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** **RESPONSE TO STATE BAR'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS**

I. INTRODUCTION

In terms of the underlying facts, this case is *exceptionally* complex. Fortunately, the issues raised by the state bar's motion are relatively simple. The bar claims it is entitled to judgment on the pleadings because no material facts are in dispute and based on those undisputed facts, the bar asserts it is entitled to judgment as a matter of law.

This argument fails for three separate, independent reasons.

First, contrary the bar's argument, multiple material facts are in dispute. That point, standing alone, requires the denial of the bar's motion.

Second, even if all material facts were undisputed (which they are not), the bar's position is directly contrary to controlling law. Accordingly, the bar has *not* shown it is entitled to judgment as a matter of law.

This leads to the third and perhaps most important point – the bar has moved for judgment *offensively*; i.e., it seeks an order resolving several claims in the Complaint. But in this posture (where a *complaining* party seeks judgment on the pleadings *offensively*), the Court cannot limit its review to only the Complaint.

Rather, in addition to reviewing the Complaint, the Court must also consider defenses raised in Respondent's Answer. In doing so, the Court must:

- Assume every fact alleged and position taken in Respondent's Answer is true;
- Apply all reasonable inferences in favor of Respondent; and
- Taking all facts as true, the Court must consider whether as a matter of law, the Answer raises *any potential defense* to the bar's claims.

If the Answer shows any potentially viable defense, this Court's task ends. In that case, only one choice remains: the Court must deny the bar's motion so the record can be fully developed. Only then may the Court review the facts, determine whether they are uncontested, and if they are, the Court may consider whether one party or the other prevails as a matter of law.

That task cannot be done on a bare, undeveloped record based solely on the pleadings. For these reasons, the bar's motion must be denied.

II. BACKGROUND—*OWENS v. ECHARD*

The origin of this dispute is a family court case called *Owens v. Echard* filed by petitioner Laura Owens against respondent Clayton Echard. Most of the extensive background details and procedural history of *Owens v. Echard* are cataloged in the Request for Judicial Notice ("RJN") submitted herewith.

The details of *Owens v. Echard* are exceptionally complicated. The case initially involved a simple paternity case (FC2023-052114) but it metastasized into something far more complicated.

Aside from the narrow issue of Ms. Owens' pregnancy claim (which was simple, and ultimately moot, long before Respondent appeared in the case) the case included what amounted to a civil tort *counterclaim* by the respondent, Clayton Echard. In his counterclaim, Mr. Echard alleged Ms. Owens faked multiple pregnancies with multiple men over a period of nearly 10 years, and that she had engaged in misconduct in a variety of relationships with multiple different men. This involved and/or implicated *extensive* other litigation including:

- *Owens v. Gillespie*, FN2021-004799 (an order of protection matter)
- *Owens v. Gillespie*, CV2021-052893 (a civil assault case with fraud counterclaims which spanned three years)
- *Owens v. Gillespie*, FN2022-052111 (an order of protection renewal)
- *Owens v. Echard*, FC2023-052771 (an order of protection matter)
- *Echard v. Owens*, CV2023-053952 (a harassment injunction matter)
- *Owens v. Marraccini*, San Francisco Superior Court Case No. FDV-18-813693 (a domestic violence restraining order "DVRO" matter)
- *Owens v. Mulvey* (a non-existent California paternity case)

Discussing the facts of each matter and explaining how they related to the paternity case filed by Ms. Owens would take dozens and dozens, if not hundreds of pages. This is why Respondent expressed incredulity at the state bar's suggestion this case could be fully presented in a single day. That assertion was not an accurate reflection of how complicated this case is (as the PDJ is about to discover).

But there is good news. To resolve the current motion, it is *not* necessary for the Court to hear the *entire* story. Not yet. However, to help understand the background, which is necessary to resolve the bar's motion, some basic details of *Owens* are explained in Respondent's declaration submitted herewith.

Against that extremely complicated backdrop, after nearly two years of investigation, the state bar charged Respondent with misconduct related to *Owens*. In the instant motion, the bar raises only two distinct claims:

1.) An allegation Respondent violated a court order which, according to the bar, required information to be filed under seal; and

2.) An allegation Respondent violated multiple ethical rules by making "disparaging" statements about the trial Judge Julie A. Mata.

As explained below, the bar is not entitled to judgement on the pleadings as to either claim. The material facts relating to both claims are heavily disputed, and the bar's position (as to both claims) is directly contrary to law.

In addition, Respondent's Answer (which the bar never discusses in any meaningful way) raises multiple viable defenses. Those defenses preclude the bar's request for judgment as a matter of law, at least at this stage. Those defenses include (but are not limited to) an allegation the bar has misstated the law and omitted facts in a manner which presents a false impression about what occurred.

Respondent also asserts the "disparaging" statements he made about Judge Mata were **entirely true** (not that he merely *believed* them to be true), and thus are protected speech under the First Amendment. Respondent further asserts the bar seeks to enforce rules which are unconstitutional, and that the bar has acted in an arbitrary and unlawful manner which violates Respondent's rights under both the Due Process Clause and the Arizona anti-SLAPP law, A.R.S. § 12–751.

Under the highly deferential standards that apply here, the Court is required to assume Respondent's factual assertions and legal defenses are correct. The Court must also resolve every reasonable inference in Respondent's favor. Applying those well-worn standards, the bar's motion must be denied.

III. DISCUSSION

a. Rule 12(c)—Legal Standard

The Court is familiar with the rules, but a short discussion is nevertheless helpful:

> [When made defensively] a Rule 12(c) motion is subject to a similar standard as a Rule 12(b)(6) motion to dismiss for failure to state a claim. This standard requires that the allegations of the non-moving party be accepted as true and that the allegations of the moving party which have been denied be treated as false. It further requires that the facts be construed in the light most favorable to the nonmoving party. Judgment on the pleadings is properly granted when there is no issue of material fact in dispute, and the moving party is entitled to judgment as a matter of law.

Delta Zee Sols. LLC v. Britannia Tucson LLC, 2026 WL 71411, *3 (D.Ariz. 2026) (cleaned up) (citing extensive authority).[1]

Because the bar is acting as plaintiff, there is a *second* step the Court must consider which the bar's motion completely ignores—whether *Respondent's Answer* raises any potentially viable defense; "A plaintiff is entitled to judgment on

[1] References to unpublished federal decisions are expressly authorized by Ariz. Sup. Ct. R. 111(d) (allowing decisions other than Arizona *state* cases to be cited, as long as permitted by the rules of the other forum). The Federal Rules of Appellate Procedure expressly permits citations to unpublished federal decisions. *See* Fed. R. App. P. 32.1(a). Unpublished state authority is cited for persuasive value per Supreme Court Rule 111(c)(1)(C).

the pleadings **only** where the complaint 'set[s] forth a claim for relief **and** the answer fails to assert a legally sufficient defense[.]'" *Flake v. Silva*, 2025 WL 2452213, *3 (Ariz.App. 2025) (emphasis added) (quoting *Pac. Fire Rating Bureau v. Ins. Co. N. Am.*, 83 Ariz. 369, 376 (1958)). "Or, stated differently, a plaintiff's motion for judgment on the pleadings should be denied where issues of fact are properly raised by the answer." *Bank of Am., N.A. v. Allen*, 2015 WL 6696911, *2 (Ariz. App. 2015) (emphasis added) (quoting *Dons Club v. Anderson,* 83 Ariz. 94, 98 (1957)).

This Court must accept Respondent's assertions and defenses as true, and construe all inferences in a light most favorable to Respondent. Under that simple standard, the bar's motion must be denied.

b. The State Bar Is Not Entitled To Judgment On The First Claim Accusing Respondent of Violating a Court Order

i. The Material Facts Are Disputed

The first issue involves a claim Respondent violated a court order which, according to the bar, required certain information to be filed under seal. The specific language at issue is found in a lengthy minute entry order issued on February 21, 2024 (before Respondent was involved in the case) which stated; "LET THE RECORD FURTHER REFLECT that no party shall disclose outside of themselves any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties." RJN Ex. 60 at 8; Amended Complaint ¶ 41.

On its face, this issue appears simple. Respondent's Answer admits the court issued the minute entry in question and admits the minute entry contains that language. *See* Respondent's Answer ¶ 44. However, that is *not* the end of the story.

Respondent's Answer affirmatively alleges the state bar has misrepresented the scope and meaning of that order by omitting extensive other information that conflicts with the bar's self-serving interpretation of the order. *See*, *e.g.*, Answer at ¶¶ 46–51. Respondent has further raised a defense that the bar's position seeks "to punish Respondent for violating court orders which were unconstitutionally vague and/or which *conflicted with other orders* such that they failed to provide Respondent with notice regarding the scope of prohibited conduct …." Answer at 67, ¶ c (emphasis added).

Understanding those points requires reviewing additional information far beyond the pleadings. The reasons are explained at length in Respondent's declaration submitted herewith and are summarized below.

In short, prior to the February 21, 2024 minute entry which Respondent is accused of violating, Ms. Owens made no fewer than **three separate requests** for confidentiality/protective/sealing orders, **all of which were denied**. The first was a *pro se* motion filed on September 14, 2023, RJN Ex. 17, which the court denied on October 20, 2023. RJN Ex 20. The second was a motion filed on January 17, 2024 by Ms. Owens' prior counsel which specifically asked the court to limit the sharing of information disclosed during discovery. RJN Ex. 39.

Importantly, although Mr. Echard did not oppose Ms. Owens' initial confidentiality motion (which was still denied), his counsel, Mr. Woodnick, angrily objected to the second motion. That objection argued, among other things, it would be unconstitutional for the court to issue an order restricting the parties from sharing information about their claims. RJN Ex. 43.

Mr. Woodnick went further, arguing that because Ms. Owens previously moved for an order sealing the case (which the court denied), it was improper for her to make a second such request; "Apparently, Petitioner feels she is entitled to what is essentially a backdoor Motion to Seal after this Court already **denied** her attempt." RJN Ex. 43 at 1:27–28 (all emphasis in original).

On February 15, 2024 the trial judge issued an order agreeing with Mr. Woodnick's position. As a result, the court denied Ms. Owens' second motion for confidentiality in its entirety. RJN Ex. 59.

This led to a third request from Ms. Owens (via her prior counsel) in the form of a verbal request for reconsideration. On February 21, 2024, that request was denied in the same order the bar now claims Respondent violated; "IT IS FURTHER ORDERED denying counsel for Petitioner's oral motion to reconsider regarding the ruling concerning Petitioner's Motion for Confidentiality." RJN Ex. 60 at 6.

These facts show several things. First, long before Respondent was involved in the case Ms. Owens made three separate requests asking—***indeed begging***—the court to limit any public sharing of information and/or sealing public access to court records. All three of those privacy requests were denied, in their entirety.

Second, Mr. Echard's counsel, Gregg Woodnick, *angrily* challenged the request for privacy, even arguing such a restriction would be illegal and unconstitutional. The court agreed and it denied, in writing and in its entirety, Ms. Owens' request for any sort of protection or privacy. RJN Ex. 59.

After this happened, perhaps to avoid an emergency special action, it appears counsel reached some sort of informal agreement that Mr. Woodnick would not publish medical records produced by Ms. Owens (Mr. Echard never produced any medical records). This appears to be the sole basis for the court's odd comment: "*LET THE RECORD FURTHER REFLECT* that no party shall disclose outside of themselves any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties." RJN Ex. 60. Notably, this line did not include the words "IT IS ORDERED" nor did it mention anything about sealing.

After that comment was included in the court's February 21 minute entry, Mr. Woodnick filed unsealed pleadings containing Ms. Owens' medical information and related documents disclosed between the parties. For instance, on March 11, 2024 (before Respondent appeared in the case), Mr. Woodnick filed a Motion to Compel. RJN Ex. 61. In that unsealed motion, Mr. Woodnick described medical information he received regarding Ms. Owens:

> Since the Status Conference, Respondent has received confirmation from nearly all providers that Petitioner was never a patient of theirs. Notably, the HIPAA releases for "Dr. Makhoul" revealed that Petitioner had never attended an appointment at his office ….

RJN Ex. 61 at 4.

Mr. Woodnick's motion also included copies of medical documents exchanged between the parties, including a letter to one of Ms. Owens' doctors. That letter clearly constituted: "medical or other documentation … disclosed between the parties", but Mr. Woodnick did not file it under seal. RJN Ex. 61, Ex. 1. The unsealed motion also included other private medical information disclosed between the parties including a list of Ms. Owens' doctors. RJN Ex. 61, Ex. 6.

Based on these facts, Respondent's position is simple – the bar has simply misconstrued the language in the February 21st order to make it appear the court issued either a protective order or an order requiring information to be filed under seal. In truth, the court did no such thing. It did NOT issue a protective order, nor a sealing order. In fact, it *denied* all such requests — not once, not twice, but three times in a row.

Mr. Woodnick's post-February 21st conduct confirms this view. It shows he understood (just as Respondent did) there was no requirement for medical information to be filed under seal, contrary to the bar's claim. This also shows even if the state bar's interpretation of the minute entry was correct, it has arbitrarily and unlawfully chosen to pursue discipline against Respondent, but not Mr. Woodnick.

In the context of a Rule 12(c) motion, this Court must accept Respondent's allegations as true, and it must construe all inferences in Respondent's favor. Based on that standard, material facts are clearly in dispute concerning the exact scope and meaning of the vague order Respondent allegedly violated. Those factual disputes preclude resolving the bar's motion on the pleadings.

ii. The Bar's Position Is Legally Incorrect

Even if the facts were not disputed, the bar's position (that the court issued a *valid* sealing order which Respondent violated) is legally incorrect for at least two other reasons. First, given the additional facts explained above, it is clear the court denied Ms. Owens' multiple requests for a sealing order, which apparently caused the parties to reach an informal agreement not to share Ms. Owens' medical records (an agreement Mr. Woodnick violated long before Respondent entered the case).

Construing these facts in a light most favorable to Respondent, the bar's argument fails as a matter of law. This is so because the Due Process Clause prohibits enforcement of vague or ambiguous court orders, even by contempt or otherwise. Any order that fails that test is simply not enforceable:

> The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one. Congress responded to that danger by requiring that a … court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid.

Gates v. Shinn, 98 F.3d 463, 468 (9th Cir. 1996) (emphasis added) (quoting *International Longshoremen's Ass'n. v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 76 (1967)).

Because this specificity requirement derives from the federal Due Process Clause, Arizona courts apply exactly the same restriction – if an order is vague, ambiguous, and does not clearly define the exact scope of prohibited conduct, that order violates the Fourteenth Amendment and is not enforceable. *See Whitmer v.*

Hilton Casitas Homeowners Ass'n, 2024 WL 338160, at *3 (Ariz.App. 2024) (explaining, "All injunctions must, inter alia, describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required. The requisite specificity will be found "only if the enjoined party can **ascertain from the four corners of the order precisely what acts are forbidden** or required.") (emphasis added) (quoting *Havens v. James*, 76 F.4th 103, 121 (2d Cir. 2023) (citing Ariz. R. Civ. P. 65(d)(1)).

Here, Respondent asserts even if the single sentence quoted by the bar (which does not contain the words "ORDER" or "SEAL") *appears* clear when read in isolation, when viewed in light of *other* facts (like the fact the court repeatedly denied any/all request for confidentiality made by Ms. Owens, and the fact Mr. Woodnick filed unsealed pleadings containing medical information *before* Respondent appeared in the case) the language used by the court is plainly too ambiguous to satisfy Due Process requirements. The court issued conflicting and confusing orders which, when viewed together, made it impossible for anyone to understand precisely what was required.

In addition, the state bar claims the single sentence in question constituted an *order* requiring him to file under seal any pleading that contained "medical or other documentation (exhibits, medical records, etc.) disclosed between the parties." The bar's position is wrong because it ignores the specific Rule of Family Law Procedure that contains the legal requirements for this exact topic—Rule 17 (entitled "**Sealing, Redacting, and Unsealing Court Records**.")

Rule 17 is clear – a party can ask the court to "seal or allow the filing of a redacted court record". However, before such relief may be ordered, the court is required, among other things, to make specific "**written findings of fact** and conclusions that the specific sealing or redaction is justified." Ariz. R. Fam. L.P. 17(c). Those findings must show: "there exists an overriding interest that overcomes the right of public access to the record." Ariz. R. Fam. L.P. 17(c)(1).

Here, the trial court never made any of the findings required by Family Law Rule 17. Nor could it have done so given the facts.

Owens was an extremely high-profile case. As the case was pending, Mr. Woodnick aggressively published statements attacking Ms. Owens (in press releases and in pleadings which he knew were being widely shared on social media), while simultaneously opposing any effort by Ms. Owens to seek confidentiality/privacy. After the court purportedly ordered him not to do so, Mr. Woodnick filed multiple unsealed motions describing, in detail, information he received from Ms. Owens' medical records. *See* RJN Ex. 61 & 65.

Considering Mr. Woodnick's choice to file unsealed pleadings with Ms. Owens' medical information, Respondent simply followed the same practice by releasing Ms. Owens' own medical records to explain her side of the story. In that situation, any order purporting to prohibit Ms. Owens from using her own medical records to respond to public allegations made by Mr. Woodnick would have been unconstitutional, just as Mr. Woodnick successfully argued in opposing Ms. Owens' request for confidentiality. *See* RJN Ex. 43 at 1:22–23 (arguing, "Petitioner's

requested relief under Rule 53 constitutes an impermissible prior restraint of protected speech."); *see also Yanez v. Sanchez*, 257 Ariz. 302, 306 (Ariz.App. 2024) (invalidating family court order which "prohibited both parents from posting on social media" and explaining: "The order here restricts future speech and is thus a prior restraint. That order is presumptively unconstitutional.")

iii. Respondent's Answer Raises Other Valid Defenses

The above issues aside, the bar's motion also fails because the existence of *any* viable defense will require the Court to Deny the bar's motion. This response will simply address one such defense: A.R.S. § 12–751 (the anti-SLAPP law), which the bar's motion never mentions.

A.R.S. § 12–751 is a newly expanded law (amended in late 2022) which protects the First Amendment by prohibiting any/all state agencies (including the state bar) from unlawfully or unfairly punishing protected speech and petitioning activities. The law does this by providing:

> In any legal action that involves a person's lawful exercise of the right of petition [or] the right of speech … pursuant to the United States Constitution or Arizona Constitution, the person other than a state actor or an intervenor may file a motion to dismiss or quash the action under this section.

The law defines "legal action" to include: "Any written investigative demand … or other compulsory legal process or any regulatory or administrative action by a state actor." A.R.S. § 12–751(J)(1)(a)(iii). This clearly includes the state bar.

When a proceeding is brought seeking to punish a person's exercise of First Amendment rights, the affected person can move to dismiss. If the moving party

shows "the legal action was substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right", the court is required to dismiss the action unless: "the responding party shows that the legal action on which the motion is based is justified by clearly established law **and** that the responding party did not act in order to deter, prevent or retaliate against the moving party's exercise of constitutional rights." A.R.S. § 12–751(B)(1) (emphasis added).

When Respondent moves to dismiss under this section (as he intends to do shortly), to avoid dismissal the bar will need to show, *inter alia*, that its claims are justified by clearly established law AND, furthermore, that it "has a consistent practice of pursuing similar legal actions against similarly situated persons who did not lawfully exercise constitutional rights." A.R.S. § 12–751(B)(1)(b).

Although this issue is not yet ripe for decision, Respondent's Answer clearly invokes the protection of A.R.S. § 12–751, and it alleges the bar is: "selectively seeking discipline against Respondent in a manner which arbitrarily violates the State Bar's own policies [and] [a]rbitrarily ignoring misconduct by others involved in the same matter." Answer at 67. That statement refers to the fact Mr. Woodnick appears to have violated the same court order in the same manner Respondent is accused of, but the bar has *not* pursued discipline against Mr. Woodnick.

Taking those allegations as true (which the Court must), it is clear the anti-SLAPP law would require dismissal of both claims at issue in the pending motion, absent some other explanation which the bar has not yet offered.

c. The State Bar Is Not Entitled To Judgment On Its Second Claim Accusing Respondent of Making "Disparaging" Statements About A Judge

i. Legal Standard

While rushing to impose punishment for what it deems "disparaging" comments Respondent made about Judge Mata, the state bar never explains the controlling legal standards for this claim. It is clear why—because the bar's position is directly contrary to law.

In short, when lawyers are engaged in public speech on public issues (at least outside a courtroom), they have the same First Amendment rights as everyone else. On that much, the United States Supreme Court has spoken loud and clear:

> At the very least, our cases recognize that disciplinary rules governing the legal profession **cannot punish activity protected by the First Amendment,** and that First Amendment protection survives even when the attorney violates a disciplinary rule he swore to obey when admitted to the practice of law.

Gentile v. State Bar of Nevada, 501 U.S. 1030, 1054 (1991) (emphasis added) (citing *Bates v. State Bar of Arizona*, 433 U. S. 350 (1977) (holding ethical rules cannot punish First Amendment protected speech)).

Although the Arizona Supreme Court has not published any decisions directly on this specific issue in the last 25 years, multiple courts around the country have done so. The rules established by those cases are clear – a lawyer who criticizes a judge cannot be punished unless the lawyer's statements were factually false: "we begin with the accepted legal principle that if an attorney's activity or speech is protected by the First Amendment, disciplinary rules governing the legal profession

cannot punish the attorney's conduct." *In re Green*, 11 P.3d 1078, 1083 (Colo. 2000); *Standing Committee v. Yagman*, 55 F.3d 1430, 1438 (9th Cir. 1995) (agreeing, "Attorneys who make statements impugning the integrity of a judge are, however, entitled to other First Amendment protections applicable in the defamation context. To begin with, attorneys may be sanctioned for impugning the integrity of a judge or the court **only if their statements are false**; truth is an absolute defense.") (emphasis added); *In re Olin*, 2024 WL 6881775, *9 (Cal. Bar Ct. 2024) (explaining, "The First Amendment does not protect intentionally false statements and false statements made with reckless disregard for the truth. Truth is an absolute defense to any statement made by an attorney that impugns the honesty or integrity of a judge.") (emphasis added).

In its motion, the state bar never discusses this critical issue of law. Instead, the bar cites authority (some of which is clearly no longer valid) as support for the requested relief. On inspection, none of these cases help the bar.

In re: Matter of James Lawrence Riley, 142 Ariz. 604, 691 P.2d 695 (1984) is a 42-year old case involving a lawyer campaigning to become a judge. During his campaign, the lawyer made statements criticizing his opponent (an incumbent judge). The Supreme Court found those comments violated a special rule (DR 8-103) applicable to judicial candidates. *See Riley*, 691 P.2d at 704. This rule has no application here because Respondent is not a candidate for judicial office.

In a passing comment in *Riley*, the Court noted: "Even if not a candidate for judicial office, a lawyer is held to a narrower standard of free speech than a non-

lawyer when discussing the judiciary." That aspect of *Riley* (for which the Court cited a *Missouri* case from 1957) is clearly no longer valid law, in light of more recent U.S. Supreme Court precedent such as *Gentile v. State Bar of Nevada*.

Indeed, the dissenting chief justice in *Riley* observed as much, "Under the freedom guaranteed by the Constitution, we must begin with the proposition that "[l]ike other citizens, attorneys are entitled to the full protection of the First Amendment, even as participants in the administration of justice.") *Riley*, 142 Ariz. at 608 (Holohan, C.J., *dissenting*) (emphasis added) (quoting *In re Hinds*, 90 N.J. 604, 614, 449 A.2d 483, 489 (1982)). As noted above, this more modern view has been fully adopted by the U.S. Supreme Court, and substantially every state and federal court that has considered similar issues.

The bar also cites *Matter of Ziman*, 174 Ariz. 61 (Ariz. 1993). That case involved a multitude of misconduct unrelated to the lawyer's speech. In addition, the lawyer engaged in *ex parte* communications with an arbitrator, "argued with him about his rulings and made a profane and insulting remark [to the arbitrator]." *Ziman*, 174 Ariz. at 63.

Ziman has no relevance here; Respondent is not accused of making any profane or insulting remarks directly to a judge.[2] Rather, the allegation is that

[2] Respondent fully agrees that when a lawyer is standing in court, directly addressing a judge, jury, or a witness, the First Amendment *may* offer less protection than it does outside of court. *See United States v. Cooper*, 872 F.2d 1, 3 (1st Cir. 1989) ("an attorney is not free to say literally anything and everything imaginable in a courtroom under the pretext of protecting his client's rights ….") (emphasis added).

Respondent made certain "disparaging" public statements *about* a judge (which the bar has not shown were factually false).

In re: Douglas B. Levy, SB-21-0085-AP (PDJ 2019-9044) was a case involving private, not public, statements made by a lawyer to opposing counsel. Although the lawyer also made comments criticizing a judge, the respondent never claimed his comments were true, and he apparently chose not to invoke his rights under the First Amendment (the case never mentions the First Amendment). The case also does not mention Arizona's anti-SLAPP law (which did not exist in its current form at the time). Nothing in *Levy* supports the bar's position here.

In re: Vladimir Gagic, SB-22-0085-AP (PDJ 2022-9050) involved a variety of bizarre attorney misconduct. Unlike this case, the attorney in *Gagic* did not properly invoke the First Amendment and did not raise any factual/legal defenses; "in his response to the motion for summary judgment, Respondent does not controvert any portion of the State Bar's statement of facts, discuss the ethical rules at issue, or cite relevant legal authority." Because Mr. Gagic waived his defenses by failing to assert them, the case contains no analysis of the First Amendment. *Gagic* is of no help to the bar's position in this case.

However, a lawyer's critical statements made directly to a judge in a pleading still receive full First Amendment protection provided they are not factually false. *See In Re Green*, 11 P.3d at 1086–87 (agreeing First Amendment protected lawyer's speech even though his "statements were directed to a limited audience—the judge in question and opposing counsel—and not to the general public.")

ii. The Material Facts Are Disputed

With respect to the bar's claim that Respondent must be punished for statements he made criticizing Judge Mata, that position must be rejected for one simple reason – because Respondent has *never* admitted that any of his statements were false. On the contrary, ¶ 108 of the Amended Complaint alleges Respondent violated multiple rules "by making public statements about Judge Mata's qualifications or integrity that were objectively false or made with reckless disregard as to their truth or falsity." (emphasis added). Respondent's Answer flatly denies that allegation, it its entirety, not merely "conditionally" as the bar claims.

As noted in the extensive legal authority cited above, a lawyer's criticism of a judge cannot be punished absent clear and convincing proof the lawyer's statements were factually false and the lawyer either knew the statement were false, or the lawyer acted with reckless disregard for the truth at the time the false statement was made. In this context, "reckless disregard" is a term of art; "reckless disregard means that a statement is unprotected if the speaker made it "with a 'high degree of awareness of ... probable falsity,' ... or ... 'entertained serious doubts as to the truth of his publication.'" *In Re Green*, 11 P.3d at 1083–84 (citing extensive authority).

Here, the Complaint alleges Respondent made false statements and acted with reckless disregard for the truth (without any well-pleaded factual support for those claims). *See* Amended Compl. ¶ 108. In his Answer, Respondent unequivocally denied that allegation, and further raised the First Amendment as a

defense. In this posture, the material facts – was Respondent's speech false, and, if it was, did Respondent act with reckless disregard – are disputed.[3] As such, judgment on the pleadings *cannot* be granted.

iii. Respondent's Answer Raises Valid Defenses

This issue has been sufficiently covered, so Respondent simply reminds the Court – judgment on the pleadings cannot be granted unless the undisputed facts show the bar's claims are factually and legally correct, *and* that Respondent's Answer raises no potentially viable defense. Here, the Answer clearly raises multiple viable defenses, including that Respondent's speech was true (which is *not* a defense; it is an affirmative part of the bar's claim for which the bar bears the burden). Respondent also alleges his speech was protected the First Amendment and A.R.S. § 12–751, and that the bar's claims are based on rules which are unconstitutional. *See Bates v. State Bar of Arizona*, 433 U. S. 350 (1977) (holding ethical rules cannot punish First Amendment protected speech)).

This Court may ultimately either agree or disagree with each of these arguments. But the Court cannot reach that conclusion on an undeveloped evidentiary record, particularly one so filled with factual disputes. Accordingly, the bar's motion cannot be granted at this early stage.

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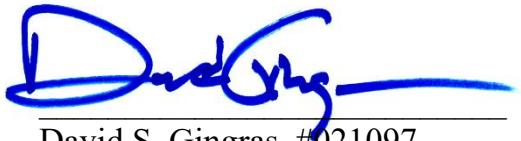
[3] Because the state bar appears to misunderstand this issue, Respondent will make this extremely clear – if a lawyer makes a statement which is factually *true*, it is irrelevant whether the lawyer acted with "reckless disregard" (a true statement *cannot* be made with reckless disregard for the truth). Put differently, true statements may *never* be punished, only "intentionally false statements and false statements made with reckless disregard for the truth." *Olin*, 2024 WL 6881775, *8.

IV. CONCLUSION

For the reasons stated above, the PDJ should either: 1.) deny the state bar's motion on the merits, by finding the material facts are disputed and/or that the bar has failed to show it is entitled to judgment as a matter of law, including because the bar has failed to show Respondent's Answer contains no viable defense; OR, in the alternative, 2.) the PDJ should find the bar's Rule 12(c) motion requires consideration of outside the pleadings. As such, the motion should be converted under Rule 56 and denied without prejudice. *See* Ariz. R. Civ. P. 12(d) ("If, on a motion under Rule 12(b)(6) or (c), matters outside the pleadings are presented to, and not excluded by, the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.")

Respectfully submitted March 18, 2026.



David S. Gingras, #021097
Gingras Law Office, PLLC
4802 E. Ray Road, #23-271
Phoenix, AZ 85044
Tel.: (480) 264-1400
David@GingrasLaw.com
Respondent

CERTIFICATE OF SERVICE

COPY of the foregoing emailed
this 18th day of March 2026 to:
Jim Lee
Jim.Lee@staff.azbar.org
Craig Henley
Craig.Henley@staff.azbar.org
Senior Bar Counsel