**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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| **IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,**<br><br>**DAVID S. GINGRAS**<br>**Bar No. 021097**<br>**Respondent.** | **PDJ 2022-9037**<br><br>**NOTICE OF STATE BAR'S FAILURE TO COMPLY WITH DISCLOSURE RULES** |

Pursuant to Ariz. Sup. Ct. R. 58(f)(3) Respondent David S. Gingras ("Respondent" or "Gingras") respectfully gives notice that the State Bar has failed to comply with its disclosure obligations under Rule 58(e). Accordingly, Respondent respectfully requests a telephonic hearing be scheduled to take place within five (5) days as required by Rule 58(f)(3). Further, Respondent respectfully requests that the Court find the Bar's failure to comply with the disclosure rules was willful, and that no undisclosed evidence may be admitted in this matter by the State Bar.

Specifically, yesterday, September 1, 2022, Bar Counsel contacted the undersigned and notified them for the first time that the Bar was withholding evidence (documents and witness names) which the Bar should have disclosed pursuant to Rule 58(e). According to Bar Counsel, the evidence in question consists of "writings" allegedly reflecting an attorney/client relationship between the complainant, Andrew Ivchenko, and some undisclosed number of "clients". These documents would also appear to contain the names of Mr. Ivchenko's "clients", who are necessary witnesses in this case.[1]

[1] Respondent believes that these "clients" are fabrications, not by the State Bar, but by Ivchenko. The Respondent must have the fair ability to explore this fact, as it is instrumental to his defense.



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This evidence is central to the State Bar's allegations in this case which accuse Respondent of violating ER 4.2 by attempting to indirectly contact these same individuals. Pursuant to Supreme Court Rule 58(e), the State Bar was required to disclose this evidence within 10 days after Respondent's Answer was filed (the Answer was filed August 5, 2022). While that deadline has passed, the Bar has *still* failed to disclose this evidence, and is instead withholding it based on an assertion that the information is "confidential" even though it is not; "Generally, the identity of an attorney's client and the nature of the fee arrangement between an attorney and his client are not privileged." *In re Grand Jury Subpoenas*, 803 F.2d 493, 496 (9th Cir. 1986) (emphasis added), opinion corrected, 817 F.2d 64 (9th Cir. 1987)).

Given the short deadlines in this proceeding, the State Bar's failure to timely disclose this evidence is both willful and should not be endorsed by the Court. Accordingly, pursuant to Supreme Court Rule 58(f)(3)(A), Respondent respectfully requests that this matter be set for a telephonic hearing to occur within the next 5 days, and that the Court issue an order precluding the State Bar from using any improperly withheld evidence at the hearing in this matter.

Furthermore, because the State Bar's withholding of this evidence has unfairly prejudiced Respondent's right to investigate the validity and veracity of the alleged attorney/client relationship between Mr. Ivchenko and his "clients", Respondent further requests that the Court issue an order, pursuant to Supreme Court Rule 58(f)(3)(B)(i) finding that the State Bar may not allege that Mr. Ivchenko actually represented any "clients" in the underlying proceedings giving rise to this matter.

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Respectfully submitted: Sept. 2, 2022

*/s/ Marc J. Randazza*
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*Respondent*

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## CERTIFICATE OF GOOD FAITH

Pursuant to Supreme Court Rule 58(f)(3) Respondent certifies that he made a good faith effort to resolve this matter with State Bar counsel prior to filing the instant notice.

*/s/ David S. Gingras*

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## CERTIFICATE OF SERVICE

Original electronically filed via email to officepdj@courts.az.gov on Sept. 2, 2022, with:

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*/s/ David S. Gingras*
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