

SUPREME COURT OF ARIZONA

In the Matter of a Member of the) Arizona Supreme Court
State Bar of Arizona) No. SB-15-0044-AP
)
JOHN MacMULLIN,) Office of the Presiding
Attorney No 13049) Disciplinary Judge
) No. PDJ20159002
Respondent.)
)
) **FILED 02/09/2016**

O R D E R

Pursuant to Rule 59, Rules of the Supreme Court, Respondent John MacMullin filed a notice of appeal from the hearing panel's Decision and Order Imposing Sanctions. The Court has considered the parties' briefs and the record in this matter. The Court agrees with the hearing panel that the record established by clear and convincing evidence that Respondent committed violations of ER 3.1, ER 4.4 and ER 8.4(d) as alleged in the Complaint. Upon consideration,

IT IS ORDERED that the appeal is DENIED.

IT IS FURTHER ORDERED that the hearing panel's Decision and Order Imposing sanctions is AFFIRMED. Respondent is suspended from the practice of law for three months, effective thirty days from the date of this order. Respondent shall comply with the notice requirements of Supreme Court Rule 72.

IT IS FURTHER ORDERED that John MacMullin's request that he receive "credit" toward his suspension for part of the time this appeal was pending is DENIED.

IT IS FURTHER ORDERED that the hearing panel's stay order pending the resolution of this appeal is VACATED.

IT IS FURTHER ORDERED that MacMullin will be assessed costs and expenses of the discipline proceedings as provided in Supreme Court Rule 60(b)(2)(B).

DATED this 9th day of February, 2016.

/s/
SCOTT BALES
Chief Justice

TO:

John MacMullin
Craig D Henley
Amanda McQueen
Sandra Montoya
Maret Vessella
Don Lewis
Beth Stephenson
Mary Pieper
Netz Tuvera
Lexis Nexis

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

IN THE MATTER OF A MEMBER OF THE
STATE BAR OF ARIZONA,

JOHN MACMULLIN,
Bar No. 013049

Respondent.

No. PDJ-2015-9002

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar No. 13-3284]

FILED JUNE 15, 2015

On April 30, 2015, the Hearing Panel ("Panel"), composed of Marsha Morgan Sitterley, a volunteer public member, Boyd T. Johnson, a retired Judge and volunteer attorney member, and the Presiding Disciplinary Judge, William J. O'Neil ("PDJ"), held a one day hearing under Rule 58(j), Ariz. R. Sup. Ct. Craig D. Henley appeared on behalf of the State Bar of Arizona ("State Bar"). Mr. MacMullin appeared *pro per*.

The Panel carefully considered the Complaint, Answer, the parties' Joint Prehearing Statement and First Amended Joint Prehearing Statement, Mr. MacMullin's Prehearing Memorandum, the testimony of Mr. MacMullin, admitted exhibits, Respondent's Proposed Findings of Fact and Conclusions of Law filed May 11, 2015, and the State Bar's Proposed Findings of Fact and Conclusions of Law filed May 14, 2015. The Panel now issues the following "Decision and Order Imposing Sanctions," under Rule 58(k), Ariz. R. Sup. Ct.

I. SANCTION IMPOSED:

SUSPENSION AND COSTS OF THESE DISCIPLINARY PROCEEDINGS

II. BACKGROUND AND PROCEDURAL HISTORY

This single count complaint arose out of Mr. MacMullin's representation of clients (a married couple) regarding an alleged aggravated assault on October 21, 2009. Mr. MacMullin asserts his client was falsely accused of the assault. He filed suit against multiple public defendants and the complainant. The ethical issues we address arise from his actions while prosecuting that lawsuit, including his allegation opposing counsel suborned perjury.

In this discipline matter, a Probable Cause Order was issued on June 12, 2014, and the State Bar filed its Complaint on January 5, 2015, alleging violations of Supreme Court Rule 42, ERs 3.1 (meritorious claims and contentions), 4.4 (respect for rights of others) and 8.4(d) (conduct prejudicial to the administration of justice).

On January 15, 2015, Mr. MacMullin filed a Motion to Continue or Stay Proceedings which was denied. See Order filed January 23, 2015. Mr. MacMullin asserts because the underlying matter is on appeal, his discipline matter is premature. Rule 48(f), *Related Pending Litigation*, provides "the processing of discipline matters shall not be delayed because of substantial similarity to the material allegations of pending criminal or civil litigation, unless the presiding disciplinary judge, in the exercise of discretion, authorizes a stay for good cause shown." Rule 48(f), Ariz. R. Sup. Ct.

Mr. MacMullin was obstructive in his Answer filed on February 13, 2015, entering no admissions and denying "all allegations not heretofore expressly admitted." An initial case management conference was held on February 26, 2015, and the matter was set for hearing April 30, 2015 and May 1, 2015.

A settlement officer was assigned by the disciplinary clerk under Rule 58(g), Ariz. R. Sup. Ct. Mr. MacMullin filed an objection to the assigned settlement officer and requested re-assignment. By Order of the PDJ, filed on March 5, 2015, Mr. MacMullin's objection was overruled and the request for reassignment denied. On March 17, 2015, Mr. MacMullin moved for recusal of the Presiding Disciplinary Judge, which was denied. See Hearing Panel Member's Order filed April 10, 2015. The parties' Joint Prehearing Statement was filed on April 10, 2015. The PDJ determined it lacked substance and contained no stipulated facts; all facts were contested. Mr. MacMullin's Answer denied he was a licensed lawyer and the Joint Prehearing statement listed this as a contested fact. When questioned about the rationale of such a denial of licensure, Mr. MacMullin argued because he admitted he was not licensed, the proceedings must be dismissed as the Supreme Court only had jurisdiction over licensed lawyers. On April 21, 2015, a final case management conference was held and the matter was set for a prehearing conference to address the presenting of evidence and exhibits and examination of witnesses. The conference and subsequent order outlined the obstructive actions of Mr. MacMullin.

Thereafter, Mr. MacMullin filed several motions and objections¹ resulting in the PDJ's Rulings on Pending Motions filed on April 24, 2015, including but not limited to: an order for the parties to enhance the stipulated facts, an order limiting the testimony of Judge Kenworthy, an order granting the State Bar's Motion to Strike Bar Counsel as a witness, an order overruling the objection to length of hearing, and the granting telephonic appearance and testimony for witnesses.

¹ Mr. MacMullin objected to the State Bar's Motion to Strike Bar Counsel as Witness, filed an Objection and Motion to Length of Hearing, and Objection to State Bar Documents.

The parties' Amended Joint Prehearing Statement, filed on April 24, 2015, slightly narrowed the issues for hearing and specifically identified the four motions Mr. MacMullin filed in the underlying matter alleged to raise ethical concerns within the complaint before the Panel. The motions identified were the: Motion for New Trial, Motion to Amend the Complaint, Motion for Supplemental Pleadings, Motion to Compel the production of opposing counsel's file and related Reply. The State Bar alleged those motions violated ERS 3.1, 4.4 and 8.4(d). In the Joint Prehearing Statement at page 5, Mr. MacMullin affirmatively asserted he committed no ethical misconduct.

Mr. MacMullin filed his Pre-Hearing Memorandum on April 24, 2015. The State Bar did not file a prehearing memorandum. A trial management conference was held on April 29, 2015, to assist the parties in paring down duplicate or irrelevant exhibits. See Minute Entry filed April 29, 2015.

The State Bar asserts a suspension of no less than six months should be the sanction. Mr. MacMullin asserts he exercised due diligence in filing the motions and any opposing position is unsupported by the facts. Mr. MacMullin argues he has engaged in no ethical violations and his actions were taken to protect his client and to pursue their rights.

FINDINGS OF FACT

Mr. MacMullin is a lawyer licensed to practice law in the State of Arizona having been first admitted to practice in Arizona on May 19, 1990. [Amended Joint Prehearing Statement; testimony of Mr. MacMullin.] Mr. MacMullin's primary area of law is civil litigation and estate planning. He is a sole practitioner with no support

staff. Since 1998, Mr. MacMullin's law practice has been in his home. [Testimony of Mr. MacMullin.]

Mr. MacMullin represented the plaintiff in the Yuma County Superior Court lawsuit of *Jorge Jimenez v. De Amaya, et.al.*, S1400CV201000801, and related counterclaims ("lawsuit"). The Complainant is one of several defendants in that lawsuit. [Amended Joint Prehearing Statement; Testimony of Mr. MacMullin.] The lawsuit is based upon Plaintiff's allegation that complainant falsely reported Plaintiff to the Yuma County Sheriff's office for assault. [Amended Joint Prehearing Statement.] On October 7, 2010, the La Paz County Attorney declined to prosecute the Aggravated Assault and Disorderly Conduct charges. [Exhibit 37.]

On or about November 15, 2010, the Court entered an order dismissing certain defendants from the civil lawsuit including, but not limited to, the County, the Sheriff and a Sheriff's deputy. [Amended Joint Prehearing Statement; Exhibit 32, SBA000422-428.]

During discovery in that civil suit, Mr. MacMullin took issue with statements in the Complainant's affidavit. [Testimony of Mr. MacMullin.] An issue in the litigation was the actual time of the assault. Mr. MacMullin believed his client had clear evidence of an alibi if the assault occurred at 7:56 p.m. We find no fault with the proper contesting of a witness statement. However, the evidence is abundantly clear, and Mr. MacMullin's own statements demonstrate he knew, the exact time of the assault was unknown.

The Complainant was represented by Marlo K. Arnold. Ms. Arnold, on behalf of Complainant, had submitted an affidavit attesting the alleged assault took place at approximately 7:30 p.m. [Exhibit 32, SBA000461-462.] Mr. MacMullin called Ms.

Arnold. Regarding that conversation, Mr. MacMullin avowed to the Superior Court: "Okay. It is relevant at this point that Miss Arnold told me that she is the one that made up the 7:30 time." [Exhibit 6, SBA000075, lines 16-18.]

Before us, Mr. MacMullin testified he had that conversation with opposing counsel, Ms. Arnold, on or about November 29, 2010. He testified Ms. Arnold, in response to his question of how the 7:30 time came about, told him she was estimating the time of the assault to be 7:30 p.m. He also swore his question was responded to with laughter by Ms. Arnold. [Testimony of Mr. MacMullin; Exhibit 6, SBA000097-141.] This assertion by Mr. MacMullin that Ms. Arnold laughed (at him) was raised solely to the State Bar and before us; not in the underlying civil suit matter. [Exhibit 2, SBA000012.]

On November 30, 2010, Mr. MacMullin sent an e-mail to Ms. Arnold regarding his conversation with her. [Ex. 6, SBA000086.] He stated,

I have had sufficient time to reflect upon our conversations concerning the 7:30 p.m. time that Maria Mora De Amaya testified to in her affidavit as the time of the alleged assault upon her person rather that (sic) 25 minutes later as she previously testified under oath to.

[Id.]

After asserting this was "dispositive" he then stated, "Your statement to me yesterday that you drafted the affidavit and the 7:30 p.m. "estimate" leads me to believe that you are the one responsible for this fabrication." [Id.] He then made the following demand:

Accordingly, I hereby demand that you confirm the fact that are the one that made upon (sic) the 7:30 p.m. and inferentially persuaded your client to sign the affidavit. I also demand that you withdraw any affidavits with any information that you made up and correct the Court.

[Id.]

On December 13, 2010, in oral argument before Superior Court Judge Reeves, Mr. MacMullin stated:

[T]here is an affidavit submitted by Miss Mora De Amaya who is the defendant who alleges that my client is the one that assaulted her on October 21, and that assault that was estimated to occur around 7:30 P.M., rather than what was show on the police report and produced by the Yuma County Sheriff's Office at the time of 7:55 or 7:56 or thereabouts. So, and I think that I have an e-mail that I sent to Miss Arnold on that who is present, their attorney, and from that discussion, she is the one that made up the 7:30 time.

[Exhibit 6, SBA000100-101, lines 19-4.]

The Judge soon asked, "And the relevance of the 7:30 versus 7:55, what would be the relevance of that? Mr. MacMullin responded,

Well the relevance of it is that she lied in her affidavit which has been our psotion as to her posture in this battery claim all along, and for that matter, the original charged filed by her against my client.

[Exhibit 6, SBA000103, lines 15-21.]

Mr. MacMullin went further when on June 25, 2012, he solely signed Plaintiffs' Amended Comprehensive Statement of Facts, certifying that in filing her client's affidavit that, "On or about November 29, 2010, in an act of subornation of perjury, Attorney Marlo Arnold stated to undersigned that she made up the 7:30 p.m. allegation...." [Exhibit 25, SBA000257, paragraph 72.] In his testimony before us, Mr. MacMullin acknowledged that his statement caused clear and substantial damage to the reputation of Ms. Arnold, but he stood by his statement.

We find Mr. MacMullin, based completely upon his speculative conjecture, leaped to such a declared "fact" Ms. Arnold did anything improper. He made no attempt at further inquiry of discussion. We are convinced by his testimony that no amount of evidence would have dissuaded him from his conclusion. Ms. Arnold did *not* confirm his conclusion was a fact. We find Mr. MacMullin only looked inward at

his own hunch and ignored the actual evidence. Ms. Arnold did as he demanded by doing nothing. She made no confirmation and withdrew no affidavits.

In reviewing his statements, which serve as the foundation for his actions that followed, we use an objective standard to assess whether his legal proceedings that followed were frivolous; however, we use a subjective standard to determine whether the lawyer acted in good faith. *In re Levine*, 174 Ariz. 146, 153, 847 P.2d 1093, 1100 (1993).

From the plain language chosen to be used by Mr. MacMullin, we objectively find Mr. MacMullin demanded Ms. Arnold to respond only if his allegations were true. She did not respond. Likewise, the fact she withdrew no affidavits should also have confirmed she maintained they were true. We find no valid legal or factual basis for his actions that followed.

We find troubling his intentional misrepresentation of the record in his email to Ms. Arnold. Complainant gave no affirmative testimony regarding the 7:30 p.m. time frame. We find Mr. MacMullin knew this, but intentionally strove to mislead Ms. Arnold with a statement he knew or should have known was untrue. Despite being fully aware of this, in the above referenced email, Mr. MacMullin stated the complainant testified "under oath" she was assaulted "25 minutes later" which would be 7:55 p.m. His basis for that assertion is the testimony of the Complainant in a prior legal proceeding in Yuma Municipal Court. Her testimony does not support the statement of Mr. MacMullin to Ms. Arnold that the assault happened at 7:55 p.m."

Q. Did you put on exact hour when the incident happen? Do you put the hour?

A. First of all, I didn't put any hour. I call—my daughter called the sheriff. I didn't put any hour.

Q. Okay. Why did you not put the hour?

A. I didn't make the report.

Q. I want to know the hour, the time that I aggressed you supposedly at your house on the 21st.

This is to the Judge. Maybe the Judge can ask her, even if it is just---

Court: It's not up to me, it's up to you.

Amaya: The time—

Jimenez: --what time is—

Amaya: --the time is on the report, the police report, your Honor.

[Exhibit 6, SBA000073.]

There was no affirmative testimony by Complainant of what time the assault occurred. Mr. MacMullin concedes there was no cross examination of Complainant to establish she had even read the police report. Having given no affirmative testimony regarding her estimation of the time, we objectively find nothing from which Mr. MacMullin could reasonably draw the conclusion he asserted to Ms. Arnold.

Mr. MacMullin compounded this by his intentional misleading of the Judge in his argument to the Superior Court on December 13, 2010. He stated to the court,

In the initial statements that she made under oath, her first response is that she didn't know. Then she said the time was on the police report. The police report says 7:56 or thereabouts and deputy Sutton in his police report state it was, the assault occurred immediately before that time, shortly before that time, which looking at his police report is a matter of minutes.

[Exhibit 6, SBA000104, lines 5-13.]

We reviewed the report. [Exhibit 6, SBA00088-95.] It does not state the exact time of the assault. Mr. MacMullin's argument to the court demonstrates he knew Complainant did not know the time of the assault. The report stated no specific time for the assault and yet he misleadingly informed the court the report stated "7:56 or thereabouts." [Id.] The report does refer to the time the call was received and what time the officer responded, not the time of the assault. We find Mr. MacMullin determined a time convenient for his evidence and then conjectured his hunch into a fact which he certified to the court.

Mr. MacMullin later stated the reason for his misleading statements to his opposing counsel in the email and to the court in his arguments. "So the time is critical. The time of the call is 7:56 or 7:55, thereabouts. And that assault occurred immediately before that, not at 7:47, more likely 7:53 or thereabouts." [Exhibit 6, SBA000128, lines 9-11.] Mr. MacMullin misrepresented the evidence to the court to intentionally mislead the court and aid his subjective view. He certified, "[A]nd we can't allow that to happen because we have his whereabouts established from El Centro...." [Exhibit 6, SBA000129 lines 19-22.]

Mr. MacMullin would later certify this misleading statement in the Superior Court proceedings. Mr. MacMullin chose to solely certify to the court by his signature alone, Plaintiff's Amended Comprehensive Statement of Facts. There he again expounded what little testimony there was by certifying, "[O]n December 11, 2009, in her sworn testimony before the Yuma Municipal Court, Defendant De Amaya testified that the time of the alleged assault was the time that was on the police report." (SB Ex. 25, SBA000250, paragraph 47.) In his testimony before us, Mr. MacMullin continued his position by swearing Ms. DeAmaya testified she was assaulted at 7:55 p.m.

Based on his declaration Ms. Arnold had legally admitted to his conclusion, Mr. MacMullin thereafter certified to the court that Ms. Arnold had engaged in the subornation of perjury when her client signed the affidavit "changing" the time of the alleged assault. Ms. Arnold denied Mr. MacMullin's allegations of suborned perjury. [Testimony of Mr. MacMullin; Exhibit 6, SBA00074, line 25 and SBA000100-141.]

The Superior Court Judge's rulings or findings are not binding as to whether Mr. MacMullin violated ethical rules. The disposition of the motions or imposing Rule

11 sanctions in the underlying Superior Court matter is not dispositive on whether Mr. MacMullin violated the ethical rules. There are significant differences between this proceeding and the proceeding before the superior court judge, which include the differing standards of proof. Although the Superior Court matters may share the same identical underlying facts, the hearing panel must independently determine, under the proper standard, the existence of the facts, which are relevant and material to the disciplinary matter and whether those facts, even if identical to those established in the superior court proceeding, warrant discipline. *See Office of Disciplinary Counsel v. McKinney*, 668 S.W.2d 293, 297 (Tenn. 1984), *In the Matter of Lewis*, 445 N.E.2d 987, 989 (Ind. 1983).

Therefore, we independently examine the record to determine whether a respondent's conduct violated the ethical rules as charged. Central to our analysis is the motive or intent. When the lawyer is charged with *intentional* misconduct, whether he had a "good faith belief [in a strategy] based on some tenable legal argument" that can become our central inquiry. However, despite that an attorney's good faith may be an important consideration in a disciplinary proceeding, it need not always be the controlling issue. Because under our rules and the *Standards for Imposing lawyer Sanctions*, an improper motive generally is not required to impose discipline, we find violations of ER 3.1, 4.4 and 8.4 by Mr. MacMullin.

Mr. MacMullin was also sanctioned for another Rule 11 violation. An amended comprehensive statement of facts filed by Mr. MacMullin was signed solely by him on June 25, 2012. Mr. MacMullin avowed as a statement of fact that, "On December 6, 2010, Defendants admitted that: "the undisputed facts are that defendant De Amaya was attacked on October 21, 2009 and mistakenly believed her attacker to be the

Plaintiff.” He then cited Defendant’s/Third Party Plaintiff’s reply. [Ex. 25, SBA000257, paragraph 73.] The pleading filed by Ms. Arnold actually stated: “For purposes of this motion, the undisputed facts are that Defendant De Amaya was attacked on October 21, 2009, and mistakenly believed her attacker to be the Plaintiff.” [Ex. 25, SBA000262, lines 20-22.]

The Reply preceded that conditional admission by a similar statement. Ms. Arnold prefaced the conditional admission above by stating, “[T]he Plaintiff has personal knowledge of whether he was involved in the attack, so the Defendants accept as true the Plaintiff’s contention that he did not attack Defendant De Amaya for purposes of this motion alone.” [Exhibit 25, SBA000262, lines 13-15.] Likewise on page 7 of the reply, it is again emphasized the admission was conditional. [Exhibit 26 SBA 000266, lines 13-16.]

Mr. MacMullin does not dispute under Civil Rule 11(a) his signature was a certification he had read the pleading and,

that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Rule 11(a), Ariz. R. Civ. P.

On December 13, 2010, Mr. MacMullin further misled the court in his argument to it regarding his misquotation:

And I don’t know if this court has that in front of the court. But I can read from page three at roughly lines 20 to 22, this is her statement which is actually an astonishing statement to me at this point in this case: It says the undisputed facts are that defendant De Amaya was attacked on October 21 and mistakenly believed her attacker to be the plaintiff. And that is an astonishingly (sic) revelation which by itself almost constitutes dismissal of the battery claim.

[Exhibit 6, SBA000102, lines 7-15.]

Notwithstanding the Judge's stated conclusion of a violation of Rule 11, we independently analyze whether this conduct violated the ethical rules. We conclude the evidence is more than clear and convincing that it does. We find Mr. MacMullin knew this statement was not only misleading but untruthful and intentionally designed to mislead the court. Mr. MacMullin maintains that having concluded his version of the facts were true, he remained entitled to submit partial quotations out of context, for the sole reason they support his conclusion. Knowing the Plaintiff's conditional admissions were made for the limited purpose of the court's analysis, Mr. MacMullin intentionally quoted out of context and intentionally omitted key language within the single sentence. Based on our observation of his testimony and the record, we decline to find this was negligently done. Mr. MacMullin acted to "win" his case for his client regardless the cost. We find violations of ERs 3.1, 4.4 and 8.4.

The Superior Court entered an order on March 7, 2013, denying the Cross-Motion to Strike Defendant Amaya's Affidavit and Motion for Sanctions against opposing counsel filed by Mr. MacMullin. The court found that standing alone, opposing counsel's silence for a few days regarding the e-mail did not entitle Mr. MacMullin to accuse her of suborned perjury, and there was no evidence to support that the estimated time of 7:30 came not from client. The court further found Mr. MacMullin violated Rule 11 twice and ordered Mr. MacMullin to pay two sanctions of \$50.00 to the clerk of court by March 28, 2013. Finally, the court awarded complainant her reasonable attorney's fees and costs related to the motion. [Amended Joint Prehearing Statement; Exhibit 1, SBA000005-07.] We independently view this evidence and conclude as the court did. Mr. MacMullin was

intentional in his misrepresentation of the record. We therefore find he violated ERs 3.1, 4.4 and 8.4.

Mr. MacMullin filed a Motion to Compel the Production of Files of Attorney Amanda Taylor and to Overrule her Objection to Subpoena on January 21, 2011, and a subsequent reply. In his motion he demanded that the defendant's attorney be required to answer all his questions and there be no right of attorney client confidentiality. [Exhibit 38, SBA000541-616.] Ms. Arnold filed a Motion to Strike Portions of Plaintiff's Reply re Motion to Compel Production of Files of Attorney Amanda Taylor and To Impose Sanctions under Rule 11, Ariz. R. Civ. P. on February 23, 2011. [Amended Joint Prehearing Statement; Exhibit 6, SBA 000070-141.] We find no substantial purpose for such action other than to delay the proceedings and burden the opposing party in violation of ER 4.4.

On September 7, 2012, the court entered an order denying Mr. MacMullin's Motion to Dismiss the Counterclaims. [Amended Joint Prehearing Statement; Exhibit 7, which was withdrawn.] On March 7, 2013, the court granted a motion for summary judgment filed by Ms. Arnold and denied Mr. MacMullin's motion for summary judgment, eliminating the primary claims. [Amended Joint Prehearing Statement; Exhibit 8, SBA000144-148.]

On or about March 20, 2013, Mr. MacMullin moved for New Trial regarding the court's summary judgment rulings and a Motion for Rule 54(B) Determination. [Amended Joint Prehearing Statement; Exhibits 10, 12, 14.] On or about March 20, 2013, Mr. MacMullin also moved for New Trial Regarding the Court's Sanctions Order. [Amended Joint Prehearing Statement; Exhibits 9, 11, 13.] We note in that pleading Mr. MacMullin, as he did before us, declared there was nothing misleading about his

misquotation of Ms. Arnold, when she admitted certain facts for the sole purpose of her motion. As before us, Mr. MacMullin asserted his intentional misquotation, “. . . is not misleading. Misleading is defined as delusive or calculated to be misunderstood. (Citation to Black’s Law Dictionary omitted) This implies wrongful conduct on the part of Jimenez or undersigned, an implication, which Jimenez and undersigned deny.” [Exhibit 9, SBA000154, lines-17.]

On April 18, 2013, the court denied the Motion for New Trial regarding summary judgment and Rule 54(b) determination because it was not persuaded with the arguments or case law cited. The court held granting relief under Rule 54(b) would not promote judicial economy, but would hinder it. [Exhibit 15.] On April 23, 2013, the court also denied the Motion for New Trial re Sanctions Order. [Exhibit 16.] The court was not persuaded Mr. MacMullin inadvertently misquoted opposing counsel’s statement but his misquotation was made to mislead the court. [Exhibit 16, SBA000193-195.]

On or about May 9, 2013, Mr. MacMullin filed a Petition for Special Action with Division One of the Arizona Court of Appeals No. 1 CA-SA 13-0124, and a separate appeal, No. 1 CA-CV 13-0383. [Amended Joint Prehearing Statement.] On May 29, 2013, the court issued an order declining jurisdiction of the petition for special action. [Amended Joint Prehearing Statement; Exhibit 17, SBA000196-197.] The Court of Appeals, Division One also dismissed Mr. MacMullin’s appeal on November 4, 2014, for lack of jurisdiction and denied his motion to strike as moot. [Exhibit 18, SBA000198-199.]

On July 10, 2014, Mr. MacMullin again moved for New Trial, Motion to Amend the Complaint and Motion for Supplemental Pleadings Pursuant to Rule 15(D), Ariz.

R. Civ. P. [Exhibit 39, SBA000617-633; Exhibit 44, SBA000681-705; and Exhibit 5, SBA00053-56.] By Order filed on August 12, 2014, the court denied Mr. MacMullin's motions. [Exhibit 21, SBA000202 – 205.]

On August 18, 2014, Mr. MacMullin moved for New Trial asserting that the court erred in its Orders filed August 12, 2014 and November 15, 2010. [Exhibit 40, SBA000634-639.] The parties then stipulated to an entry of judgment under Rule 54(b), Ariz. R. Civ. P. [Exhibits 22, SBA000206-210.] Judgment was entered on September 19, 2014, dismissing the Plaintiff's Complaint with prejudice against Defendant's Yuma County, Ralph Ogden, Todd Sutton and Jane Doe Sutton only. [Exhibit 23, SBA000211-213.]

The State Bar alleged these later actions were violations as they prolonged the case and occurred after the special action, but before the formal final judgment was entered. We find the evidence insufficient to agree and therefore dismiss those allegations.

However, we do not ignore the submission of false evidence, false statements and the other deceptive practices of Mr. MacMullin in the proceeding before us. His answer was deceptive and he maintained that deceptive practice and intentionally obstructed these proceedings by failing to comply with the Supreme Court Rules.

CONCLUSIONS OF LAW AND DISCUSSION OF DECISION

The Panel finds clear and convincing evidence Mr. MacMullin violated Rule 42, ERs 3.1, 4.4, and 8.4(d). ER 3.1 prohibits a lawyer from either bringing or defending a proceeding or asserting issues, "unless there is a good faith basis in law and fact for doing so that is not frivolous, which may include a good faith and non-frivolous argument for an extension, modification or reversal of existing law." An objective

standard assesses whether a legal proceeding is frivolous; however, a subjective standard is used to determine whether the lawyer acted in good faith. *In re Levine*, 174 Ariz. 146, 153, 847 P.2d 1093, 1100 (1993). ER 4.4 prohibits lawyers, while representing clients, from using means that have no substantial purpose other than to embarrass, delay, or burden any other person. The record supports clear and convincing evidence that Mr. MacMullin violated ERs 3.1 and 4.4. Many of the pleadings were filed by Mr. MacMullin without a good faith basis in fact or law and had no substantial purpose other than to delay the proceedings or burden the opposing party.

In attorney discipline matters, Civil Rule 11 sanctions standing alone, however, are not dispositive of ethical rule violations. Under ER 8.4(d), it is unprofessional conduct for a lawyer to engage in conduct prejudicial to the administration of justice. The Supreme Court has held that ER 8.4(d) requires no mental state other than negligence. *In re Clark*, 207 Ariz. 414, 418, ¶ 16, 87 P.3d 827, 831 (2004).

Mr. MacMullin filed frivolous and unsupported pleadings which required the court to hold unnecessary hearings in violation of ER 8.4(d). Mr. MacMullin acknowledged he filed pleadings that did not meet standards. [Testimony of Mr. MacMullin.] Included in those pleadings or arguments, Mr. MacMullin concluded opposing counsel committed misconduct by suborning perjury and argued it was demonstrated such conduct by his own email. [Exhibit 6, SBA0000086.] As stated above, the Panel finds these were unreasonable positions by Mr. MacMullin. His certification of a discrepancy in the time of the attack was to mislead the court as was his certification opposing counsel engaged in the subornation of perjury. [Exhibit 1, SBA000005-07.] No reasonable attorney would have made the allegations against

opposing counsel regarding suborned perjury. [Exhibit 1, SBA000008—SBA000010.] In addition, in his Amended Comprehensive Statement of Facts, Mr. MacMullin quoted from the Defendant's reply filed on December 6, 2010, and omitted three prefatory words in the quotation, which changed the statement's context. The court found the misquotation to be misleading, as do we.

Having considered the testimony and exhibits, we find the State Bar proved the above stated ethical rule violations by clear and convincing evidence.

VI. SANCTIONS

In consideration of a sanction, the Panel considered the following factors in the American Bar Association *Standards for Imposing Lawyer Discipline (Standards)*:

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating or mitigating factors. *Standard 3.0.*

In determining the ethical duty violated, the *Standards* assume that the most important ethical duties are those obligations which a lawyer owes to his clients, including preserving the client's property. *Theoretical Framework*, p. 5. The *Standards*, however, do not account for multiple ethical rule violations. The ultimate sanction should at minimum be consistent with the most serious instance of misconduct and generally should be greater than the sanction for the most serious misconduct. *Id.*, at p. 6.

Standard 6.22, Abuse of the Legal System, applies to Mr. MacMullin's violation of ERs 3.1, 4.4 and 8.4(d). *Standard 6.22* provides:

Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

Standard 6.23 provides:

Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

The Panel determined that the presumptive sanction is suspension. Mr. MacMullin knowingly violated his duty to the legal system and intentionally caused injury or potential injury a party, opposing counsel, and interference with a legal proceeding by filing unsupported pleadings not based in fact or law and had no substantial purpose other than to embarrass, delay, or burden any other person.

AGGRAVATION AND MITIGATION

The Panel determined the following aggravating factors are supported by the record:

Standard 9.22(a) (prior disciplinary offense).

- An informal reprimand was imposed effective August 8, 2008, in File No. 08-0499 for violating ER 1.7 and 1.8(h)(2).
- Under an Agreement for Discipline by Consent, an Order of Reprimand and two years of probation (MAP and CLE) was imposed effective July 8, 2013, in PDJ 2013-9030 for violating ERs 1.7, 3.1 and 8.4(d). Mr. MacMullin is currently on probation. [Exhibits 26-29.]

Standard 9.22(c) (pattern of misconduct). Mr. MacMullin was reprimanded in 2013 for violations of ER 3.1 and 8.4(d).

Standard 9.22(e) (bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules).

Standard 9.22(f) (submission of false evidence, false statements, or other deceptive practices during the disciplinary process).

Standard 9.22(i) (substantial experience in the practice of law). Mr. MacMullin has been a member of the State Bar of Arizona since 1991.

Mr. MacMullin offered no mitigating factors; therefore, the Panel finds none are present.

The presumptive sanction is suspension and the Panel determined the objectives of discipline will be fulfilled by imposing suspension and costs. Mr. MacMullin was overzealous in his efforts to protect his clients and their rights. The Panel is hopeful Mr. MacMullin will proceed with great trepidation in filing such motions and these proceedings have illuminated his duty to file pleadings well-grounded in fact and law. The Panel notes Mr. MacMullin is on probation in PDJ 2013-9030, and may not have had the full benefits of the rehabilitative programs imposed. As a result, the Panel declined to follow the State Bar recommendation of a sanction of six months or longer.

VII. CONCLUSION

Mr. MacMullin repeatedly appears to give more authority to that which is inward, precisely because it is *his* speculation within. This choice seems to enable his misconduct which blinds him from analyzing objectively or even accurately, the river of evidence in front of him. While we are hopeful our sanction will cause him to reconsider these choices, we remain concerned that for Mr. MacMullin there may be no authority which counts as highly as his own inward hunch. Notwithstanding, the object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *In re Peasley*, 208 Ariz. 27, 38, 90 P.3d 764, 775 (2004). Based on the facts, conclusions of law, and application of the

Standards, including aggravating factors, the Panel determined that a three month suspension is the sanction. Accordingly,

IT IS ORDERED:

Mr. MacMullin is suspended for three months, effective 30 days from this order.

IT IS FURTHER ORDERED that Mr. MacMullin shall pay costs and expenses.

A final judgment and order will follow.

DATED this 15th day of June, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

CONCURRING:

Marsha Morgan Sitterley

Marsha Sitterley, Volunteer Public Member

Boyd T. Johnson

Judge Boyd T. Johnson (retired), Volunteer Attorney Member

COPY of the foregoing e-mailed/mailed
this 15th day of June, 2015, to:

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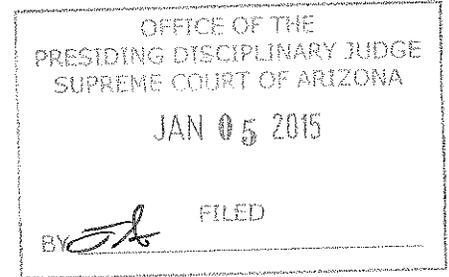
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**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

**IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,**

**JOHN MACMULLIN,
Bar No. 013049,**

Respondent.

PDJ 2015-9002

COMPLAINT

State Bar No. 13-3284

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent is a lawyer licensed to practice law in the State of Arizona having been first admitted to practice in Arizona on May 19, 1990.

COUNT ONE (File No. 13-3284/Mora)

2. Respondent represented the plaintiff in the Yuma County Superior Court lawsuit of *Jorge Jimenez v. De Amaya, et.al.* and relate counterclaims, S1400CV201000801. Complainant is one of several defendants in the lawsuit.

3. The lawsuit is based upon, among other things, Plaintiff's allegation that Complainant falsely reported Plaintiff to the Yuma County Sheriff's office for assault. One of Respondent's theories in the case was that Complainant contradicted herself regarding the time of the purported assault. Complainant

originally indicated that the assault occurred around 7:56 pm and later submitted an affidavit alleging that the assault occurred at 7:30 pm.

4. On or about November 15, 2010, the Court entered an order dismissing certain defendants in the matter including, but not limited to, the County, the Sheriff and a Sheriff's deputy.

5. During the lawsuit, Respondent filed a Motion to Compel the production of the opposing counsel's file and Reply to the Motion to Compel alleging, among other things, that opposing counsel suborned perjury by causing their client to sign an affidavit changing the time of the purported assault.

6. On February 23, 2011, opposing counsel filed a Motion to Strike Portions of Plaintiff's Reply and Motion for Sanctions for alleged violations of Rule 11 of the *Arizona Rules of Civil Procedure*.

7. On September 7, 2012, the Court entered an order denying Respondent's Motion to Dismiss the Counterclaims.

8. On March 7, 2013, the Court granted De Amaya's motion for summary judgment and denied Respondent's motion for summary judgment, thereby eliminating the primary claims in the case.

9. The Court contemporaneously entered a separate order denying Respondent Cross-Motion to Strike Defendant-Amaya's Affidavit and Motion for Sanctions against opposing counsel. Instead, the Court found that Respondent violated Rule 11 twice and ordered Respondent to pay two sanctions of \$50.00 to

the clerk of court on or before March 28, 2013. Finally, the Court awarded Complainant her reasonable attorney's fees and costs related to the motion.

10. On or about March 20, 2013, Respondent filed a Motion for New Trial regarding the Court's summary judgment rulings and a Motion for Rule 54(B) Determination. The Court denied both motions on April 18, 2013.

11. Respondent also filed a Motion for New Trial Regarding the Court's Sanctions Order.

12. The Court denied this motion on April 23, 2013 finding that the motion was not supported by the facts and stating "[i]f the court agreed with (Respondent's) arguments, the result would be that in a substantial portion of the cases filed in court, counsel would be entitled to accuse opposing counsel of subornation of perjury without any consequences. That is a result this court will not condone."

13. On or about May 9, 2013, Respondent filed a Petition for Special Action with Division One of the Arizona Court of Appeals (1 CA-SA 13-0124) and an appeal (1 CA-CV 13-0383).

14. On May 29, 2013, the Court declined to accept jurisdiction of the petition for special action.

15. On November 4, 2013, the Court dismissed the appeal for lack of jurisdiction.

16. On or about July 8, 2014 (almost four years later), Respondent filed a Motion for New Trial, Motion to Amend the Complaint and Motion for Supplemental Pleadings attempting to overturn the Court's November 2010 order dismissing certain defendants in the matter including, but not limited to, the County, the Sheriff and a Sheriff's deputy.¹

17. The Court denied the motion and found that "[b]efore the court entered the November 10, 2010 ruling, it heard the very same arguments that Plaintiff has included in the Motion to Amend and Motion for New Trial. Both then and now, Plaintiff contends there was a jury question regarding the Deputy having probable cause to arrest Plaintiff given the Justice Court's dismissal of Maria Mora's IAH against Plaintiff's wife. Both then and now, Plaintiff contends the adverse ruling as to Maria Amor's (sic) Petition for IAH showed that Maria Amora (sic) was not credible, and thus should not have been believed as to her allegations that Plaintiff assaulted her on October 21, 2009. It appears Plaintiff is filing the Motion with the hope that a new judge will view the matter differently than the previously assigned judge...it appears to the court that the main purpose of Plaintiff's amendment is to cause additional delay...[o]nly after it appeared a trial would be set did Plaintiff file the Motion in question. The timing of Plaintiff's request appears more a result of an effort to delay the trial rather than recover on a plausible claim."

¹ Rule 59(d) of the *Arizona Rules of Civil Procedure* requires that a motion for new trial must be filed within 15 days after the entry of the judgment unless it is based upon newly discovered evidence pursuant to Rule 60.

18. Opposing counsel indicates that his law firm has stopped billing Complainant due to the number of pleadings and amount of related attorney fees incurred as a result of Respondent's litigation tactics.

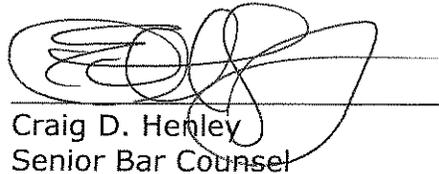
19. By engaging in the above described misconduct as well as actions related to the underlying lawsuit, Respondent violated Rule 42, Ariz. R. Sup. Ct.:

- a. ER 3.1 – Respondent filed a Motion for New Trial, Motion to Amend the Complaint and Motion for Supplemental Pleadings almost four years later attempting to overturn the Court's November 2010 order dismissing certain defendants in the matter which asserted the "very same arguments" and issues that were previously heard when there was not a good faith basis in law including, but not limited to, Rule 59(d) of the *Arizona Rules of Civil Procedure* or in fact, and a Motion to Compel the production of the opposing counsel's file and Reply to the Motion to Compel alleging, among other things, that opposing counsel suborned perjury when there was not a good faith basis in law or fact;
- b. ER 4.4 – Respondent engaged in the above referenced litigation tactics, among others, that had no substantial purpose other than to delay the proceedings or burden the opposing party resulting in, among other things, opposing counsel to stop billing Complainant for legal fees due to the nature and number of Respondent's pleadings and the amount of related attorney fees incurred; and

- c. ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of justice by filing unsupported pleadings causing, among other things, the Court to find that Respondent violated Rule 11 twice and requiring the Court to order Respondent to pay two sanctions of \$50.00 to the clerk of court on or before March 28, 2013.

DATED this 5th day of January, 2015.

STATE BAR OF ARIZONA



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 5th day of January, 2015.

by: 
CDH/ bdfm



**BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA**

**IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,**

**JOHN MACMULLIN
Bar No. 013049**

Respondent.

No. 13-3284

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on December 12, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 13-3284.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 22 day of December, 2014.



Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause
Committee of the Supreme Court of Arizona

Original filed this 22nd day
of December, 2014, with:

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by: Robert T. Braw