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May 7, 2020

VIA EMAIL: lawyerinfo@staff.azbar.org
& U.S. Mail

State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, AZ 85016-6266

Re: Mandatory Report of Attorney Misconduct

To Whom It May Concern:

I am an attorney in Phoenix, Arizona and I am a member of the State Bar of Arizona. I am submitting this report to you pursuant to the requirements of Rule ER 8.3. As explained below, I have become aware of information about another attorney which raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. I therefore feel I have an obligation to report this conduct to the bar.

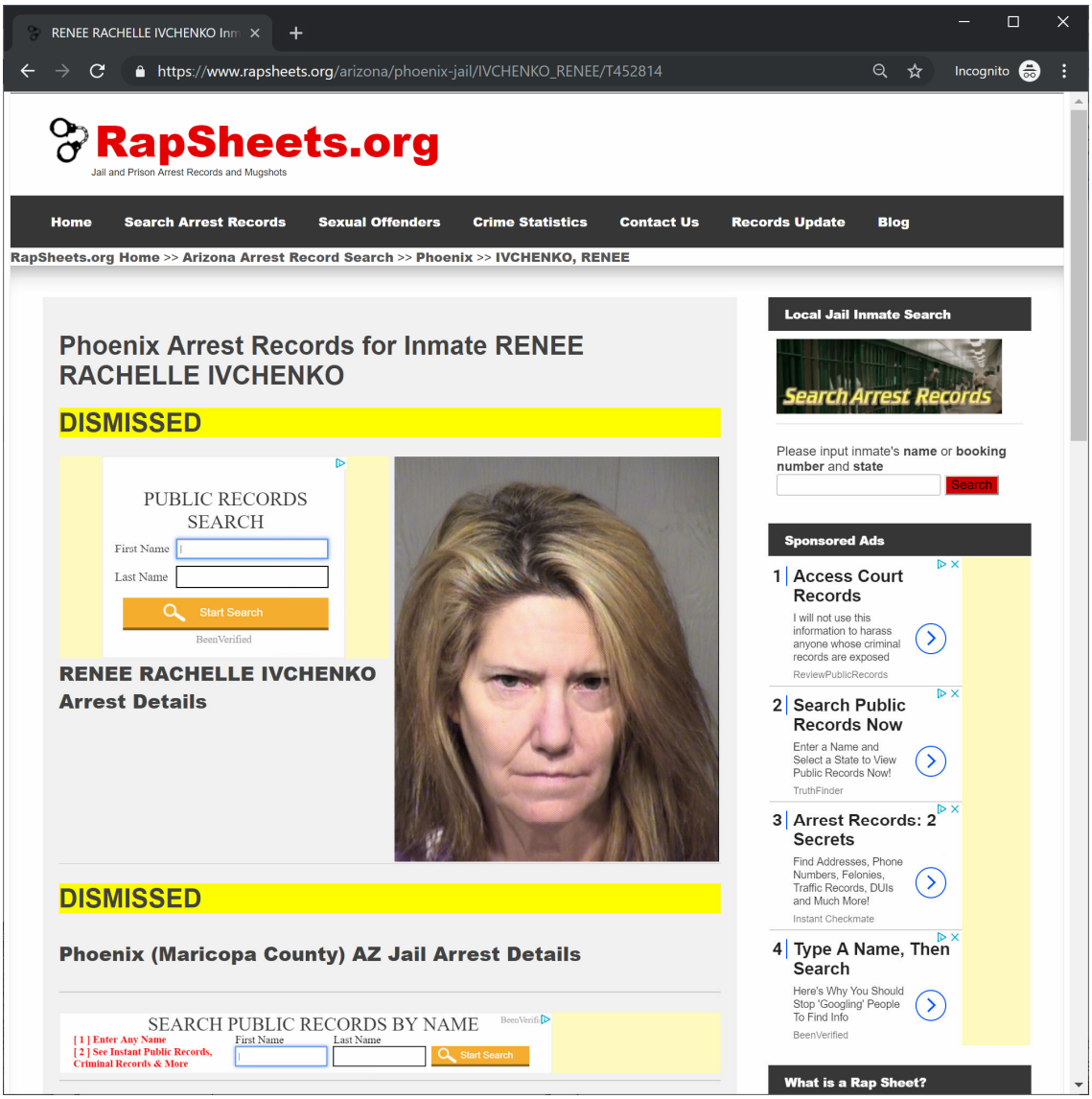
The attorney in question is Andrew Ivchenko, AZ Bar #021145.

As explained further below, I am aware of information which appears to show that Mr. Ivchenko has committed several serious federal crimes including perjury and making knowingly false statements to the United States Copyright Office in violation of 17 U.S.C. § 506(e). The context of this conduct is both sad and simple—in April 2018, Mr. Ivchenko's wife, Renee Rachelle Ivchenko, was arrested for drunkenly assaulting a police officer in Scottsdale.

At the time of her arrest, Mrs. Ivchenko was transported to the Maricopa County Sheriff's Office where she was booked. In keeping with its normal practice, the MCSO took a booking photo or "mugshot" of Mrs. Ivchenko, which it subsequently published on its website at https://www.mcso.org/Mugshot/.

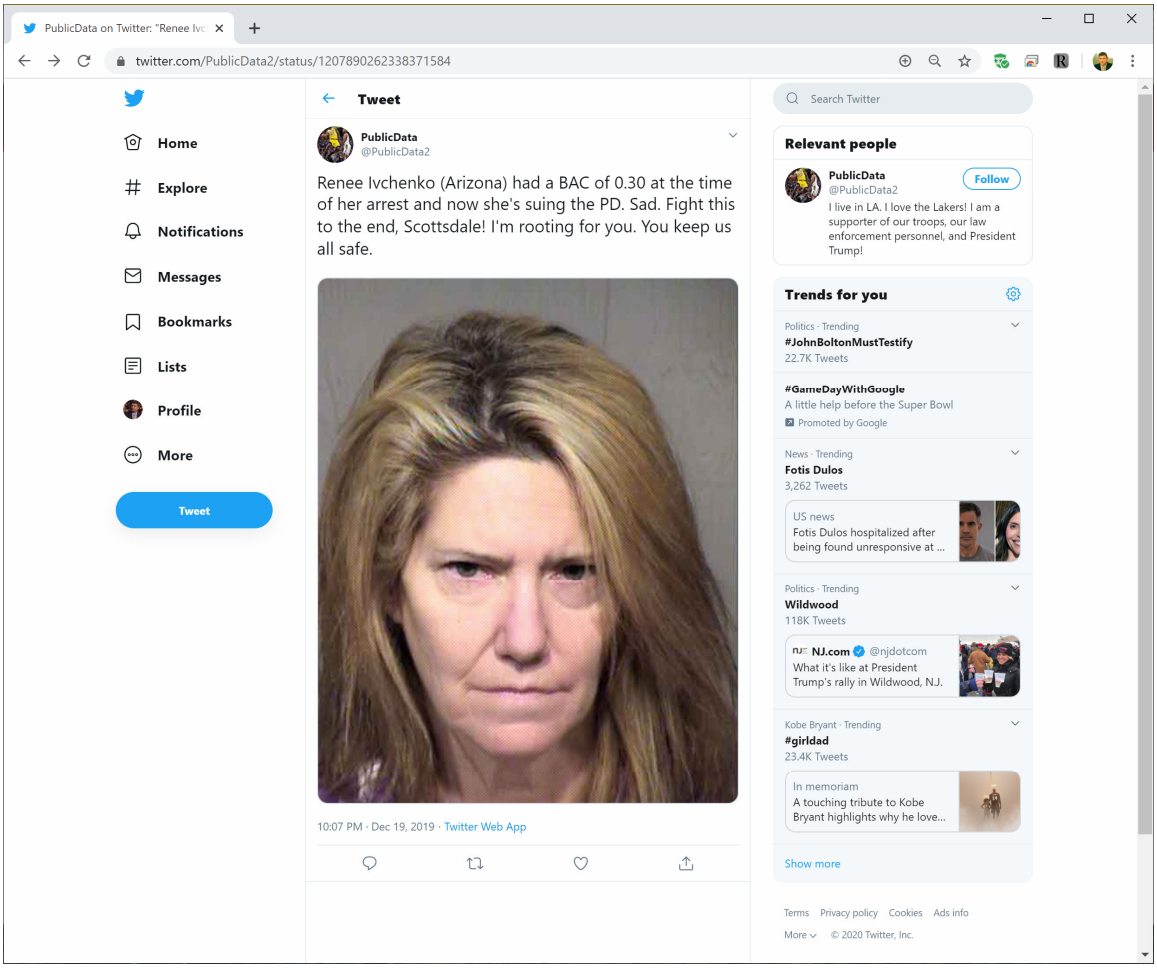
I represent a client named Travis Grant who owns and operates several websites which index and display criminal records. At the present time, Mr. Grant's websites contain more than 20 million arrest records and mugshots.

Shortly after Mrs. Ivchenko's arrest, her mugshot and information about her criminal charges appeared on one of Mr. Grant's websites, RapSheets.org. A partial screenshot of the page in question is shown below. As you can see, this page includes Mrs. Ivchenko's mugshot. Lower down on the page was information about the date of her arrest and the crimes she was charged with.



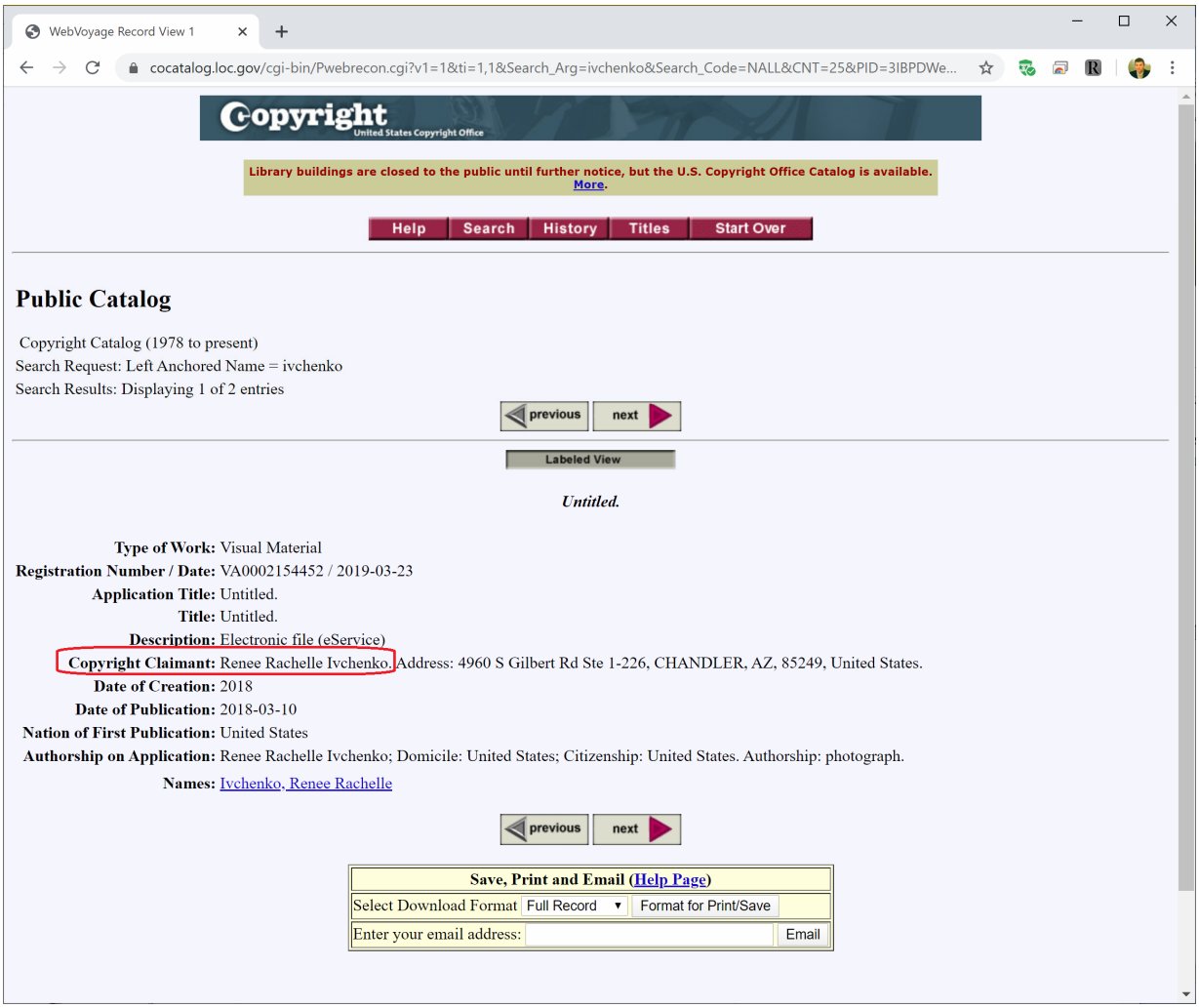
In addition to appearing on my client's website, Mrs. Ivchenko's mugshot was also republished on several other websites. It was also republished at least twice on Twitter by one or more unknown individuals. My client had nothing to do with the photo being posted on Twitter.

One example of the image appearing on Twitter is shown below. As you may be able to see from the screenshot, the image originally appeared at this address: https://twitter.com/publicdata2/status/1207890262338371584 which is a Twitter account with a "handle" or screen name of @PublicData2 (the address of the page is important, for reasons I will explain in a moment). Apparently whoever runs this account chose to publish Mrs. Ivchenko's photo after learning that she was suing the City of Scottsdale for false arrest (even though she admitted guilt as part of a felony diversion agreement).



At some point in time, Mr. Ivchenko became aware that his wife's mugshot was posted online. Since learning about this, Mr. Ivchenko has gone to extreme (and illegal) lengths in an attempt to hide the mugshot from public view. As part of that process, it appears that Mr. Ivchenko submitted an application to the United States Copyright Office which claimed—falsely—that Mrs. Ivchenko was the "author" and owner of the copyright in her mugshot.

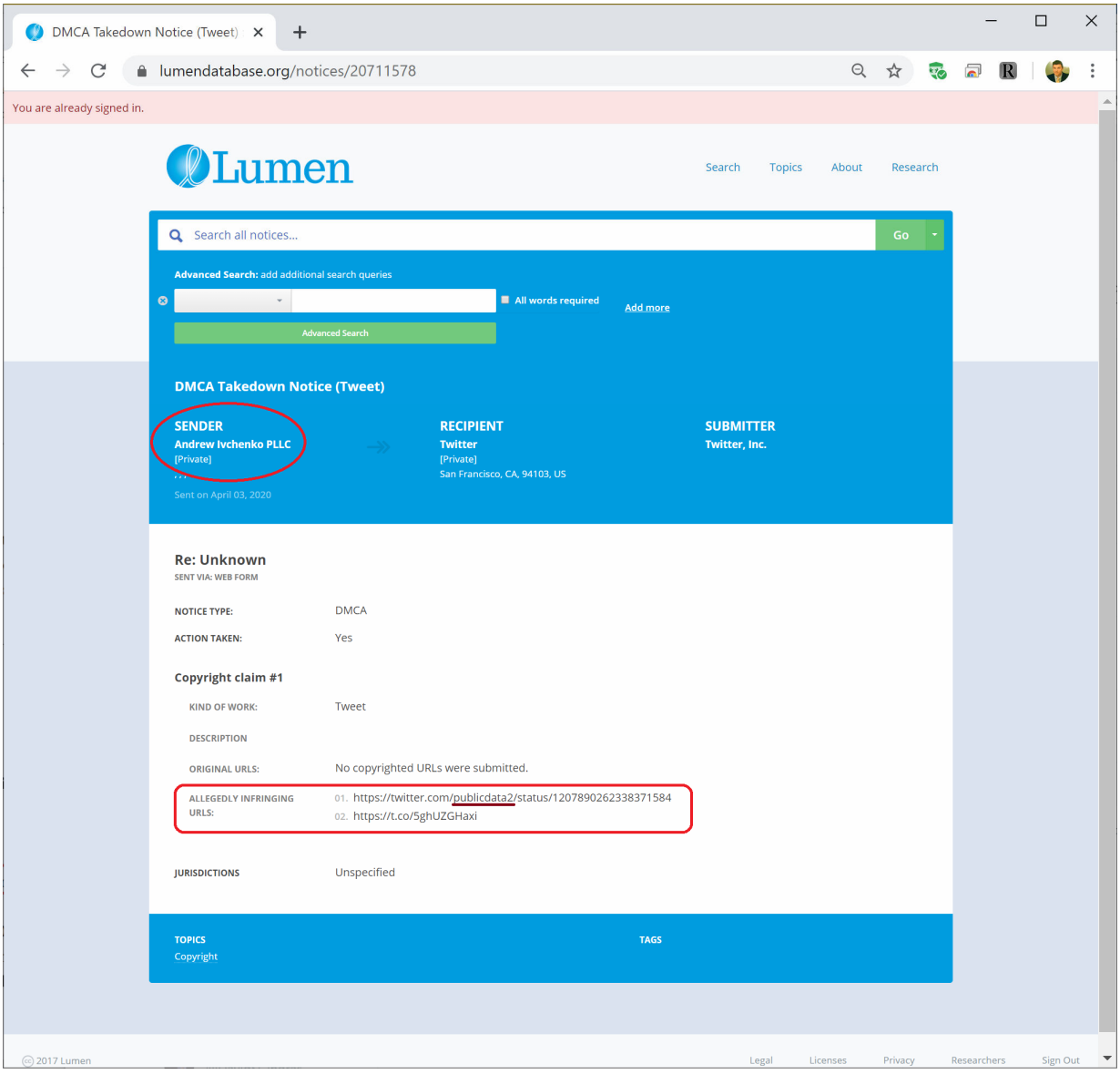
Below is a screenshot obtained from the U.S. Copyright Office website which shows that on March 23, 2019 (almost a year after her arrest), Mrs. Ivchenko (presumably with the assistance of Mr. Ivchenko) submitted a registration application for an "untitled" work. Although the U.S. Copyright Office website does not display the actual "work" which has been registered, my belief is that the "work" that was submitted in connection with this registration was Mrs. Ivchenko's mugshot. If that assumption is correct, then Mr. and/or Mrs. Ivchenko committed a federal crime by making a knowingly false statement in a copyright application. *See* 17 U.S.C. 506(e).



After this copyright registration was issued, Mr. Ivchenko used it to send legal "takedown" demands to websites including Twitter in which he claimed—falsely—that the publication of Mrs. Ivchenko's mugshot constituted copyright infringement. These types of copyright-based takedown demands (also known as a "DMCA Notice" in reference to the Digital Millennium Copyright Act, 17 U.S.C § 512), are cataloged by Harvard University which publishes them in a searchable database located at www.lumendatabase.org.

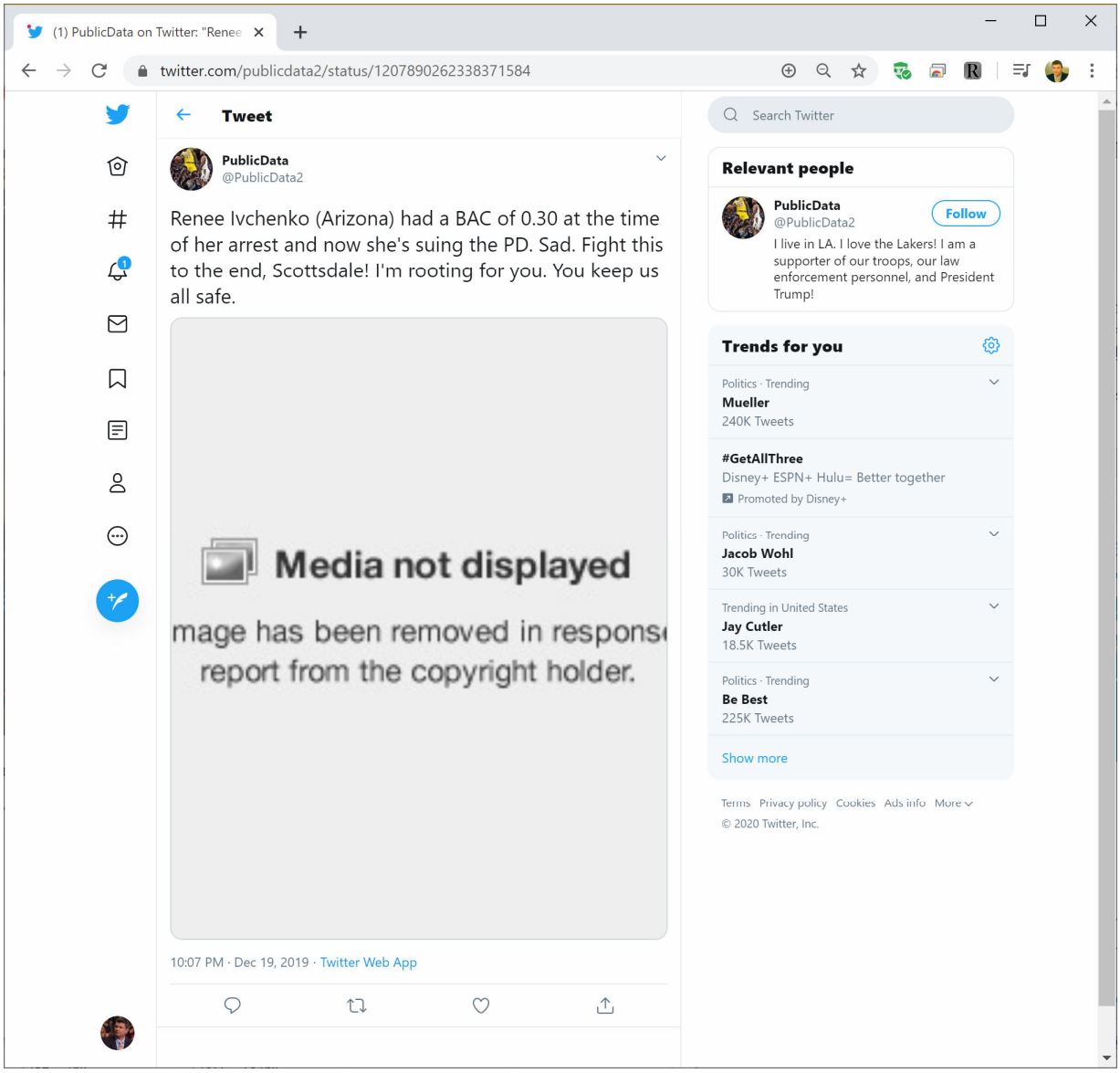
Below is a screenshot reflecting the most recent DMCA notice sent by Mr. Ivchenko. As this notice reflects, Mr. Ivchenko demanded that Twitter take down the image located at: https://twitter.com/publicdata2/status/1207890262338371584.

This is the same page mentioned above; i.e., the one containing Mrs. Ivchenko's mugshot.



NOTE – by law, any person who sends a DMCA notice must attest that the information in the takedown notice is accurate, under penalty of perjury. *See* 17 U.S.C. § 512(c)(3)(A)(vi). Furthermore, the Copyright Act expressly prohibits making any false statements in a DMCA notice. *See* 17 U.S.C. § 512(f).

Unfortunately, despite its size, Twitter does not have sufficient resources to "fact-check" or challenge every takedown demand it receives. As a result, Twitter complied with Mr. Ivchenko's demand and removed Mrs. Ivchenko's mugshot, even though there was no valid legal or factual basis for its removal.



Putting aside the fact that Twitter should not have complied with this groundless demand, when Mr. Ivchenko submitted this DMCA notice to Twitter on April 3, 2020, he committed perjury by representing that his wife owns the copyright in her mugshot. As a matter of law, copyrights are owned by the "author" of the work which, in the case of a photograph, means the person or entity who created the photo, *e.g.*, MCSO. There is absolutely no valid legal basis upon which Mrs. Ivchenko could claim to own a copyright in her own mugshot.

Despite this, Mr. Ivchenko has sent DMCA takedown notices to Twitter and/or Google on at least three other occasions – July 20, 2019, December 24, 2018, and October 12, 2019. Because Mrs. Ivchenko has no copyright ownership in her mugshot, Mr. Ivchenko committed perjury when sending each of these notices.

To be clear—I have some degree of sympathy for Mr. Ivchenko and his desire to protect his wife from embarrassment. That much is understandable. However, this does not justify Mr. Ivchenko's actions, nor does it entitle him to knowingly make false statements simply to benefit his wife.

As a member of the State Bar of Arizona, Mr. Ivchenko is not entitled to engage in criminal conduct involving such blatant acts of dishonesty. As a lawyer, Mr. Ivchenko is required to not only refrain from engaging in criminal conduct, he is also required to comply with the Rules of Professional Conduct which do not permit lawyers to make false statements simply because it will help a loved one.

Also, entirely separate and apart from the false DMCA notices and fraudulent copyright registration, Mr. Ivchenko has engaged in other misconduct which I believe raises serious questions regarding his fitness to practice law. Specifically, Mr. Ivchenko has filed *numerous* groundless and frivolous lawsuits in an attempt to suppress his wife's mugshot from public view. These lawsuits included claims which Mr. Ivchenko knew were untimely as a matter of law and/or groundless for other reasons.

Specifically, on May 9, 2019, Mr. Ivchenko filed a Complaint in the Maricopa County Superior Court, Case No. CV2019-090493. A copy of the Complaint is attached hereto as Exhibit A.

In this Complaint, Mr. Ivchenko asserted claims against my clients for, among other things, defamation. In short, Mr. Ivchenko claimed that my clients defamed Mrs. Ivchenko by publishing her mugshot, thereby "implying" that she was guilty of committing a crime. I believe it is clear that Mr. Ivchenko violated Rule ER 3.1 in bringing this claim because he knew, or reasonably should have know, that the claim was groundless for multiple reasons.

First, the claim was untimely as a matter of law. This is so because Mrs. Ivchenko was arrested in April 2018, and her mugshot was automatically indexed and republished on my clients' website within days of her arrest. Pursuant to A.R.S. § 12–541, defamation claims are subject to a one-year limitation period which begins to run on the date the allegedly defamatory information is first published, not when the information is first discovered. *See Larue v. Brown*, 235 Ariz. 440, 443 (App. 2014) ("Arizona provides that the statute of limitations for a defamation action begins to run upon publication of the defamatory statement. [citations] A plaintiff has one year after a defamation action accrues to commence and prosecute his claim.") Accordingly, when Mr. Ivchenko filed suit on May 9, 2019, he knew or should have known the defamation claim was untimely as a matter of law.

Separate and apart from that point, Mr. Ivchenko also violated ER 3.1 because defamation claims cannot be based on statements that are true. Here, in order to resolve the felony assault charges against her, Mrs. Ivchenko entered into a felony pretrial diversion agreement, a copy of which is attached hereto as Exhibit B. As this document reflects, Mrs. Ivchenko signed a statement which expressly admitted that she was GUILTY of the offense she was charged with (felony assault on a police officer).

As part of my consent to participate in the Felony Pretrial Intervention Program, I acknowledge that I am guilty of the offenses charged in the complaint. I acknowledge that this admission and the statements in this document may be used against me if I fail to successfully complete the program and my case proceeds to trial. I understand that I have the right to remain silent and I make the following statements voluntarily after consultation with my attorney.

On **April 21, 2018** (Date of Offense) in **Scottsdale, Arizona - Maricopa County** (Location and Jurisdiction)

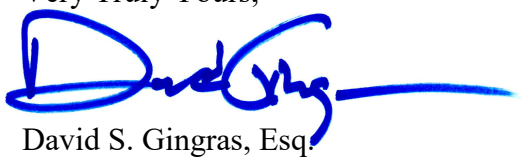
On April 21, 2018, I, Renee Ivchenko, knowingly touched Brandon Treglown in the chest area with the intent to provoke him. Brandon Treglown is a a Scottsdale Police Officer and at the time of this incident he was in full uniform and I knew he was a police officer acting in his official capacity.

Clearly, Mr. Ivchenko (who was present at the time of his wife's arrest) knew that she had committed the crime she was charged with, and he knew or should have known his wife entered into an agreement which required her to admit guilt. Knowing those facts, Mr. Ivchenko had no grounds whatsoever to sue my clients for defamation on the basis that they *falsely* implied Mrs. Ivchenko had committed a crime.

As explained above, I do not believe there is any question that Mr. Ivchenko has engaged in conduct which is criminal, unethical, and which raises serious questions regarding his fitness to practice law. Moreover, Mr. Ivchenko's actions have caused serious harm to my clients by forcing them to needlessly incur thousands of dollars in attorney's fees and costs. For these reasons, I respectfully request that the State Bar investigate this matter fully, and take whatever actions you deem appropriate to protect the public and the courts from further harm.

I am happy to provide any further information you may require. If you have any questions, please feel free to reach me at (480) 264-1400 or via email at: david@gingraslaw.com or via fax at: (480) 248-3196.

Very Truly Yours,



David S. Gingras, Esq.

cc: Client (via email only)