OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
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C.LOPEZ
DISCIPLINARY CLERK

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DAVID S. GINGRAS** Bar No. 021097 Respondent.	**No. PDJ 2026-9010** **REPLY IN SUPPORT OF RESPONDENT'S [SECOND] MOTION TO OBTAIN DISCOVERY BEYOND TIER LIMITS**

The issue here is narrow – entirely separate and apart from the question of which discovery tier should apply, Respondent asks the PDJ to require the State Bar to answer some additional interrogatories explaining precisely *what* the Bar claims Respondent did wrong. However, as the Bar correctly notes, Respondent's motion cited seven (7) specific interrogatories, but one of those interrogatories (No. 5) was mooted by the Bar's later withdrawal of certain claims (which occurred *after* the interrogatory was propounded). As such, the dispute here only involves six remaining questions (with some subparts).

To begin, this request is specifically permitted by Civil Procedure Rule 26.2(g). That rule allows any party to request additional discovery regardless of which discovery tier is applied.

So, should the PDJ approve this request? Not surprisingly, the Bar argues the request should be denied, in its entirety, arguing, *inter alia*, "The State Bar has disclosed all witnesses and evidence it may present in support of its claims and will continue to supplement as appropriate." Resp. at 2.

Of course, disclosing evidence and witnesses is helpful, but that does not address Respondent's need to understand specifically what the Bar claims he did wrong. Answering those basic types of questions is essential both to allow Respondent to prepare his defense, but also for a separate beneficial purpose – to help the parties see if they can agree as to any facts/issues, and possibly help narrow the scope of this case.

There is no good reason to permit trial by ambush. Nor is there any good reason to allow the Bar to conceal its claims until the hearing in this case begins. As such, Respondent's request should be granted.

I. Good Cause Exists For Minimal Additional Discovery

Rule 26.2(g)(1)(A) allows any party to obtain discovery beyond an existing tier's limits upon a showing of necessity and proportionality. Here, that showing has been made, and the State Bar does not argue otherwise.

Indeed, over the last several months, despite the Bar's general refusal to answer *any* discovery beyond the tier 1 limits, Respondent has worked diligently to try and understand the Bar's allegations and positions, for one main reason—to see if the case can be narrowed further. As recent events show, at least some of those efforts have borne fruit, as demonstrated by the Bar's recent withdrawal of some claims. But Respondent believes with more discovery, the case can be narrowed even further.

For example, Paragraphs 151–160 of the Bar's Amended Complaint discuss a "Notice of Candor" filed by Ms. Owens' prior attorney, Cory Keith. Referring to that issue, the Complaint claims: "Attorney Keith included evidence in that Notice of Candor establishing that Owens had testified falsely before Maricopa County Superior Court Commissioner Cynthia Gialketsis several months earlier in *Echard v. Owens*, No. CV2023-053952, an injunction against harassment proceeding." After noting that fact, the Complaint then alleges in Paragraph 157: "Respondent **failed to take steps** to address Owens' false statement to Judge Gialketsis during the November 2, 2023 hearing on the petition for injunction against harassment."

This allegation, coupled with the summary of violations set forth in ¶ 177 (listing the rules allegedly violated), made it appear the Bar believed Respondent had a duty under ER 3.3(a) to correct Ms. Owens' testimony given at the November 2, 2023 hearing before Commissioner Gialketsis. That allegation was alarming for multiple reasons, including:

- Respondent **did not represent Ms. Owens** in 2023, either with respect to the harassment injunction case heard by Commissioner Gialketsis or any other matters.

- Respondent **was not present** at the 2023 hearing held before Commissioner Gialketsis; Ms. Owens was represented by other counsel, not Respondent.

- Mr. Echard **fully prevailed** at the conclusion of the November 2023 IAH hearing, and Ms. Owens did not appeal that decision.

- Pursuant to comment 13 to ER 3.3, the **duty to correct false evidence terminates** when a case is concluded and the time to appeal expires.

- While any duty imposed by ER 3.3 expired months before Respondent appeared in the case, **Ms. Owens corrected her own inaccurate testimony** at her deposition in *Owens v. Echard* which took place on March 1, 2024 (three weeks before Respondent was retained).

Based on these facts, Respondent believed the State Bar appeared to have violated Rule 11 by making false statements of both fact and law in Paragraphs 151–160. That belief was based on the fact those paragraphs appeared to claim (falsely): 1.) that Respondent owed a duty to correct under ER 3.3 relating to Ms. Owens' testimony at the 2023 hearing, and 2.) that Respondent "violated" that duty by failing to correct Ms. Owens' testimony (even though she had already done so before Respondent was retained).

After meeting and conferring about these issues, on October 6, 2026, Bar counsel Craig Henley sent an email in which he conceded: "the State Bar does not intend to ask the hearing panel to find that the allegation in paragraph 157 of the Amended Complaint independently establishes a violation of Rule 42, Ariz. R. Sup. Ct., ER 3.3." In other words, Mr. Henley seemed to admit that given the undisputed facts, Respondent did not owe any duty to correct Ms. Owens' testimony at the 2023 harassment injunction hearing, even though the Complaint clearly contains that false implication.

What this exchange shows is this – the parties benefit from clarity, and clarity requires communication. The Complaint is so long and so complicated that Respondent cannot reasonably understand the Bar's specific positions without some additional clarification. The point is *not* to burden the Bar with unnecessary questions. The point is that due the factual complexity of this case, additional clarification is required so Respondent can understand what issues are disputed and what issues are not.

The six additional interrogatories are narrowly focused on that specific goal. For instance, Respondent's interrogatories ask the Bar for clarifying information about the precise nature and scope of the alleged misconduct in this case in ways that should be easy to answer.

Specifically, a large portion of the Bar's Complaint is focused on a generalized allegation that Respondent "failed to diligently investigate" Ms. Owens' claims. To help understand the scope of that allegation, one interrogatory (No. 2) asks the Bar to: "State each specific investigative act the State Bar contends Respondent reasonably should have undertaken concerning Laura Owens or the factual assertions at issue in *Owens v. Echard* but which Respondent failed to undertake."

That question is neither unfair nor unreasonable. The Bar claims Respondent failed to diligently investigate. This question simply asks the Bar

to give more details about the scope of that claim by listing each specific thing or act that Respondent failed to do which the Bar claims he should have done. That should be an easy question to answer.

If the Bar cannot answer that question, then it cannot meet its burden of proving Respondent failed to act diligently. Furthermore, given the seriousness of this case, it is patently unfair for the Bar to leave Respondent guessing as to the specific acts the Bar intends to cite as proof of his lack of diligence. This is why the PDJ should require the Bar to respond to these simple and fair questions.

II. Arizona Expressly Permits Contention Interrogatories

Citing cases from New York and Kansas, the Bar also objects to Respondent's use of "contention interrogatories"; i.e., questions that ask the Bar to explain its position regarding certain specific issues. The Bar argues the disputed interrogatories ask it: "to provide a detailed recitation of every conceivable point the State Bar may make at trial. Respondent is not entitled to that." Resp. at 2.

This argument is not well-taken for two reasons. First, Arizona's rules expressly permit contention interrogatories; "An interrogatory may ask for a party's contention about facts or the application of law to facts …." Ariz. R. Civ. P. 33(a)(3). The Bar's own cases agree; "contention interrogatories are a

perfectly acceptable form of discovery ….” *Ritchie Risk-Linked Strategies Trading (Ireland), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010).

Second, contrary to the Bar’s suggestion, Respondent is not asking the Bar “to provide a detailed recitation of *every conceivable point* the State Bar may make at trial.” **Not at all**. Not even close.

Instead, Respondent has identified a handful of specific contentions made by the Bar which need some clarification. For instance, one remaining claim in this case accuses Respondent of attempting to “intimidate” a witness named Michael Marraccini.

But Mr. Marraccini did not testify at the trial in *Owens v. Echard*, and as explained in Respondent’s Answer, “Respondent understood and believed that Mr. Marraccini was not a trial witness” because his attorney had informed Respondent, in writing, that Mr. Marraccini would not testify at the *Owens* trial (*see* Respondent’s Amended Answer ¶¶ 68, 74–75). Paragraph 74 of Respondent’s Answer further notes Mr. Marraccini gave a video recorded interview in which he stated: “I knew I wasn’t going to be testifying [at the trial]”.[1]

[1] https://youtu.be/nhdseYCE9WU?si=kNHCtDZmhbq4HxPQ&t=5804 (at timestamp 01:36:44)

Given those facts which appear to contradict the Bar's allegations, Respondent has served two simple interrogatories (Nos. 3 & 4) asking the Bar to clarify a few points regarding Mr. Marraccini. The first asks the Bar to explain if it: "contends Michael Marraccini intended to testify at the June 10, 2024 trial in *Owens v. Echard* and, if so, identify all evidence supporting that contention …." Again, that question is clear, simple, and easy.

Another interrogatory asks the Bar to explain whether it contends Mr. Marraccini lied when he gave a recorded statement in which he asserted: "I knew I wasn't going to be testifying [at the trial]." This is a simple yes-or-no question.

There is nothing difficult or burdensome about these questions. The fact that some questions contain subparts does *not* justify treating each additional subpart as a new question; "interrogatories such as these may be acceptable where the subparts are factually interconnected and dependent upon the question posed by the basic interrogatory …." *Ritchie*, 273 F.R.D. at 369. That is the case here, and even if the subparts are viewed as separate, the information requested is still easily proportional and relevant to the needs of this case.

III. The Bar's Pending MSJ Response Does Not Excuse Discovery

The Bar also argues it should not be required to answer any further discovery because: "the State Bar will soon be filing its response to Respondent's Motion for Summary Judgment, which will provide further details, analysis, and citations to evidence supporting" its claims. While it is true that the Bar will be filing its brief next week, that fact is not relevant to any part of the Rule 26.2(g)(1)(A) analysis.

Also, all litigators understand summary judgment may be denied when even a single material fact is in dispute. In truth, the standard is even worse; "although courts have no discretion to grant summary judgment if the standard is not met, they can deny summary judgment even where there is apparently no genuine dispute over any material fact." *Orme School v. Reeves*, 166 Ariz. 301, 309 n1, 802 P.2d 1000 (Ariz. 1990).

What this means is simple – the Bar's burden for surviving summary judgment is low. If the Bar can show that even a single material fact is disputed, the court may deny the motion. The PDJ could, in fact, deny the motion even if no facts were disputed.

Given that extremely low standard, the Bar's MSJ response may be helpful, but it cannot stand as a substitute for interrogatories that ask the Bar to "close the loop" on the scope of its own claims. Respondent is entitled to

know what he is accused of, with sufficient clarity to prepare a defense. The sweeping allegations in the Complaint only provide a starting point for that process; the Complaint is the beginning, not the end of the inquiry.

For all those reasons, the PDJ should grant Respondent's request for additional discovery, as specifically permitted by Rule 26.2(g)(1)(A).

Respectfully submitted October 9, 2026.



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Respondent

CERTIFICATE OF SERVICE

Original filed and COPY of the foregoing emailed
October 6, 2026 to:
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