

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

**RESPONDENT'S
MOTION FOR RELIEF
FROM ORDER**

Respondent David S. Gingras (“Respondent” or “Gingras”) has received and reviewed the PDJ’s order, issued today, which resolved two pending motions – a Motion to Quash filed by the Commission on Judicial Conduct (“CJC”) and a Motion to Compel filed by Respondent. In today’s order, the Court substantially accepted the CJC’s position that it should not be required to produce information such as a response provided to the CJC by a non-party witness, Judge Julie Mata.

Respondent understands Ariz. R. Civ. P. 7.1(e) permits parties to move for reconsideration. Respondent further understands Supreme Court Rule 48(b) incorporates many of the Civil Procedure Rules, but *not* Rule 7.1(e).

On the other hand, Supreme Court Rule 48(b) does specifically incorporate Civil Procedure Rule 60(b) (allowing parties to seek relief from judgments/orders).

To ensure a full and proper appellate record is preserved, Respondent respectfully moves the PDJ for relief from today’s order pursuant to Civil Procedure Rule 60(b)(1) (allowing relief based on “mistake, inadvertence, surprise”) and 60(b)(6) (any other reason justifying relief).

Relief under Rule 60 is appropriate here for two main reasons. First, the manner in which the PDJ resolved the pending motions deprived Respondent of any right to be heard with respect to the sole basis on which the motions were resolved. This deprived Respondent of his due process right to be heard *before* an adverse ruling was made.

Specifically, the PDJ's order was based solely on an argument that was *never raised* by the CJC – i.e., that the requested records were not relevant. That point was specifically noted in Respondent's Motion to Compel at page 7: "The CJC's objection does not argue the subpoena seeks information that is not relevant (an impossible assertion to make, given that the subpoena seeks information which goes directly to the issues in this case)." (emphasis added).

Because the CJC never claimed the subpoena sought records that were not relevant, Respondent assumed that issue was undisputed and thus did not spend any time discussing it. Despite this, the PDJ's decision today was based *solely* on a conclusion that the records in question were not relevant: "Respondent Gringas [sic] has not demonstrated how the outstanding items in the subpoena duces tecum would assist in his defense regarding such."

The Court's decision to deny access to critically important information in this manner (i.e., on a basis that was never raised and thus never addressed) justifies relief under Rule 60(b)(1) on the basis of mistake, inadvertence, [or] surprise and under Rule 60(b)(6) (any other reason; the reason being a denial of due process).

This leads to the second reason justifying relief – the PDJ’s conclusion regarding relevance is incorrect. In short, the Court based its conclusion on the fact the state bar’s complaint accuses Respondent of making “inappropriate” statements about Judge Mata as cited in ¶¶ 100–108 of the Complaint. The Court simply cited a *legal conclusion* alleged by the bar (that Respondent’s speech violated certain ethical rules), and then suggested Respondent did not explain why the CJC records were relevant or necessary to his defense.

But in reaching that conclusion, the Court failed to consider two things. First, Respondent’s Answer expressly invokes the First Amendment as a defense (even though the First Amendment is *not* a defense; it represents a substantive limitation on the scope of the very rules the state bar is claiming Respondent violated). *See* Respondent’s Answer at 66 (explaining, “Substantial parts of this matter (including the issue raised above) arise from speech and conduct which is protected by the First Amendment and by other legal authority.”)

This leads to the second problem with the Court’s analysis; it is insufficient as a matter of law for the bar to simply point to something Respondent said and then claim those words were unprofessional. The reason is because the United States Supreme Court has clearly and repeated explained – speech that is protected under the First Amendment cannot form the basis for discipline:

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)).

A very helpful example of this rule was discussed in a case cited by the bar in its disclosures -- *In re Green*, 11 P.3d 1078 (Colo. 2000). *Green* was an attorney discipline case involving a lawyer who “authored letters and motions to a trial judge containing ‘relentless criticism and contempt for the judge’ constituting ‘a serious breach of acceptable behavior for an attorney toward a member of the judiciary.’” *Green*, 11 P.3d at 1080. Among other things, the lawyer in *Green* accused a trial judge of being “racist” because the judge (who was white) failed to grant attorney’s fees to the lawyer (who was black) in the full amount requested. *See id.*

The disciplinary panel in *Green* found the lawyer’s attacks violated numerous rules of professional conduct (essentially the same rules at issue in this case). On review, the Supreme Court of Colorado *reversed*, finding the lawyer’s speech (while certainly rude and offensive) was nevertheless protected by the First Amendment: “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.” *Id.* at 1083 (emphasis added) (citing *In re Primus*, 436 U.S. 412, 432–433, 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978); *Bates v. State Bar of Arizona*, 433 U.S. 350, 355, 365, 384, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977); *State of Oklahoma v. Porter*, 766 P.2d 958, 966–970

(Okla.1988); *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1054, 111 S.Ct. 2720, 115 L.Ed.2d 888 (1991)).

After concluding that the rules of professional conduct cannot (and do not) apply to constitutionally-protected speech, the Colorado Supreme Court found the lawyer's words were fully protected and thus exempt from discipline:

We view Green's statements that the judge was a "racist and bigot" and having a "bent of mind" as statements of opinion based upon fully disclosed and uncontested facts. Because Green's statements do not involve false statements of fact or represent statements of opinion necessarily implying undisclosed false assertions of fact, we may not, consistent with the First Amendment and the first prong of the *New York Times* test, discipline Green for his subjective opinions, irrespective of our disagreement with them.

Green, 11 P.3d at 1086 (emphasis added).

Green is only one of many cases to reach the same result. For instance, in *Standing Comm. v. Yagman*, 55 F.3d 1430 (9th Cir. 1995) involved a similar set of facts involving a lawyer who engaged in series of harsh attacks maligning the integrity of a judge. The words used by the lawyer in *Yagman*—referring to the judge as "dishonest," "ignorant," "ill-tempered," "buffoon," "sub-standard human," "right-wing fanatic," "a bully," "one of the worst judges in the United States"—were *far* worse than any of the language at issue in this matter.

Despite this, the Ninth Circuit concluded the First Amendment does not permit professional discipline of attorneys based on constitutionally-protected speech, even speech which harshly attacks the integrity of a judge:

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. Moreover, the disciplinary body bears the burden of proving falsity.

Yagman, 55 F.3d at 1438 (emphasis added) (citing *Garrison v. Louisiana*, 379 U.S. 64, 74, 85 S.Ct. 209, 215, 13 L.Ed.2d 125 (1964)).

Applying these legal standards here, it is clear the PDJ's conclusion regarding the relevance of the CJC's records was incorrect. As explained in the Motion to Compel, the State Bar is seeking to punish Respondent for making statements impugning the integrity of Judge Mata. Many of the statements at issue involve *exactly* the same allegations Respondent reported to the CJC in July 2024.

After reviewing those allegations and "all available relevant information", the CJC concluded Respondent's claims were not supported by clear and convincing evidence. Despite this, the CJC has refused to disclose any of the information it relied upon to reach that conclusion, and, most importantly the CJC has refused to disclose Judge Mata's response to those allegations.

As explained in *Yagman*, *Green*, *Gentile*, *Bates*, and countless other cases, a lawyer's speech remains fully protected by the First Amendment and thus beyond the scope of discipline unless that speech is factually false, or unless it falls outside the scope of First Amendment protection for other reasons (i.e., the speech involves true threats of violence, etc.). Furthermore, as explained in *Yagman* (and in Supreme Court Rule 48(e)), the burden of proving that the speech is false is on the state bar, not Respondent. Here, the issue of truth/falsity is hotly contested.

Under these circumstances, the information Respondent is seeking from the CJC is unquestionably relevant and necessary to this case. Again, Respondent accused Judge Mata of misconduct. Judge Mata provided some form of written response to those allegations to the CJC. Based on her explanation, the CJC determined the misconduct allegations were not supported by clear and convincing evidence.

If the CJC is telling the truth, that evidence would be relevant to help the state bar meet its burden of proof. On the other hand, if the CJC is *not* telling the truth, that would be relevant to help Respondent prove his statements were true (even though Respondent bears no burden in this regard). Furthermore, because Judge Mata's response to the CJC represents a written statement that could be used for impeachment, it is relevant to her credibility, all other issues notwithstanding.

As the Court knows, Evidence Rule 401 defines relevant evidence as follows:

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action

Here, Judge Mata's statements to the CJC are unquestionably relevant to the core issues in this case – i.e., were Respondent's allegations regarding Judge Mata true, or were they false? If Respondent's speech was true, it cannot form the basis for discipline no matter how offensive it may otherwise have been.

The state bar has offered literally no legal authority of any kind to contradict that conclusion. For instance, the bar *claims* its position is supported by *Matter of Ziman*, 174 Ariz. 61 (Ariz. 1993). That case involved a lawyer who was disciplined for multiple acts of misconduct, most of which had nothing to do with protected speech. However, without any discussion of the First Amendment, the Supreme Court found Mr. Ziman violated Supreme Court Rule 41(g) “by making an offensive and profane comment to [an] arbitrator.” *Ziman*, 174 Ariz. at 64.

Ziman has no application here. This case does not involve any allegation that Respondent made a profane or offensive statement directly to a judge or an arbitrator in a manner that interrupted any pending proceeding. The state bar’s claim is that Respondent made public allegations *about the integrity of a judge* accusing the judge of misconduct. As explained in *Yagman* and *Green*, offensive statements made *about* a judge cannot be punished unless they are factually false (and both cases concur – that protection can still apply even when the offensive statements are made directly to the judge in question).

To be clear – Respondent fully agrees that when a lawyer is standing in court, if the lawyer begins shouting profanity at a judge, that would be valid grounds for discipline. That much is undisputed.

Respondent also agrees that whatever broad scope the First Amendment has on the sidewalk, that scope narrows once a person enters a courtroom. Indeed, as the United States Supreme Court has held, the First Amendment protects offensive speech *in the hallway of a court*. See *Cohen v. California*, 403 U.S. 15, 91 S.Ct.

1780 (1971) (First Amendment protected defendant’s right to wear a jacket with the words ““Fuck the Draft” while in a courthouse hallway). Respondent does not contend a lawyer could push that rule further and appear in court wearing a similar jacket, or that a lawyer could use insulting/offensive speech in court which interfered with the court’s ability to conduct its affairs.

But this case does not involve insulting invective hurled at a judge sitting in court. It involves public speech, including public statements made by Respondent on social media and his website. It also involves allegations of serious misconduct by a judge submitted to the state agency responsible for investigating judicial misconduct.

This category of speech – criticism of a public official (Judge Mata) – constitutes political speech which is entitled to the absolute highest degree of First Amendment protection; “Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966)); *see also In Re Anonymous Online Speakers*, 661 F.3d 1168, 117 (9th Cir. 2011) (“Given the importance of political speech in the history of this country, it is not surprising that courts afford political speech the highest level of protection.”) (citing *Meyer v. Grant*, 486 U.S. 414, 422, 425 (1988) (describing the First Amendment protection of “core political speech” to be “at its zenith”)).

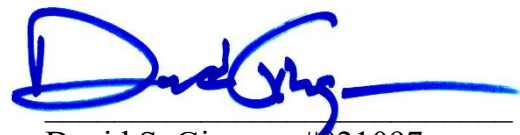
Notably, *Ziman* did not involve political speech of any kind.

For these reasons, it is clear this Court's conclusion regarding the CJC's records lacking relevance to the case was incorrect. More importantly and fundamentally, the manner in which the PDJ resolved these issues (which were never raised by the CJC) constituted an unfair surprise, and it effectively deprived Respondent of his right to be heard on this issue.

Rule 60(b) allows parties to seek relief from orders when valid grounds exist. Here, valid grounds clearly exist for the reasons stated above. For that reason, the PDJ should grant the following relief:

- The Court should allow Respondent to submit supplemental briefing on the issue of whether the CJC's records are relevant to this case;
- The Court should treat this motion as that supplemental briefing;
- The Court should issue an order allowing either the CJC or the state bar to address the issue of relevance;
- After receiving such additional briefing, the PDJ should review and revise its order to require the CJC to produce all relevant, non-privileged records it has, as required by Ariz. R. Civ. P. 26(b).

Respectfully submitted March 11, 2026.



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CERTIFICATE OF SERVICE

ORIGINAL of the foregoing electronically filed
this 11th day of March 2026, with:

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