

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
MOTION TO CHANGE
DISCOVERY TIER**

This motion presets two different issues: *First*, should the court modify the discovery limits in this case? *Second*, regardless of how the court rules on Issue #1, should the court *separately* order the State Bar to respond to some narrow additional written discovery beyond the limits of Tier 1?

Respondent asserts the answer to both questions is yes. This is a complicated case, and the State Bar's allegations are both extensive *and* sufficiently serious to warrant reasonable additional discovery requests.

Before addressing other issues, let's be clear about what is *not* at issue here. First, Respondent is NOT seeking any change or delay in the current hearing schedule. Second, although Tier 3 cases permit *up to* 60 hours of deposition time, Respondent has **ZERO interest or intention of taking 60 hours of depositions.**

Rather, the main purpose for the tier change is to allow a small amount of additional *written* discovery which is simple, non-burdensome, and clearly necessary and proportional to the needs of this case. As the Bar's position has shown, the extreme limit of *five* interrogatories is simply not workable, nor fair, in a case this complex. Thus, it should be changed.

I. This Is A Tier 3 Case

a. Just Like *In re: Parker/Olsen*

As Respondent explained at the first hearing in this matter, this case is factually complicated, it involves multiple witnesses, voluminous documents, and novel/complex issues of law. If there was a Tier higher than level 3, this case would belong in it.

To understand this conclusion, it is helpful to consider a recent discipline proceeding that was also designated Tier 3 – *In re: Parker/Olsen*, PDJ2024–9002/3. *Parker* involved two lawyers – Andrew Parker and Kurt Olsen – who filed a lawsuit in federal court on behalf of former gubernatorial candidate Kari Lake alleging fraud in the 2022 elections.

The federal court found the lawsuit filed by Parker and Olsen was frivolous. In a long and detailed 30-page decision, the court ordered Mr. Parker and Mr. Olsen to pay more than \$100,000 in sanctions for violating Rule 11 and 28 U.S.C. § 1927. *See Lake v. Hobbs*, 643 F.Supp.3d 989 (D.Ariz. 2022). That decision was affirmed on appeal in another lengthy opinion which, once again, explained *exactly what* the lawyers did wrong and *why* their conduct warranted sanctions. *See Lake v. Gates*, 130 F.4th 1064 (9th Cir. 2025).

Given a clear and thoroughly-explained **judicial finding** of attorney misconduct, the State Bar filed charges against Mr. Parker and Mr. Olsen in early 2024. The Complaint alleged they pursued claims without a good faith basis and they took positions that were not well-grounded. Based on those things (as already

determined by the district court), the Bar alleged: “Respondents violated Ariz. R. Sup. Ct. 42, ER 1.1, ER 1.3, ER 3.1, ER 8.4(c), and ER 8.4(d).” *See In re Parker*, PDJ2024-9002 (Complaint ¶ 64).

Those same rules and similar allegations are at issue in this matter, with one major difference—in this case, *no court* ever sanctioned Respondent, nor did any court (the trial court or the Court of Appeals) make clear, detailed findings of precisely *what/how* Respondent did anything wrong. Instead, this case involves literally a single, conclusory sentence (from the Court of Appeals) suggesting some aspect of the case was not “grounded in fact or law” with literally ZERO explanation to support that charge (unlike the 30-page decision in *Parker*).

As for factual complexity, in *Parker*, the Bar’s Complaint contained 64 paragraphs of allegations spanning 17 pages, most of which just repeated misconduct findings previously made by the district court. In that way, the misconduct in *Parker* was very clear and well-defined — because it had already been fully litigated and resolved in the district court. Thus, the respondents in *Parker* clearly understood *all aspects* of the Bar’s claims against them when the case began.

Despite this clarity, on March 11, 2024 (three months after the initial complaint was filed), the respondents in *Parker* moved for an order elevating the discovery Tier from level 1 to level 3. On March 19, 2024, over the State Bar’s objection, the PDJ (Judge Downie) granted the respondents’ request and applied Tier 3 to the case.

By comparison, the Amended Complaint in this case accuses Respondent of engaging in conduct similar to *Parker* (i.e., pursuing groundless claims), in violation of the same ethical rules cited in *Parker*. However, the Amended Complaint in this case contains nearly **triple the number of** factual allegations (184 paragraphs here vs. 64 in *Parker*). Critically, as noted above, this case *does not* involve a prior judicial finding of misconduct; only a single passing sentence in an appellate ruling without a shred of explanation.

Also, unlike in *Parker*, here the Bar accuses Respondent of misconduct committed in multiple different stages of the case — the pre-trial investigation, the trial, and also the appellate level in *Owens*. This is significant because in *Parker*, the underlying misconduct was limited in scope: the lawyers filed **one pleading**—a Complaint—found to be frivolous. That Complaint was quickly tossed on a Motion to Dismiss so, unlike here, there was neither a trial in *Parker* nor was there any allegation of appellate misconduct.

Here, by comparison, the State Bar has made broad, expansive (but entirely vague) allegations of misconduct – accusing Respondent of things like: “failing to investigate” Ms. Owens’ claims without ever defining the precise scope and nature of those failures. Similarly, the Bar has made an **exceptionally serious** allegation claiming Respondent: “knew that Owens intended to engage in, was engaging in or had engaged in **criminal or fraudulent conduct** related to the paternity case” Amended Comp. ¶ 177. In short, the Bar has accused Respondent of **committing a serious crime** – *knowingly* acting as an accomplice by helping Ms. Owens lie.

But the Bar has not disclosed a single shred of evidence to support that claim. Literally nothing. The Bar’s entire case thus far is: “Trust me, bro.”

Although the facts of *Parker* were much simpler and narrower, the PDJ agreed they justified elevating the case to discovery Tier 3. By comparison, the facts of this case are **far more complicated** than in *Parker*, the allegations of misconduct are much broader and wider in both scope and temporal duration.

Here, unlike in *Parker*, Respondent was never sanctioned by any court – not by the trial court in *Owens*, nor by the Court of Appeals or the Supreme Court. To be sure – the trial court and the Court of Appeals both ordered Ms. Owens to pay fees based on a finding that **her conduct** was “unreasonable”, but at no time did any court make such a specific finding as to Respondent.

This point is critically important because *unlike* the respondents in *Parker*, Respondent does not understand WHY the State Bar claims his conduct was unethical, either with respect to the appeal or the lower court proceedings. That is precisely why discovery exists – to remove doubt and to help parties understand and investigate the allegations against them so they have a **meaningful** opportunity to prepare a defense; “the rules of discovery are to be broadly and liberally construed to facilitate identifying the issues, promote justice, provide a more efficient and speedy disposition of cases, avoid surprise, and prevent the trial of a lawsuit from becoming a 'guessing game.'” *Cornet Stores v. Superior Court*, 108 Ariz. 84, 86, 492 P.2d 1191, 1193 (Ariz. 1972) (emphasis added). Because this case clearly does not fit within the extreme limits of Tier 1, a change is appropriate.

Also notable is this – even though the District Court made detailed findings of misconduct against the lawyers in *Parker*, after the PDJ granted their request for additional discovery, the hearing panel ruled in Mr. Parker’s favor on all claims.

In its decision, the panel explained:

Retrospective scrutiny of any complex litigation may reveal some measure of imprecision, legal arguments fairly characterized as long shots, puffery in advocacy, and reliance on authorities that are distinguishable in some respects. Such is the case here. ... But for the hearing panel to conclude that objective attorneys would not have acted as Respondents did in that context, significantly more evidence would be necessary – particularly given the State Bar’s high burden of proof, Respondents’ strong substantive defense, and the safe harbor afforded fairly debatable and long shot claims advanced in litigation.

Parker, PDJ2024-9002, [Report and Order of Dismissal](#) at 22 (emphasis added).

As the panel held in *Parker*, to accuse a lawyer of acting unethically simply by presenting legal arguments that were not successful is an *extraordinary* claim for the Bar to make. As *Parker* cautioned, this type of Monday-morning quarterbacking is rarely, if ever, successful, and to meet its “high burden of proof”, the Bar must present *significant* evidence to prove the claim. Rumor and speculation will not do.

But here, the Bar has disclosed essentially *nothing* to support its position. This is why Respondent needs additional discovery – to determine what proof, if any, the Bar has to back up its allegations. The Bar’s angry refusal to show its proof can only mean one thing – it has none.

In short, if *Parker/Olsen* was a Tier 3 case, so is this one. For those reasons, the PDJ should order this matter elevated to Tier 3, just as occurred in *Parker*.

b. Rule 26(c)(1) Requires A Tier 3 Designation

In *Parker*, the Respondent's motion to change discovery tiers was exceedingly short – [just three pages](#). Here, Respondent believes the issues are simple enough that three pages should suffice. But given the State Bar's hyper-aggressive attack on *every* conceivable issue, Respondent offers a few brief additional comments to support the tier change request.

Discovery tier choice is controlled by Rule 26.2(c)(1) which, in turn, directs the Court to consider the proportionality factors of Rule 26(b)(1). Because the Bar discusses those points Respondent offers the following in reply.

- Importance of the issues. The Bar concedes that the issues are important. Resp. at 5. The proceeding concerns Respondent's professional license, livelihood, and reputation, and includes allegations of knowing involvement in a client's false or fraudulent conduct. Those stakes favor a meaningful opportunity to obtain the information necessary to defend against the charges.
- Amount in controversy. This is not a damages action, so a monetary amount does not provide a useful measure of the appropriate discovery tier. The absence of a damages demand does not reduce the importance of the interests at stake or the need to investigate the remaining allegations.
- Relative access to information. The Bar argues that Respondent possesses equal or better access to information because he participated in the events and supplied the client file. This argument is misleading. Possessing the

underlying documents is different from knowing which conduct the Bar alleges violated which rule, which evidence it relies upon, and what it contends Respondent knew at the relevant time. Respondent's familiarity with his representation of Ms. Owens does not identify the Bar's specific factual contentions.

- The parties' resources. The Bar infers ample resources from Respondent's extensive filings. However, the number of filings does not establish available financial resources, especially when a respondent lawyer prepares his own defense. More importantly, the requested written discovery is a comparatively inexpensive means of identifying the disputes and reducing unnecessary depositions and hearing preparation.
- Importance of discovery in resolving the issues. The Bar asserts that discovery will not help resolve any outstanding issue. That position is not well-taken. Identifying the challenged acts, required investigative steps, and evidentiary bases for alleged knowledge of Ms. Owens' conduct will allow Respondent to investigate the actual charges, identify relevant witnesses and documents, and narrow the hearing. Discovery cannot be unnecessary merely because the charging party believes its accusations are correct.
- Burden compared with likely benefit. The Bar says it will rely almost entirely on documents Respondent supplied and that its screening process already laid out the issues. Resp. at 5–7. If so, identifying its principal factual contentions and the materials supporting them should not require a new

investigation or an exhaustive search. The benefit is also substantial: Respondent can prepare a focused defense and the parties can identify genuine disputes. Any excessive wording in an individual request can be narrowed without denying all additional discovery.

In short, all factors support Respondent's Tier 3 request.

II. The Bar Must Be Ordered To Respond To Additional Interrogatories

Assuming the court grants the request to change tiers, it is not necessary to consider the next issue because increasing the discovery tier necessarily means the Bar must answer the additional discovery discussed below. However, regardless of what discovery tier is applied to a case, a party may *always* seek additional discovery in either of two ways. *See* Ariz. R. Civ. P. 26.2(g). First, the parties can avoid burdening the court by stipulating to additional discovery. *See* Ariz. R. Civ. P. 26.2(g)(1)(B). Absent a stipulation, a party can bring a motion which requires attaching a copy of the additional discovery sought. *See* Ariz. R. Civ. P. 26.2(g)(1)(A).

Because it is unrealistic to ask a party to blindly agree to additional discovery without first showing the exact questions/requests involved, here Respondent drafted some extremely limited discovery requests—five interrogatories, two categories of documents, and ten Requests to Admit. After the State Bar refused to answer most of this discovery, Respondent moved this court for relief and, of course, he *attached* the additional disputed discovery to his motion.

The State Bar claims this process was somehow improper, as if the better approach was for Respondent to ask the Bar to agree to additional discovery *without showing the specific questions/requests at issue*. Then, after the Bar refused to answer discovery *it had not yet seen*, at that point Respondent could bring a motion.

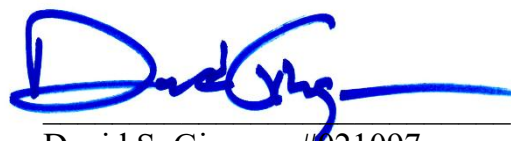
This argument is wasteful and disingenuous at best. As a career civil litigator, Respondent believes all parties have an obligation to avoid burdening the Court with petty issues. Respondent further knows it is impossible to ask a hostile adversary to agree to additional discovery without first showing the specific questions involved. That is why Respondent used the approach that he did.

Because the Bar refused to accept this reasonable request, Respondent had no choice but to burden the Court with this motion. Of course, this is exactly why this case SHOULD be elevated to Tier 3 – because by raising the discovery limits, it will not be necessary for Respondent to seek relief for each additional round of discovery requests.

Of course, as in any case, if the Bar feels those requests are excessive, it can seek relief *after* the discovery is propounded. That scenario is far more efficient and reasonable than imposing the clearly inappropriate Tier 1 limits to this case and *then* forcing the parties to seek relief for minimal additional questions (as this motion shows).

For all these reasons stated above, the PDJ should grant Respondent's request and change this matter to discovery Tier 3, just as the Court did in *Parker*.

Respectfully submitted October 2, 2026.

A handwritten signature in blue ink, appearing to read "David Gingras", with a long horizontal flourish extending to the right.

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Respondent

CERTIFICATE OF SERVICE

Original filed and COPY of the foregoing emailed
October 2, 2026 to:
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A handwritten signature in blue ink, appearing to read "Dudley", is written over a horizontal line.