-751\(B\)](#).

This Court must determine whether the anti-SLAPP statute applies to lawyer discipline cases in which the State Bar alleges that a lawyer has made disparaging comments about a judge in a case in which the lawyer is involved. This raises an issue, as noted by Mr. Gingras, whether the state legislature’s adoption of the anti-SLAPP statute invades the province of this Court’s supervision of the practice of law.

Although the two branches of government have (generally) distinct purposes, even if the anti-SLAPP statute were to be found to be exclusively procedural, this 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).

This Court must also determine that the anti-SLAPP statute provides substantive rights to lawyers involved in lawyer discipline proceedings. This 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 \(1986\)](#) (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 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 v. Siebel*, 220 Ariz. 85, 93 ¶ 31, 203 P.3d 483, 491 \(2009\)](#). 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 this Court’s rulemaking authority and violates the separation of powers doctrine if it were to be applied in lawyer discipline cases.

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,⁷ the Tenth Circuit has found that a state's anti-SLAPP statute was procedural and, therefore, conflicted with the Federal Rules of Civil Procedure,⁸ 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.⁹

⁷ See, e.g., [*Adelson v. Harris*, 774 F.3d 803, 809 \(2d Cir. 2014\)](#) (holding that Nevada's anti-SLAPP law provided substantive rights).

⁸ 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").

⁹ 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-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).

There is also a lack of consensus among state courts whether anti-SLAPP laws primarily establish substantive or procedural rights. Kentucky¹⁰ and Maine¹¹ have held that anti-SLAPP statutes provide procedural rights, whereas Connecticut¹² and Oklahoma¹³ 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.¹⁴

Whether this Court determines that Arizona’s anti-SLAPP statute provides substantive or procedural rights, or a combination of substantive and procedural

¹⁰ [*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.”).

¹¹ [*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.”).

¹² [*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”).

¹³ [*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)).

¹⁴ [*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 [*Harkins v. Atlanta Humane Society*, 264 Ga.App. 356, 360\(1\), 590 S.E.2d 737, 740 \(2003\)](#) (emphasis added))).

rights, application of it to lawyer discipline proceedings would be inappropriate because it invades this Court's authority over the practice of law and application of the statute may be prejudicial to this 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).

Even if this Court were to conclude that Arizona's anti-SLAPP statute applies in lawyer discipline cases, the statute would apply only when lawyers can prove they were *lawfully* exercising their Constitutional rights and the State Bar is "substantially motivated by a desire to deter, retaliate against or prevent the *lawful exercise of a constitutional right.*" [A.R.S. § 12-751](#) (emphasis added). As noted above, this Court has held that lawyers have limited free speech rights while engaged in the practice of law. Mr. Gingras' disparaging comments about Judge Mata were made in the context of his representation of a client during the pendency of her case. Mr. Gingras' comments about Judge Mata were *not* made during the *lawful* exercise of his free speech rights. Determining whether a lawyer has lawfully exercised his/her free speech rights is a matter that can—and—should be made by the PDJ, subject to appeal at the conclusion of a hearing on the merits of the State Bar's complaint.

Mr. Gingras asserts that the PDJ "assumed the judiciary possesses inherent authority to discipline attorneys for *constitutionally protected speech.*" The State

Bar does not believe the PDJ made that assumption. In Mr. Gingras' case, his comments were not constitutionally protected speech (as noted above, this Court has imposed discipline on lawyers who have made disparaging comments about judges).

Conclusion

Based on the criteria for accepting and declining appellate special action jurisdiction as set forth in [Rule 12\(b\) and \(c\)](#), this Court should decline special action jurisdiction. The factors that support declining jurisdiction outweigh the factors that support accepting jurisdiction. In this case, special action review is unnecessary because Mr. Gingras has an equally plain, speedy, and adequate remedy by means of appeal.

If this Court accepts appellate special action jurisdiction, it should find that lawyers' First Amendment rights are restricted while they are engaged in the practice of law in Arizona and that the PDJ correctly found that Mr. Gingras violated [Rules 41\(b\)\(3\) and \(7\), Ariz. R. Sup. Ct.](#), and Rule 42, Ariz. R. Sup. Ct., [ER 4.4\(a\)](#), [ER 8.2\(a\)](#) and [ER 8.4\(d\)](#) by making disparaging remarks about Judge Mata during his representation of a client.

"Membership in the bar is a privilege burdened with conditions." [Theard v. United States](#), 354 U.S. 278, 281, 77 S.Ct. 1274, 1276, 1 L.Ed.2d 1342, _____ (1957) (quoting Cardozo, J., in [In re Rouss](#), 221 N.Y. 81, 84, 116 N.E. 782, 783

(1917)). One of the conditions imposed on lawyers is a limitation on their First Amendment rights while engaged in the practice of law.

The State Bar has not attempted to regulate the content of Mr. Gingras' speech based on the Rules of the Supreme Court. The Bar is simply attempting to enforce the lawyer conduct rules. This Court's ethical rules prohibit making false statements or statements made with reckless disregard as to their truthfulness or falsity, or otherwise acting unprofessionally.

Arizona has a compelling interest in how lawyers engage in the practice of law, and may adopt rules to protect valid state interests. [*Goldfarb v. Virginia State Bar*, 421 U.S. 773, 792, 95 S.Ct. 2004, 2016, 44 L.Ed.2d 572, ____ \(1975\)](#). "The interest of the States in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been 'officers of the courts.'" [*Id.*](#) Arizona has a valid state interest in ensuring that its residents have faith that the judiciary is objective, neutral and fair.

Mr. Gingras argues that he had a First Amendment right to make disparaging comments about Judge Mata, and that the truthfulness of his comments is an absolute defense to the imposition of discipline. He has overlooked case law from Arizona and throughout the United States that stand for the proposition that state supreme courts may limit a lawyer's false statements and statements made with

reckless disregard for their truthfulness or falsity, or otherwise acting unprofessionally.

Mr. Gingras' disparaging comments about Judge Mata were not required to diligently represent his client. He could have simply noted any provable errors, without including any disparaging commentary. In addition, he could have utilized other means of redress: filing a motion to reconsider, a special action, or an appeal. Finding that lawyers have limited First Amendment rights while engaged in the practice of law will not prevent lawyers from addressing a judge's alleged misconduct.

The State Bar agrees with Mr. Gingras that "any disciplinary rule that seeks to punish *constitutionally-protected* speech is simply not a valid or enforceable rule." (Emphasis added). He fails to note, however, that lawyers' First Amendment rights may be Constitutionally limited when their comments are false or made with reckless disregard for the truthfulness or falsity, or otherwise intentionally disparaging.

Finally, if this Court remands this matter to the PDJ for further proceedings, there is no evidence that the PDJ would be biased against Mr. Gingras, so referral to another judge is unwarranted. Furthermore, nothing in this Court's lawyer discipline procedural rules requires a matter to be assigned to someone other than the duly appointed PDJ upon remand.

DATED this 6th day of August, 2026.

STATE BAR OF ARIZONA

/s/ James D. Lee

James D. Lee

Craig Henley

Senior Bar Counsel