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BEFORE THE PRESIDING DISCIPLINARY JUDGE

**In the Matter of a Member of
the State Bar of Arizona,**

DAVID S. GINGRAS,
Bar No. 021097,

Respondent.

PDJ 2026-9010

**STATE BAR'S RESPONSE TO
RESPONDENT'S MOTION TO
CHANGE DISCOVERY TIER AND
MOTION TO OBTAIN DISCOVERY
BEYOND TIER LIMITS**

[State Bar Nos. 24-1692, 24-1826, 24-2483,
24-2819, 24-3080, and 25-1230]

The State Bar of Arizona opposes Respondent's *Motion to Change Discovery Tier and Motion to Obtain Discovery Beyond Tier Limits* because it is untimely and Respondent's delay is prejudicial, and because Respondent fails to demonstrate the requisite good cause under the Ariz. R. Civ. P. 26(b)(1) factors for either moving to Tier 3 discovery, or for the written discovery he seeks.

Respondent's Delay Warrants Denial of His *Motion*

The Presiding Disciplinary Judge ("PDJ") identified this case as a Tier 1 case *seven months ago*. See *Initial Case Management and Sealing Order*, dated Feb. 24, 2026. Footnote 2 of the Order stated, "While Respondent stated a concern, the PDJ

found that an appropriate record had not been made at this time to adjust the presumed Tier 1 limits.” Respondent could have and should have filed the present motion within a reasonable time after the PDJ issued the February 24, 2026 Order, but Respondent chose not to do so.

As a result of Respondent’s delay, the parties have nowhere near the time that Rule 26.2(f) provides for expanded discovery. Under Rules 26.2(f)(2) and (3), parties have 180 days (6 months) to complete Tier 2 discovery and 240 days (8 months) to complete Tier 3 discovery. Here, the State Bar’s draft of the joint prehearing statement is due to Respondent on November 25, 2026—less than two months away. That timeframe is woefully insufficient to complete the broad-ranging discovery Respondent requests.

As for Respondent’s written discovery, Rule 26.2(g) required Respondent to obtain a stipulation or seek an order authorizing him to exceed the limits before serving that discovery, but Respondent failed to do so. The signature page of the discovery requests reflects that they are dated March 24, 2026.

Respondent’s delay is an independent basis to deny Respondent’s Motion.

An Increase in Authorized Discovery is Unnecessary
Because Only Three Issues Remain

The discoverable issues have been streamlined since the PDJ identified the matter as a Tier 1 case. First, PDJ granted the State Bar’s *Motion for Partial Judgment on the Pleadings* on all issues arising out of Respondent’s attacks on Judge

Mata. Respondent does not need to conduct discovery to make a record on these issues and should not be permitted to do so. If Respondent challenges, on appeal, the order granting judgment on the pleadings, the Supreme Court will either reverse the ruling and remand for further proceedings, *see, e.g., Hancock v. O’Neil*, 253 Ariz. 509 (2022) (vacating the PDJ’s grant of partial summary judgment and remanding for further proceedings), or it will dismiss the State Bar’s allegations. If the latter happens, no discovery will be necessary. If the former happens, there will be a new hearing at which *both sides* will be able to present evidence on the issues.

Respondent relies on *In re Bates*, 433 U.S. 350 (1977), for the proposition that he is entitled to conduct discovery on an issue resolved by the PDJ. The *Bates* Court made no such finding. In its summary of the procedural history, the Court simply noted that in a hearing conducted 50 years ago by a Special Local Administrative Committee that no longer exists: “the committee took the position that it could not consider an attack on the validity of the [disciplinary] rule, [but] it allowed the parties to develop a record on which such a challenge could be based.” *Bates*, 433 U.S. at 356. *Bates* is not analogous here.

Second, pursuant to the State Bar’s Notice, the PDJ dismissed all violations arising out of: (1) Respondent’s alleged violation of Judge Mata’s February 21, 2024 Order; and (2) Respondent’s alleged inappropriate disparaging comments about members of the public.

Without the above-referenced allegations, the hearing on the merits will address only three sets of alleged misconduct: (1) Respondent's Efforts to Preclude Michael Marraccini from Testifying on June 10, 2024; (2) Respondent's Meritless Claims, False Information in an Affidavit, and Presentation of Owens' False Testimony/Changing Version of Events; and (3) the Non-Meritorious Appeal.

Factual and Legal Issues in This Case
Do *Not* Warrant Changing the Assigned Discovery Tier

Rule 26.2(c)(1) requires Respondent to establish "good cause" to vary a tier from the court's assigned tier by referring "to the factors that define proportional discovery in Rule 26(b)(1)." Respondent has not established the requisite "good cause" because: (a) he fails even to cite Rule 26(b)(1), much less explain why an increase in the allowable discovery is appropriate under its factors; and (b) this case is *not* analogous to a Tier 3 civil case.

(a) The Rule 26(b)(1) factors do not support Respondent's request.

The factors set forth in Rule 26(b)(1) are essential to the analysis of the appropriate discovery tier under Rule 26.2(c)(1) and Rule 26.2(c)(2) and yet Respondent fails to address them. That alone provides another independent basis to deny Respondent's Motion.

To the extent the PDJ wants to consider the Rule 26(b)(1) proportionality factors notwithstanding Respondent's failure to address them, they are: "the importance of the issues at stake in the action, the amount in controversy, the parties'

relative access to information, the parties' resources, the importance of discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." The State Bar concedes that the issues at stake are important, but no other factor supports Respondent's requested discovery.

The second factor does not apply.

With respect to the third factor, Respondent has equal, if not better, access to information than the State Bar does because Respondent was personally involved in the events at issue. Similarly, the State Bar will be relying almost entirely on the documents Respondent produced to the State Bar as his client file for Owens.

On the fourth factor, Respondent's extensive filings in this case suggest that he has ample resources, and he has not provided any facts or evidence to suggest otherwise.

On the fifth factor, the State Bar does not believe that discovery will help resolve any of the outstanding issues in this case, and Respondent has not explained how it can.

The final factor under Rule 26(b)(1) can relate only to Respondent's specific proposed written discovery requests. *See* Mot. Exs. A & B. Responding to those requests would impose a burden on the State Bar and provide little to no benefit to Respondent. The Requests for Admission and Interrogatory No. 2 relate to

Respondent's attacks on Judge Mata¹—an issue the PDJ has resolved. Respondent's final interrogatory requests are essentially requests that the State Bar lay out every aspect of its evidence and legal theories. Such interrogatories are overly broad and unduly burdensome. *See, e.g., Lawrence v. First Kansas Bank & Trust Co.*, 169 F.R.D. 657, 660-64 (1996) (explaining why interrogatories seeking “all” facts and “all” documents supporting certain allegations in pleadings are excessive and sustaining the objections). And, Respondent will soon have the State Bar's response to his *Motion for Summary Judgment*, which will explain the State Bar's analysis and much of its evidence on the remaining issues in this case.

The Rule 26(b)(1) factors do not support Respondent's requests.

(b) This case is not analogous to a Tier 3 civil case.

As an initial matter, the tier descriptions in Rule 26.2(b) are for civil proceedings and do not fit precisely for discipline cases. As the PDJ is aware, before the State Bar can file a formal complaint, there must be a screening investigation, which includes written charges and written responses from the respondents, and concludes with a written report of the State Bar's findings to which the respondent is entitled to respond in writing. Thus, the issues are well laid out before formal proceedings are even initiated. When the formal proceedings are initiated, the

¹ That is the portion of the Amended Complaint that alleges misstatements by Respondent personally (versus his client, Owens).

documents the State Bar produces consist primarily, if not entirely, of the documents the State Bar obtained (typically from the respondents themselves) during the screening investigation. Therefore, there are few, if any, *new* materials the State Bar *can* provide to a respondent during discovery.

In addition to the unique nature of disciplinary proceedings, none of the specific arguments Respondent makes warrants Tier 2 or Tier 3 discovery.

First, Respondent argues that the State Bar’s complaint arises out of and implicates six separate litigation matters. *Mot.* at 3. That is not accurate.

The case arises out of *Owens v. Echard* only. While there were related proceedings where Echard obtained an injunction against harassment and Owens obtained an order of protection, such proceedings are extremely limited in nature and the material portions of those proceedings were produced and addressed in *Owens v. Echard*, such that they are part of that case.

Second, Respondent argues that the documents in this case are “exceptionally voluminous” because the court filings that were subject to his Request for Judicial Notice “span[] nearly 2,500 pages.” *Mot.* at 4. Even if all filings in his Request for Judicial Notice were relevant (which they are not), the State Bar disputes that qualifies as “voluminous documentary evidence” under Rule 26.2(b)(3). *Compare, e.g., SinglePoint Direct Solar LLC v. Solar Integrated Roofing Corp.*, No. CV-21-01076-PHX-JAT, 2023 WL 2585296, at *3 (D. Ariz. Mar. 21, 2023) (finding that a

request that would require the production of 409,988 *documents* was proportional to the needs of the case).

Third, the witnesses the parties have disclosed do not require the collective 60 hours of deposition time that Tier 3 discovery would provide. While the State Bar agrees that it has disclosed “nine potential trial witnesses (not including Respondent),” that includes everyone the State Bar has disclosed as having knowledge or information relevant to the case, such as Laura Owens (who the State Bar certainly is not going to call). The State Bar’s witness list also includes its custodian of records, who would only lay foundation or authenticate documents. More importantly, this case has been pending since February, and yet Respondent has not deposed a single witness.

As for Respondent’s identified witnesses, they include undersigned bar counsel, Judge Mata, Judge Mata’s father, a judge from the Court of Appeals that ruled on the appeal, Rachel Mitchell (who is supposed to testify about not bringing criminal charges against Respondent), and members of the Commission on Judicial Conduct. Of those witnesses, only Judge Mata could offer relevant testimony (on the issue of harm), and she likely will not want to testify and will have valid reasons to object to being compelled to do so.²

² This list of witnesses also illustrates that Respondent is not focusing on developing legitimate defenses to the State Bar’s allegations.

Fourth, to the extent this case raises novel or complex legal issues, they have already been resolved. The dispositive motion deadline has passed, and the deadline for all remaining motions is November 18—just a few weeks after this motion will be decided. To the extent Respondent argues that the case presents novel legal issues regarding Michael Marraccini, *see Mot.* at 7, that is not so. The State Bar will address in its response to the *Motion for Summary Judgment* why Respondent’s arguments regarding Marraccini fail. As one example, however, to the extent Respondent alleges that Marraccini’s testimony was not properly disclosed, that is an issue to be decided by the trial court (and it was). If Respondent disagreed with the trial court’s ruling, his option before trial was to seek special action review, *not* to call 911 and ask that the witness be arrested.

Regardless, there is no discovery Respondent needs to address the legal issues he identifies regarding Marraccini. Tier 1 is the appropriate discovery tier.

Conclusion

Respondent’s *Motion* should be denied because of Respondent’s extreme delay, the immense burden it would impose for the parties to conduct 6 or 8 months of discovery in the less than two months that remain for discovery, and because Respondent has failed to establish the good cause for the relief he seeks.

Based on the PDJ’s partial granting of the State Bar’s *Motion for Partial Judgment on the Pleadings*, the State Bar’s dismissal of two sets of allegations, and

the fact that most of the documentary evidence was provided to the Bar by Respondent, this case should remain a Tier 1 case.

DATED this 30th day of September 2026.

STATE BAR OF ARIZONA

/s/ Craig D. Henley

Craig D. Henley
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 30th day of September 2026.

Copy of the foregoing emailed
this 30th day of September 2026 to:

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