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**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE STATE BAR OF ARIZONA**

**In the Matter of Members of the
State Bar of Arizona,**

**ANDREW P. THOMAS, Bar No. 014069,
LISA M. AUBUCHON, Bar No. 013141, and
RACHEL R. ALEXANDER, Bar No. 020092**

**INDEPENDENT BAR COUNSEL'S
CLOSING ARGUMENT**

Case No. PDJ 2011-9002

Independent Bar Counsel, John S. Gleason, acting by appointment of Rebecca White Berch, the Chief Justice of the Arizona Supreme Court, as set forth in her Administrative Order No. 2010-41 entered March 23, 2010, respectfully submits his Closing Argument in this proceeding.

I. INTRODUCTION

This case is a lawyer discipline matter brought pursuant to Arizona Supreme Court Rule 31 against Andrew P. Thomas ("Thomas"), Lisa M. Aubuchon ("Aubuchon") and Rachel R. Alexander ("Alexander"). Commencing on September 12, 2011, a hearing was held about the allegations against the three lawyers. The hearing concluded November 2, 2011. The Presiding Disciplinary Judge ("PDJ") ordered Independent Bar Counsel to file a written closing argument by December 30, 2011. Respondents have until January 15, 2012 to file responses, after which IBC has until January 31, 2012 to file a reply.

1 IBC is filing contemporaneously with this Closing Argument a Proposed Report and Order
2 Imposing Sanctions (“Report”). IBC has composed that document as a Report that the Hearing
3 Panel may adopt in total or in part if it so chooses. Almost every factual statement in the Report is
4 cited to the testimony or to an exhibit in the record.
5

6 In this Closing Argument, IBC submits his reasons for concluding that Thomas and
7 Aubuchon must be disbarred and Alexander must be suspended.
8

9 II. OVERVIEW

10 The misconduct of the three lawyers in this proceeding arose out of disputes between
11 Thomas and the Maricopa County Board of Supervisors (“MCBOS” or “Board”) that began after
12 Thomas became County Attorney in 2005. Thomas also had disputes with particular judges of the
13 Maricopa County Superior Court that led to misconduct. Thomas and Aubuchon became obsessed
14 with pursuing particular individuals involved in these disputes through criminal investigations and
15 then a civil RICO action. Their obsession with Supervisor Donald Stapley, attorney Thomas Irvine
16 and Judge Gary Donahoe caused multiple conflicts of interest, dishonesty in documents they filed in
17 court, and the filing of criminal charges without any evidence that a crime had been committed.
18

19 Thomas and Aubuchon committed multiple serious violations of their obligations as lawyers,
20 and they can no longer be permitted the privilege of practicing law.

21 Alexander’s misconduct was not as serious, but still requires that her license to practice law
22 be suspended. Alexander committed 6 violations of the Arizona Rules of Professional Conduct, all
23 related to the RICO action that was commenced in December 2009.

24 Aubuchon committed 28 violations of the Rules of Professional Conduct including but not
25 limited to:

- 26 • 7 violations of the rule prohibiting conflicts of interest

- 6 violations of the rule prohibiting the use of means to burden or embarrass another
- 4 violations of the rule prohibiting conduct that prejudices the administration of justice
- 3 violations of the rule prohibiting engaging in dishonesty
- 2 violations of the rule prohibiting engaging in criminal conduct

Thomas committed 32 violations of the Rules of Professional Conduct including but not limited to:

- 8 violations of the rule prohibiting conflicts of interest
- 6 violations of the rule prohibiting the use of means to burden or embarrass another
- 2 violations of the rule prohibiting engaging in dishonesty
- 3 violations of the rule prohibiting conduct that prejudices the administration of justice
- 2 violations of the rule prohibiting engaging in criminal conduct

However, the most serious misconduct that Thomas and Aubuchon committed was filing three felony charges against Superior Court Presiding Criminal Judge Gary Donahoe with no evidence of any criminal activity. They did so to force his removal from a case he was handling. Thomas and Aubuchon's misconduct in that matter was such a serious breach of their ethical obligations that the only conclusion to be reached on that matter alone is disbarment pursuant to *ABA Standards for Imposing Lawyer Sanctions* § 5.21 (disbarment appropriate when a government

1 Remarkably, Thomas never admitted or recognized that he became an adversary of the
2 Board. During the hearing, Thomas was still unwilling to examine his own conduct and instead
3 criticized the conduct of others.
4

5 During 2006, Thomas had a significant disagreement with the Board about the appointment
6 of outside counsel to represent the Board. At this time, Supervisor Don Stapley was chair of the
7 Board. He wrote to Thomas and proposed a new method of selecting counsel in which the Board
8 would have much more control over the process and Thomas would have less. Thomas did not
9 agree. This disagreement led to Thomas advising the Board in a series of letters.

10 Thomas advised the Board that it could not follow the new method to appoint outside
11 lawyers. There would have been no problem with Thomas giving such advice except that he had a
12 significant personal interest in the matter. Thomas's interest was to maintain his authority over the
13 appointment of outside counsel without hindrance from the Board. Regardless of the merits of his
14 view on this subject, Thomas's client, MCBOS, wanted to be able to choose its own outside counsel.
15 Thomas had an obvious conflict – he could not give objective advice to the Board. Later, Thomas
16 eventually acknowledged that he had a conflict of interest, but that was quite some time after he had
17 given his conflicted advice to the Board. In advising his client, the Board, about appointment of
18 counsel for the Board while his judgment was limited by his own interests, Thomas violated **ER**
19 **1.7(a)(2)**.
20

21 **Claim 2. (Breach of Confidentiality).** On June 14, 2006, Thomas sued the Board over the
22 issue of appointing outside counsel for the Board. At the time he sued the Board, Thomas issued a
23 news release stating that his suit was similar to two other suits that had been filed against the Board
24 – one by Sandra Dowling, and another by Philip Keen. Thomas again demonstrated his lack of
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26

1 objectivity and his lack of understanding of what it is to have an attorney-client relationship with a
2 client. In his news release, Thomas stated:

3
4 It bears noting that these recent lawsuits [against the county] had occurred
5 during, and largely because of, the unusual chairmanship of Supervisor Don
6 Stapley. While respecting the attorney-client relationship I hold with Mr.
7 Stapley and other members of the board, I would be remiss if I did not help
8 the people of Maricopa County understand why the board has attracted so
9 many costly lawsuits in such a brief period of time.

10 I cannot in good conscience defend the Board of Supervisors in the two legal
11 actions brought by Ms. Dowling and Mr. Keen, as I believe these complaints
12 [against the county] have merit.

13 Thomas's statement revealed his personal opinion about his client's legal position in those two
14 cases. Unless his client consents, a lawyer should never disclose what he thinks about his client's
15 legal position. To do so is a serious breach of loyalty to a client, and Thomas demonstrated that his
16 loyalty was not to his client but to himself.

17 Thomas's news release showed that Supervisor Stapley had become the focus of Thomas's
18 criticism and animosity.

19 Thomas's office had represented the County and advised the Board on both the *Dowling* and
20 *Keen* cases before Thomas issued his statement. Thomas did not even check to see if his office had
21 ever advised the County on those matters; Thomas was not justified in revealing his opinion about
22 the County's position. Doing so was a violation of **ER 1.6(a)**. Moreover, his news release shows
23 that he did not respect the fundamental principle of trust that is the hallmark of the attorney-client
24 relationship. ER 1.6 cmt. 2. Thomas eviscerated that trust.

25 **Claim 3. (Improper Statements to the Media).** Thomas's news release about his own suit
26 and the Dowling and Keen suits also violated the rule that a lawyer cannot make extrajudicial

1 statements that he knows or reasonably should know will be disseminated by means of public
2 communication and will have a substantial likelihood of materially prejudicing an adjudicative
3 proceeding. Thomas violated **ER 3.6(a)**. Again, Thomas demonstrated that he lacked the ethical
4 compass that should guide not just all lawyers, but especially those who hold such a powerful and
5 public position.
6

7 Looking back over Thomas's tenure as County Attorney, it is clear that the serious
8 misconduct that he committed in December 2009 – filing the RICO case and charging Judge Gary
9 Donahoe – was a result of the same fundamental lack of attorney ethics. Thomas's self interest took
10 precedence over his obligation to abide by ethical rules.
11

12 **B. Claims 4-11 Thomas and Aubuchon's Misconduct In *Stapley I* Case**

13 **Claim 4. (Charging Stapley to Burden Him).** In December 2008, Thomas and Aubuchon
14 caused a grand jury to indict Supervisor Stapley on 118 charges for conduct beginning in 1994. This
15 was Thomas's first act based upon his obsession with Supervisor Stapley. Soon, this obsession
16 reached the point where Thomas acted not on evidence, but on vague and unsubstantiated rumors
17 about Stapley. One unsubstantiated rumor was that Stapley told Presiding Superior Court Judge
18 Mundell that she would not get the Court Tower if she did not hire attorney Tom Irvine. This rumor
19 marked the beginning of Thomas's obsession with Tom Irvine. Thomas and Aubuchon never talked
20 to the source of this rumor, Jack LaSota, and did not perform any investigation of this alleged bribe.
21 Nevertheless, in January 2007, soon after the lawsuit against the Board was settled, Thomas's
22 Special Assistant County Attorney Mark Goldman began to investigate whether there was a
23 connection between Stapley and Irvine.
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1 Goldman began investigating Stapley in January 2007 when Thomas had a conversation with
2 him about a possible connection between Stapley and Irvine. Goldman found no connection, but he
3 did find that Stapley had not made full financial disclosures as required of members of the Board.
4 Goldman developed this information no later than May 2007. Goldman gave this information to
5 Thomas and to the Maricopa Anti Corruption Enforcement (“MACE”) unit, a joint project between
6 MCSO and MCAO.
7

8 Thomas did not follow up on this information until March 2008 when he assigned the matter
9 to Lisa Aubuchon. At that time, Thomas told Aubuchon to get the case done in a month; the only
10 reason it had to be done in a month was that the statute of limitations would run on misdemeanor
11 violations a year after law enforcement knew or should have known there was probable cause that a
12 crime was committed. Because Thomas had known about Goldman’s findings since May 2007, the
13 evidence establishes that Thomas was concerned about the one year statute of limitations.
14

15 In March 2008, Aubuchon obtained information about Stapley’s disclosures. Thomas told
16 her the case originated from a “tip.” Aubuchon never asked who made the tip or what that person
17 said. Instead, she investigated the matter herself – enough to prepare a 65 count indictment. She
18 then gave the case and the draft indictment to the MACE unit on May 14, 2008, and told the MCSO
19 detectives that the investigation was going to begin that day. Clearly, Aubuchon was misleading the
20 detectives about the timing of the matter. She knew that Goldman had investigated in early 2007,
21 and she knew that she had investigated earlier in 2008. The timing of when investigations begin is
22 critical for statute of limitations purposes. She was not forthright about that timing.

23 In December of 2008, Aubuchon and Thomas charged Stapley in December 2008 with 118
24 counts for crimes that no one remembers ever being charged against a member of the Board. As
25 noted, some of the charges include conduct that had allegedly occurred 14 years earlier.
26

1 The purpose of charging Stapley was to burden and embarrass him. This is shown by the
2 number of counts against him, how far the charges went back (1994), and the fact that Thomas and
3 Aubuchon were willing to charge crimes outside the statute of limitations.
4

5 Beginning with the first charges against Stapley, there was a concerted effort by Thomas,
6 Aubuchon, Sheriff Arpaio, and then-Chief Deputy Hendershott to take control of the Board. In fact,
7 Hendershott testified that at one point the goal was to put the County into receivership. Stapley was
8 their first target.

9 MCAO viewed Stapley as the most vocal and powerful Board member because Stapley had
10 been the one supervisor who was openly challenging Thomas on the appointment of attorneys.

11 Even assuming Thomas and Aubuchon had probable cause to charge Stapley, they still
12 violated **ER 4.4(a)**. *In re Levine*, 174 Ariz. 146, 847 P.2d 1093 (1993), makes it clear that a lawyer
13 still violates that rule if he files otherwise proper charges when the substantial purpose of doing so is
14 to embarrass or burden another.

15 **Claim 5. (Conflicts in Charging Stapley).** Thomas and Aubuchon had conflicts of interest
16 in charging Stapley in December 2008. First, they were suing one client, Supervisor Stapley, on
17 behalf of another client, the State of Arizona, in violation of **ER 1.7(a)(1)**. Thomas himself
18 recognized that he had an attorney-client relationship with Stapley as he stated in the June 14, 2006
19 news release quoted above. Thomas never terminated that relationship and never advised Stapley
20 about the conflict or sought a waiver. The Arizona Rules of Professional Conduct do not authorize
21 such conduct.
22

23 This conflict of interest issue is critical for this Hearing Panel to resolve. No attorney
24 discipline case, to the knowledge of Independent Bar Counsel, has addressed this issue. The role of a
25 county attorney is established by statute; however, a county attorney's conduct is always governed
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1 and subject to the Arizona Rules of Professional Conduct. The Hearing Panel must use this
2 opportunity to instruct the Bar about this point.

3
4 If a county attorney becomes aware of possible criminal conduct by a member of the board
5 he or she represents civilly, the county attorney has an inherent conflict of interest. In this case, that
6 conflict of interest resulted in the county attorney filing charges against Board members. However,
7 the conflict could result in the opposite: a county attorney deciding not to prosecute potential
8 criminal activity because of fear of budgetary restrictions or other problems with the Board. In this
9 situation, a county attorney must remove him or herself from the matter and send it to the Attorney
10 General or to another prosecuting entity.

11 **Thomas and Aubuchon also violated ER 1.7(a)(2).** Thomas and Aubuchon were
12 motivated to charge Stapley in retaliation for his actions in 2006 when, from Thomas's perspective,
13 Stapley had led to various lawsuits against the County during his "unusual chairmanship." Stapley
14 was also the spearhead of the Board's effort to take control over the appointment of attorney's for
15 the Board. Because Thomas and Aubuchon were in the same "firm" and worked very closely
16 together on these cases, Thomas's conflicts are imputed to Aubuchon under **ER 1.0(c) and 1.10.**

17
18 **Claim 6. (Misrepresentation about "Chinese Wall").** Aubuchon filed a pleading in
19 *Stapley I* in which she stated that there was a "Chinese Wall" regarding that case in the County
20 Attorney's Office. The purpose of such a statement was to convince Judge Fields that there was no
21 conflict in MCAO because the civil division was walled off from the criminal divisions. There was
22 much testimony about this issue and, while there may have been an informal practice that the
23 divisions did not talk to each other, it was dishonest to state that there was a "Chinese Wall." There
24 was no "Chinese Wall" and no screening in *Stapley I*.

1 The term Aubuchon used and her statement implied that people had been instructed not to
2 talk about the Stapley matter between or among divisions. An ethical wall would prohibit such
3 sharing; but there was no ethical wall in any case and certainly none in the Stapley matter. All
4 divisions, civil and criminal, reported to Sally Wells. She reported to Phil MacDonnell, who in turn
5 reported to Thomas. There was no screening. If there had been, there would have been a formal
6 policy designed to prevent disclosure of information from the civil division to anyone involved in
7 the criminal process. *See Blacks Law Dictionary (9th ed. 2009), for “ethical wall” which is a*
8 *substitute term for “Chinese wall.”* Further, those involved in the criminal prosecution (Thomas and
9 Aubuchon) would have been formally screened from the civil division. That never happened.
10

11 Thomas adopted Aubuchon’s statement as his own and is equally culpable. Both of them
12 misled the court about screening and in doing so violated **ER 3.3(a)(1)** which forbids a knowing
13 misrepresentation to the court.
14

15 **Claim 7. (Misrepresentation about Judge Fields Filing Bar Complaint).** Aubuchon also
16 misrepresented to the court (in this case Judge Fields or whatever judge might handle the case) that
17 Judge Fields had filed a bar complaint against Thomas. He had never done so and the statement that
18 he had was untrue. Aubuchon again violated **ER 3.3(a)(1)**.

19 Both the misrepresentation in Claim 6 about the “Chinese Wall” and the misrepresentation
20 about Judge Fields filing a bar complaint indicate Thomas and Aubuchon’s willingness to sacrifice
21 the truth to obtain what they wanted.

22 **Claim 8. (Improper Efforts to Interfere in Superior Court Judges’ Decisions).**
23 Aubuchon became obsessed with the fact that the *Stapley I* case was assigned to Judge Fields – an
24 obsession that affected her decision making later in the RICO case. Aubuchon thought that Judge
25 Mundell and Judge Baca had assigned the case to Fields because he was biased against Thomas.
26

1 Aubuchon filed a motion to recuse Fields based upon his alleged bias. She then wrote to Judge
2 Mundell and Judge Baca to interview them or depose them about their decision to assign the case to
3 Fields. There was absolutely no information that Aubuchon could have gained by interviewing or
4 deposing Judge Mundell and Judge Baca that was relevant to Judge Fields's alleged bias. His
5 alleged bias was based upon some statements he had made in relation to a proposed veterans' court.
6 Aubuchon's conduct interfered in Judge Mundell's and Judge Baca's administration of the court.
7 The judges' appointment of Fields was not relevant to his bias. Aubuchon violated **ER 8.4(d)** by
8 making such efforts. Once again this is an indication that Aubuchon's judgment as a lawyer was
9 severely impaired. This conclusion is borne out later by her conduct in the RICO matter and the
10 charging of Judge Donahoe.
11

12 **Claim 9. (Charging Crimes Outside the Statute of Limitations).** Thomas and Aubuchon
13 charged Stapley in December 2008 knowing that many of the misdemeanors were charged outside
14 the statute of limitations. Here is a summary of the evidence:
15

- 16 a. At Thomas's direction Goldman started the investigation into Stapley in January
17 2007;
- 18 b. Hendershott and Luth started their own investigation of Stapley in January 2007;
- 19 c. MACE investigated Stapley in January 2007;
- 20 d. Goldman finished his investigation in May 2007;
- 21 e. Goldman discovered Stapley's financial disclosure violations;
- 22 f. Goldman gave this evidence to Thomas and to MACE no later than May 2007;
- 23 g. Thomas and MACE did nothing with this information in 2007;
- 24 h. Sally Wells from MCAO delivered a memo with other documents to MCSO in June
25 2007 that outlined Stapley's financial disclosure violations;
- 26

- 1 i. Thomas gave the matter to Aubuchon in March 2008;
- 2 j. Thomas told Aubuchon he wanted the matter done in a month;
- 3 k. Thomas told Aubuchon they had received a tip about Stapley's financial disclosures;
- 4 l. Thomas told Aubuchon that there may be some truth to the tip;
- 5 m. Aubuchon did not ask Thomas anything about the tip or the person who made the tip;
- 6 n. Aubuchon received information from Goldman that showed he had printed
- 7 documents as early as January 2007;
- 8 o. Aubuchon made no inquiry of anyone about when they started investigating Stapley;
- 9 p. Aubuchon did some investigation of her own in April 2008;
- 10 q. In early May 2008, Thomas met with MCAO Commander Stribling and told him he
- 11 wanted Stribling to work on the Stapley matter and that Aubuchon had already
- 12 worked on it;
- 13 r. Thomas told Stribling he wanted the matter done in a month;
- 14 s. Aubuchon brought documents and a draft indictment against Stapley to a meeting
- 15 with MCSO detectives on May 14, 2008, and some of these documents had print
- 16 dates from early 2007;
- 17 t. Aubuchon told those at the May 14, 2008 meeting that the investigation began that
- 18 day and that is what the MCSO departmental report stated as the date the matter
- 19 commenced;
- 20 u. Aubuchon presented the matter to the grand jury in November 2008 but never asked
- 21 the investigator who testified what date the investigation began or why it began;
- 22 v. The grand jury indicted Stapley in November 2007.
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1 The evidence indicates Thomas and Aubuchon knew that law enforcement knew or should have
2 known no later than May 2007 that there was probable cause that Stapley had committed crimes
3 about his financial disclosures. The charges on most of the misdemeanors were outside the statute of
4 limitations, and even detectives from MCSO had concerns about this issue. Thomas and
5 Aubuchon's conduct violated **ER 8.4(d)** because they obtained an indictment knowing that the court
6 did not have jurisdiction over Stapley for those 44 alleged violations. Their conduct prejudiced the
7 administration of justice because the court lacked jurisdiction over Stapley for most of the
8 misdemeanor. The fair administration of justice required Aubuchon and Thomas not to initiate the
9 charges outside the statute of limitations.
10

11 **Claim 10. (Failure to Tell Grand Jury About Statute of Limitations).** Aubuchon
12 engaged in dishonesty because she failed to tell the grand jury anything about the statute of
13 limitations issue in *Stapley I*. Had she done so, the grand jury likely would not have indicted on
14 those misdemeanor counts.

15 Aubuchon's duty as a prosecutor was to seek justice, not to indict when she knew there was
16 no legal jurisdiction over Stapley on many of the charges. She knew she should not be pursuing
17 most of the charges against Stapley, and she hid that fact from the grand jury in order to get the
18 indictment.
19

20 Aubuchon violated **ER 8.4(c)** by engaging in dishonesty when she failed to be forthright with
21 the grand jury about the statute of limitations issue.

22 **Claim 11. (Improper Public Statements about Stapley Case).** On April 2, 2009, the
23 Yavapai County Attorney, Sheila Polk, agreed with Thomas to take over the prosecution of *Stapley*
24 *I*. On August 24, 2009, Judge Fields granted Stapley's motion to dismiss and dismissed many
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1 counts. The ruling was based upon the fact that the Board had not passed a resolution or other action
2 about financial disclosure requirements.

3
4 Thomas issued a public statement about *Stapley I* on the same day as Judge Fields' ruling.
5 Although Polk was the prosecutor for the State in that case, Thomas nevertheless issued this press
6 release. In his public statement, Thomas urged Ms. Polk to appeal the ruling. Thomas further stated
7 the following:

8 It is unjust and improper for this criminal defendant to be able to claim that as a
9 member of the board of supervisors, he failed to properly pass or amend the very
10 laws he's accused of violating. For him to be able to take advantage of the
11 improper performance of his own public duties is wrong by any measure. It's
12 equally wrong that the people of Maricopa County have just been told they're the
13 only citizens of Arizona whose elected county officials don't have to disclose
14 their private business dealings to the voters.

15 The ruling today reinforces our office's concerns about the impartiality of Judge
16 Fields. He was handpicked for this case in violation of the rules of court, despite
17 his having filed a bar complaint against the Maricopa County Attorney (which
18 was dismissed) and having campaigned for Mr. Thomas' opponent in last year's
19 election. Four esteemed experts in judicial ethics have stated that Judge Fields
20 was ethically required to recuse himself from this case.

21 Thomas's statement indicates the animosity Thomas had for Stapley and Fields. Thomas had
22 transferred the case to Ms. Polk, yet due to his personal feelings about Stapley and Fields, he felt
23 compelled to comment publicly on the matter. Again, his conduct demonstrates his obsession with
24 Stapley and a lack of sound judgment.

25 Thomas violated **ER 3.6(a)** in making the above statement when Judge Fields dismissed
26 many of the counts against Stapley.

1 **C. Claims 12-14: Thomas and Aubuchon’s Misconduct in December 2008**

2 **Claim 12. (Interfering in Attorney-Client Relationship between the Board and Tom**
3 **Irvine).** After Stapley was indicted and after the Board became concerned about Thomas’s conflicts
4 of interest, the Board hired Tom Irvine for legal advice about those conflicts of interest. Thomas
5 reacted in various ways, one of which was to send letters to county employees threatening them with
6 criminal prosecution if they paid Irvine pursuant to his contract with the County. These letters were
7 done in yet another effort to burden county employees and Irvine. Thomas’s goal was to interfere in
8 the relationship between the Board and Irvine. Once again, Thomas displayed his obsession with
9 Irvine and how it caused him to use means that had no substantial purpose other than to burden an
10 embarrass others in violation of **ER 4.4(a)**.

11 **Claim 13. (Issuing Grand Jury Subpoena to County about Court Tower).** Thomas and
12 Aubuchon issued a grand jury subpoena to the County on December 15, 2008, about ten days after
13 the Board had hired Irvine. This subpoena was broad and asked for thousands of documents about
14 the Court Tower. Never did Aubuchon or Thomas seriously consider the effect this subpoena would
15 have on their own client, the County. In addition to the subpoena, Thomas and his office issued
16 public records requests to the County for much of the same information, as did the Sheriff’s Office.
17 These efforts were done not for any legitimate purpose; they were done to harass and burden the
18 County in an effort to retaliate after the Board had hired Irvine. In so doing, Thomas and Aubuchon
19 again violated **ER 4.4(a)** by their conduct.

20 **Claim 14. (Conflict of Interest in Court Tower Matter).** Thomas and Aubuchon could
21 not ethically investigate the Court Tower matter; they were conflicted because MCAO represented
22 the County on the Court Tower and Thomas and Aubuchon were involved in the Court Tower
23 planning process. When they started the investigation they were again representing one client, the
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1 State of Arizona, against other clients, including the County, Board members and county employees.

2 This was a violation of **ER 1.7(a)(1)**.

3
4 Additionally, both Thomas and Aubuchon had conflicts due to their personal interests. They
5 both were obsessed with Tom Irvine's role in representing the County and the Superior Courts. As
6 stated above, these obsessions led them to act on vague and unsubstantiated rumors about Irvine,
7 Stapley and Judge Mundell. Aubuchon expressed her personal concern about Irvine to Supervisor
8 Kunasek – that Irvine was highly paid while she was drawing a simple salary. Additionally,
9 Aubuchon expressed her personal concern that the Board was proceeding with the Court Tower
10 when County departments' budgets were reduced. None of Thomas and Aubuchon's concerns were
11 based upon alleged criminal activity around the Court Tower; instead, their concerns arose out of
12 personal disagreements with what the Board had done. These personal disagreements with what
13 their client had done limited the representation they owed to the State of Arizona, in violation of **ER**
14 **1.7(a)(2)**. Judge Gary Donahoe ruled that Thomas's office had a conflict in the Court Tower
15 investigation and there has been no evidence presented to the Hearing Panel that his ruling was
16 wrong, and in fact his ruling was never overturned.

17
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19 **D. Claims 15-20: Thomas, Aubuchon and Alexander's Misconduct in the RICO**
20 **Case.**

21 **Claim 15. (Pursuing the RICO Action to Burden Others).** Thomas and Aubuchon filed
22 the federal civil RICO action on December 1, 2009. This case was a brazen act of retaliation against
23 the defendants for lawful actions they had taken. Thomas, Aubuchon and Alexander's conduct in
24 the RICO matter displayed massive incompetence, total lack of judgment and extreme arrogance. It
25 also showed their obsession with Stapley, Irvine and others.

1 Thomas and Aubuchon filed this case against 15 defendants with whom they had personal
2 disagreements. They sued the Board as an entity, each Board member, the County Manager and the
3 Deputy County Manager. They sued four judges and other lawyers. This action was brought against
4 those defendants to embarrass and burden them.
5

6 Aubuchon and Thomas drafted the RICO complaint. They filed this action against the Board
7 and its members when a statute clearly stated that the County Attorney may not bring such an action.
8 They listed Thomas as both attorney and party in the matter. They sued people who had allegedly
9 filed bar complaints against Thomas and other MCAO deputies. They sued judges based on the
10 judges' decisions. There was no evidence to support the racketeering case. They failed to plead the
11 basic required elements of a RICO complaint.

12 Alexander continued this effort when Thomas assigned her to the RICO case. She filed
13 responses to motions to dismiss that continued this harassing and retaliatory action. She filed an
14 amended complaint that repeated the spurious allegations.
15

16 Thomas, Aubuchon and Alexander pursued the RICO action with no substantial purpose
17 other than to burden and embarrass the defendants. They violated **ER 4.4(a)**.

18 **Claim 16. (Pursuing a Meritless Action).** Thomas, Aubuchon and Alexander's pursuit of
19 the RICO action was meritless because of the following:

- 20 a. The plaintiffs lacked standing
- 21 b. There was no good faith basis in fact for the action
- 22 c. There was no good faith basis in law for the action
- 23 d. There was no statutory authority permitting the County Attorney to bring such
24 action
25
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1 e. Most of the defendants, including the named judges and county officials, were
2 immune from such an action.
3

4
5 There was no evidence offered to this Hearing Panel contradicting the above conclusions. The
6 evidence is overwhelming that the respondents violated **ER 3.1**.

7 Many of the factual allegations in the RICO complaint and the amended complaint were
8 untrue and unsubstantiated. Some of the allegations, for example that some defendants laughed at
9 Aubuchon in a court proceeding, were ridiculous if they had not been placed in a serious federal
10 RICO pleading. Another example of a spurious allegation was that there was a faction of judges
11 dubbed by Aubuchon and Thomas as the “Mundell-Fields faction” that met or communicated to
12 bring frivolous bar complaints against Thomas. There was no evidence of such a faction or that it
13 met or communicated. Many other statements in the RICO complaint were unsubstantiated
14 conclusions.

15 **Claim 17. (Incompetence in the RICO Action).** Each of the respondents displayed a
16 stunning lack of competence in pursuing the RICO action. Their lack of competence might have
17 affected only themselves, but the respondents were ostensibly attempting to represent the Sheriff in
18 the RICO action. Instead of telling the Sheriff that he should not be a party to the action, and that
19 the action lacked any merit, Thomas, Aubuchon and Alexander blithely went forward on his behalf.
20 The respondents did not associate with or involve other competent RICO lawyers. The respondents
21 violated **ER 1.1** which requires them to represent their client competently.
22

23 **Claim 18. (Conflicts of Interest in the RICO Action).** As Thomas and Aubuchon had
24 done before, when they filed the RICO action, they brought suit against their own clients, i.e. the
25 Board, and constituents of their client. They gave no consideration to the principle of legal ethics
26

1 that a lawyer should not sue his own client. The respondents were all purportedly representing
2 Thomas and Arpaio and brought suit on their behalves against other clients. In doing so, Thomas,
3 Aubuchon and Alexander violated **ER 1.7(a)(1)**; they represented clients who were directly adverse
4 to other clients.
5

6 The respondents also violated the conflicts rule, **ER 1.7(a)(2)**, because their judgment in
7 bringing the RICO case was clouded by their own personal interests. Thomas and Aubuchon, and to
8 a lesser extent Alexander, had been involved in earlier proceedings and disagreements with each of
9 the defendants in the RICO action. The defendants who were judges had ruled against Thomas and
10 Aubuchon. The defendants who were members of the Board had taken action by legal resolutions to
11 reduce Thomas's budget and take many of the civil division cases from MCAO. The defendants
12 who were county officials, Smith and Wilson, were involved with the Board in those actions. The
13 defendants who were private attorneys, Irvine, Novak and Swanson, had filed motions contrary to
14 the positions of MCAO, Thomas and Aubuchon.
15

16 Specifically, the following had happened that created a significant risk that the respondents'
17 representation would be materially limited by their personal interests:

- 18 a) Thomas and Aubuchon unsuccessfully attempted to depose or
19 interview Judge Mundell and Judge Baca about the appointment of
20 Judge Fields to the *Stapley I* case.
- 21 b) Thomas and Aubuchon unsuccessfully attempted to remove Judge
22 Fields from the *Stapley I* case.
- 23 c) MCBOS (less Stapley) hired attorney Irvine to determine if
24 Thomas had conflicts of interest.
- 25 d) MCBOS determined to manage all the county's civil litigation
26 through county manager Smith.

- 1 e) Thomas and Arpaio sued MCBOS in the Dec Action.
- 2
- 3 f) Judge Donahoe quashed the court tower grand jury subpoena and
4 disqualified MCAO from that investigation, two matters handled
5 by Aubuchon.
- 6 g) Judge Daughton made various rulings against Thomas in the Dec
7 Action.
- 8 h) Thomas sued attorney Tom Irvine, his firm and Rick Romley in the
9 Quo Warranto action.
- 10 i) Thomas and Arpaio sued MCBOS in the Sweeps action.
- 11 j) Thomas fought with MCBOS over the appointment of special
12 prosecutors.
- 13 k) Aubuchon thought that it was strange the Board was going forward
14 with the Court Tower while other budgets were cut.
- 15 l) Aubuchon compared her salary as a deputy county attorney to the
16 amount of money one of the defendants, Tom Irvine, was making.
- 17

18 All of these factors made it impossible for any attorney in MCAO to be objective and
19 reasonable in judging whether to pursue the RICO action. Thomas, Aubuchon and Alexander
20 violated **ER 1.7(a)(2)**.

21 **Claim 19. (Filing Claims Based Upon the Filing of Bar Complaints).** Arizona Supreme
22 Court Rule 48(l) provides immunity for those who file complaints to the State Bar about attorneys'
23 alleged misconduct. However, the respondents based various allegations in the RICO complaint on
24 their speculation that judges and others conspired to file Bar complaints and did file Bar complaints.
25
26

1 Doing so was a violation of the Supreme Court Rule. Violation of that rule is a violation of **ER**
2 **3.4(c)**.

3
4 Aubuchon, Thomas and Alexander failed to admit to this Hearing Panel that Rule 48(I)
5 forbids what they did. They had no remorse about having sued people in the RICO action based
6 upon their alleged complaints to the Bar.

7 **Claim 20. (Suing Judges in the RICO Action Based Upon Their Judicial Conduct).** The
8 respondents brought the RICO action against four judges based solely on their actions as judges.
9 However, those judges were immune from civil liability for those decisions. The RICO suit was an
10 unlawful effort to intrude upon the decision-making of judges, to intimidate them and to retaliate
11 against them for their decisions.

12 Suing judges based on their judicial conduct affects the judges being sued and has the
13 potential to affect other judges who may be handling cases involving the County Attorney. Judges
14 cannot be concerned with civil liability for decisions they make as judges. Thomas, Aubuchon and
15 Alexander knew that judges were immune, yet chose to go forward with the federal civil RICO
16 action anyway.

17
18 The respondents' conduct was prejudicial to the administration of justice in violation of **ER**
19 **8.4(d)** because they disregarded judicial immunity.

20 **E. Claims 21-23 Thomas and Aubuchon's Misconduct in Charging Wilcox and**
21 **Stapley.**

22 **Claim 21. (Conflict of Interest in Charging Supervisor Wilcox).** After Thomas and
23 Aubuchon filed the RICO case on December 1, 2009, they caused a grand jury to indict Supervisor
24 Mary Rose Wilcox on December 8, 2009. At the time they criminally charged Supervisor Wilcox,
25 they had the civil RICO case pending against her asking for damages. Having those two cases
26

1 pending is a conflict of interest because the prosecutor in a criminal case must act in the best interest
2 of the State of Arizona, yet his judgment can be compromised by his own interests in obtaining the
3 result he wants in the civil case. The prosecutor could use the criminal case as leverage to settle the
4 civil case. Such conduct by Aubuchon and Thomas violated **ER 1.7(a)(2)**.

5
6 Judge Leonardo ruled that Thomas and Aubuchon could not prosecute Wilcox after she filed
7 a motion about the conflict. Judge Leonardo also ruled that Thomas had acted in retaliation against
8 Supervisor Wilcox. Judge Leonardo's ruling is not binding on the Hearing Panel, but there has been
9 no evidence presented in this proceeding that shows Judge Leonardo's ruling was incorrect.

10 The charging of Supervisor Wilcox was also a conflict for Thomas and Aubuchon because
11 they had all same personal conflicts of interest involving her and the other supervisors that are
12 discussed above in Claim 18 about the RICO case. Neither Thomas nor Aubuchon demonstrated to
13 this Hearing Panel any remorse for their conflicts of interest.

14 **Claim 22. (Filing Charges to Embarrass Or Burden In Wilcox and Stapley II).** Thomas
15 and Aubuchon also caused an indictment to be returned against Supervisor Stapley on December 8,
16 2009. They should never have done so. Pursuit of Stapley in this matter is yet again further
17 indication of Thomas and Aubuchon's obsession with Stapley.

18
19 These charges against Stapley and those against Supervisor Wilcox might have been
20 appropriately filed by another prosecuting office; however, they were not appropriately filed by
21 Thomas and Aubuchon. By December 2009, there had been so much conflict between MCAO and
22 the Board, including Supervisor Stapley, that the only substantial purpose that Thomas and
23 Aubuchon had was to again burden and embarrass Stapley. Aubuchon stated to MCSO personnel
24 that if she could not prosecute a case in court, she would do so in the media. Her purpose in filing
25 these charges was to burden him further. Thomas and Aubuchon were about to go after a third
26

1 supervisor, Andy Kunasek, and retrospectively, it is clear that there was a concerted scheme, as
2 stated by then-Chief Deputy Hendershott, to take over the Board or to put it into receivership.

3
4 Thomas and Aubuchon violated **ER 4.4(a)** because there was no substantial purpose to
5 charge Supervisor Wilcox and Supervisor Stapley in December 2009.

6 **Claim 23. (Conflict of Interest in Charging Stapley in December 2009).** Thomas and
7 Aubuchon had the same conflicts of interest in charging Supervisor Stapley in December 2009 that
8 they had in charging Supervisor Wilcox and in filing the RICO action. *See* Claims 18 and 21 above.
9 Thomas and Aubuchon violated **ER 1.7(a)(2)** for the reasons outlined in those claims.

10
11
12 **F. Claims 24-30 Thomas and Aubuchon's Misconduct in Charging Judge Donahoe.**

13 **Claim 24. (Prosecuting Charges Without Probable Cause).** On the morning of December
14 9, 2009, Thomas and Aubuchon, in collusion with Sheriff Arpaio and Hendershott, filed criminal
15 charges against Judge Gary Donahoe with no evidence that Judge Donahoe had committed any
16 crime. There is no doubt about why they charged Judge Donahoe. They wanted to stop Judge
17 Donahoe from having a hearing that was scheduled for 1:30 p.m. on December 9, 2009. They were
18 afraid that Judge Donahoe was going to stop MCAO from handling any cases involving county
19 supervisors or employees. The hearing he had scheduled was on a motion filed by Irvine and Novak
20 about special prosecutors that Thomas wanted to appoint. Thomas and Aubuchon's misconduct in
21 the Donahoe matter standing on its own must result in disbarment of both of them. Prosecutors
22 cannot be allowed to practice law after charging someone with no evidence to support the charges.
23 Any other result would be a grave insult to professional prosecutors who currently serve in MCAO,
24 Arizona and the United States.
25
26

1 The direct complaint against Judge Donahoe attached a probable cause statement. One can
2 read that statement endlessly and still find absolutely no evidence of any crime, much less probable
3 cause to believe that Judge Donahoe had committed bribery, obstruction and hindering.
4 Furthermore, neither Aubuchon nor Thomas gave this Hearing Panel any additional evidence of a
5 crime committed by Judge Donahoe of which they were aware before they charged him. They both
6 testified that the probable cause statement actually set forth probable cause for the charges that they
7 filed. That testimony is totally incredible. The lack of probable cause in this case is underscored by
8 the fact that MCAO investigators and MCSO detectives did not want to sign or file the direct
9 complaint.
10

11 Judge Donahoe did not committ any crimes. The probable cause statement attached to the
12 direct complaint against Judge Donahoe described his judicial decisions, listed below:

- 13 a) He disqualified Thomas and his office from investigating the Court
14 Tower;
- 15 b) He quashed the overbroad subpoena that Thomas and Aubuchon issued;
- 16 c) His ruling was never appealed by Aubuchon or Thomas and neither the
17 Court of Appeals nor the Supreme Court would take Special Action
18 jurisdiction over these two rulings;
- 19 d) He scheduled a hearing to occur on the motion about special prosecutors
20 (in Thomas and Aubuchon's mind, he had ignored their motion to recuse
21 him or send the motion to an out-of-county judge).

22 Judge Donahoe also had issues with MCSO about transportation of prisoners and about a
23 deputy who took documents out of a lawyer's brief case. Those matters are outlined in the probable
24 cause statement, but they do not support the conclusion that anyone committed a crime.
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The above is the sum of Judge Donahoe’s conduct.

It is not believable that Thomas and Aubuchon thought they had probable cause to charge Judge Donahoe. It is not believable that Thomas and Aubuchon were acting in good faith when they charged Judge Donahoe. The evidence is directly contrary.

Thomas and Aubuchon charged Judge Donahoe without probable cause. They violated **ER 3.8(a)**. The seriousness of this violation of the Arizona Rules of Professional Conduct cannot be overstated.

Claim 25. (Charging Judge Donahoe to Embarrass and Burden Him). Thomas and Aubuchon charged Judge Donahoe to burden and embarrass him. They wanted to burden him enough that he would vacate the hearing scheduled on December 9, 2009. Their plan worked. In doing so they also violated **ER 4.4(a)**.

Claim 26. (Filing False Charges against Judge Donahoe). The charges against Judge Donahoe were completely false as there was no truth to stating that Judge Donahoe had engaged in bribery, obstruction or hindering. There was never any evidence that he had accepted a bribe or bribed anyone. There was never any evidence that he had obstructed an investigation or hindered an investigation. Filing false charges against a sitting Superior Court judge is despicable misconduct for a prosecutor. It deserves the most severe sanction. Thomas and Aubuchon engaged in conduct involving dishonesty in violation of **ER 8.4(c)**.

Claim 27. (Committing A Criminal Act – Perjury). Thomas and Aubuchon committed perjury in the filing of the charges against Judge Donahoe. Thomas and Aubuchon both knew that the complaint against Judge Donahoe was false and they knew that anyone who signed it was putting their name on a false document.

1 The perjury occurred when a detective, Gabe Almanza, signed the direct complaint that
2 Aubuchon had prepared. She had placed a signature line on the direct complaint for a detective to
3 sign under oath. She knew that someone would sign it under oath. That document was a sworn
4 statement under the law. However, she knew that no detective had investigated the case and that
5 none could truthfully sign the document under oath. She set up this situation knowing that someone
6 who had no knowledge would walk the direct complaint through the clerk's office and would have to
7 sign the complaint under oath.
8

9 When the direct complaint was filed and delivered to Aubuchon, she was happy. She knew
10 that it had been signed by someone who had no personal knowledge of the contents.

11 Thomas adopted this direct complaint as his own when he attended the news conference
12 about charging Judge Donahoe and attached the direct complaint to the News Release.

13 Under A.R.S. § 13-303, Thomas and Aubuchon are criminally accountable for the conduct of
14 Detective Almanza because they acted with the culpable mental state for perjury and caused another
15 to engage in perjury whether or not such other person was capable of forming the culpable mental
16 state.
17

18 Thomas and Aubuchon committed a criminal act, Perjury as defined by A.R.S. § 13-2702.
19 In so doing they violated ER 8.4(b).

20 **Claim 28. (Conspiracy to Violate Judge Donahoe's Civil Rights).** The charging of Judge
21 Donahoe was a joint effort by Thomas, Aubuchon, Sheriff Arpaio and Hendershott. They conspired
22 with each other to oppress, threaten or intimidate Judge Donahoe in the free exercise of his First
23 Amendment rights to freedom of speech, a right or privilege secured to him by the U.S. Constitution
24 and laws of the United States. Furthermore they conspired to injure, oppress, threaten or intimidate
25 Judge Donahoe because he had exercised his right to freedom of speech in the past by disqualifying
26

1 MCAO from the Court Tower investigation. The evidence is beyond clear and convincing that they
2 wanted Judge Donahoe to vacate the hearing set for December 9, 2009. The four conspirators met
3 on the afternoon of December 8, 2009 and discussed the charging of Judge Donahoe. They all
4 agreed to charge him. They all agreed to stifle Judge Donahoe's right to free speech and his right to
5 carry out his job.
6

7 This conspiracy violated 18 U.S.C. § 241, and therefore Thomas and Aubuchon each violated
8 **ER 8.4(b)**.

9 There was no other reason to charge Judge Donahoe except to stop him from holding the
10 hearing. The testimony of Aubuchon was that she wanted to charge him that day not to stop the
11 hearing, but because he had committed crimes. This explanation is unbelievable. She could have
12 waited until after the hearing. Thomas testified that he wanted to file the charges before Judge
13 Donahoe's hearing so the press could go over to the hearing and see his criminal activity. This
14 explanation is unbelievable. Both Aubuchon and Thomas's testimony about the reasons for charging
15 Judge Donahoe were dishonest.
16

17 The only explanation for charging Judge Donahoe is that Thomas and Aubuchon and their
18 co-conspirators wanted to muzzle Judge Donahoe. By forcing him to vacate the hearing, they did so.

19 **Claim 29. (Conflicts of Interest in Charging Judge Donahoe).** Thomas and Aubuchon
20 had conflicts of interest in charging Judge Donahoe for reasons very similar to other conflicts of
21 interest claims discussed above (Claims 18 and 21). They had a concurrent conflict of interest
22 because they had a pending civil case against Judge Donahoe seeking damages to Thomas at the
23 time they filed charges against Judge Donahoe. They also had a concurrent conflict of interest
24 because Judge Donahoe had ruled against them by disqualifying MCAO from the Court Tower
25 grand jury matter and quashing the subpoena. They also disagreed with Judge Donahoe's handling
26

1 of the motion filed by Irvine and Novak about the special prosecutors. These occurrences made it
2 impossible for Thomas and Aubuchon to represent the State effectively. How could a prosecutor
3 charge a judge with crimes when the prosecutor viewed himself as the ‘victim’ of rulings by the
4 judge? Only a disinterested prosecutor could make that call, and as the Hearing Panel knows, Sheila
5 Polk, the other prosecutor asked about the Donahoe matter, said that there was no probable cause in
6 that case.
7

8 Thomas and Aubuchon violated **ER 1.7(a)(2)**.

9 **Claim 30. (Conduct Prejudicial to the Administration of Justice).** Thomas and
10 Aubuchon committed conduct prejudicial to the administration of justice by filing fabricated charges
11 against Judge Donahoe on the day he was to have a hearing about a motion concerning special
12 prosecutors. Charging Judge Donahoe was done to put a stop the hearing and it effectively did so.
13 This action obviously prejudiced the administration of justice. Thomas and Aubuhcon violated **ER**
14 **8.4(d)**.
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19 **G. Claims 31-32 Thomas and Aubuchon’s Misconduct re: 2010 Grand Jury**

20 **Claim 31. (Conflict of Interest in Pursuing Grand Jury Investigation).** On January 4,
21 2010, Aubuchon began a presentation to a Grand Jury about two areas: 1) allegations that Stephen
22 Wetzel, Andrew Kunasek and Sandi Wilson had illegally used public monies on two separate
23 occasions to conduct sweeps for electronic listening devices at county offices; and 2) allegations that
24 Judge Donahoe, Thomas Irvine, and County Manager David Smith had illegally conspired to hinder
25 prosecution and obstruct a criminal investigation involving the court tower. Thomas and Aubuchon
26

1 had a concurrent conflict of interest in this case for the same reasons as in other cases. They had
2 filed a pending civil RICO case against the individuals named in the paragraph above (except for
3 Wetzel) seeking damages caused to Thomas. As pointed out above, a prosecutor cannot pursue both
4 a criminal and a civil case against the same people. Thomas and Aubuchon violated **ER 1.7(a)(2)**.

6 **Claim 32. (Aubuchon's Dishonesty in Communication to Daisy Flores).** The Grand Jury
7 asked for advice as to how it could proceed. The Grand Jury was advised that they could ask for a
8 draft indictment, end the inquiry, or call for more witnesses or evidence. The Grand Jury voted to
9 end the inquiry.

10 In March 2010, Gila County Attorney Daisy Flores agreed to review the *Wilcox* and *Stapley*
11 *II* matters which had been dismissed by MCAO. On April 1, 2010, Thomas announced his
12 resignation as County Attorney which he stated was effective April 6, 2010. On April 2, 2010,
13 Aubuchon sent Ms. Flores a letter, memorandum and departmental report about the bug sweep
14 investigation. Aubuchon wrote in her memo that the matter was presented to the county grand jury
15 as part of an overall investigation into local corruption. Aubuchon wrote that the grand jurors had
16 not finished deliberating on an indictment when a judge entered a stay as to one of the suspects,
17 Judge Donahoe. Aubuchon stated that she asked the grand jurors to stop considering the matter until
18 that issue was resolved. She wrote further that her office was found to have a conflict in the Mary
19 Rose Wilcox case and that the office decided to dismiss the matters relating to the other county
20 officials. She said that if Ms. Flores decided to go forward with the charges, parts of the grand jury
21 presentation may need to be accessed or disclosed after court order as it was all in a sealed grand
22 jury proceeding under number 494 GJ 156, January 4, 2010. Aubuchon failed to tell Ms. Flores
23 that, in fact, the grand jury had voted to end the inquiry. Aubuchon's failure to tell Ms. Flores was
24 dishonest in violation of **ER 8.4(c)**.
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H. Claim 33 Noncooperation by Thomas, Aubuchon and Alexander

Claim 33. (Failure to Cooperate in the Screening Investigations). Rule 53(d) (now Rule 54(d)) provides that it is grounds for discipline for a lawyer to refuse to cooperate with officials and staff of the state bar. The respondents refused to cooperate with Independent Bar Counsel by filing meritless, frivolous and dilatory motions and special actions. Each of the pleadings and motions filed by the respondents was denied. By filing the above motions and special actions, each of the respondents failed to cooperate with the screening investigations as required by **Rule 53(d)**. By their conduct, each respondent violated **Rule 53(f)** by failing to promptly respond to an inquiry from Independent Bar Counsel.

IV. SANCTIONS

There can be no sanction other than disbarment for Thomas and Aubuchon. As stated above, that sanction is required by *ABA Standards for Imposing Lawyer Sanctions* (“ABA Standards”) § 5.21 (disbarment appropriate when a government lawyer knowingly misuses his position with intent to gain a significant benefit or advantage or with intent to cause serious or potentially serious injury to a party or to the integrity of the legal process). Thomas and Aubuchon’s most serious misconduct was bringing charges against Judge Gary Donahoe without probable cause. They knew they did not have probable cause. They knew they were filing charges to get Judge Donahoe to recuse himself in the matter he scheduled to hear on December 9, 2009. They knew that he would be humiliated by the charges. They knew they were misusing their position to further their own personal interests.

Under *ABA Standards* § 9.2, the aggravating factors present in considering sanctions for Thomas and Aubuchon are dishonest or selfish motive; engaging in a pattern of misconduct; engaging in multiple offenses; failure to cooperate; deceptive practices during disciplinary process;

1 refusal to acknowledge wrongful nature of conduct; and engaging in illegal conduct. ABA
2 *Standards* § 9.22 (b), (c), (d), (e), (f), (g) and (k).

3
4 Alexander's license to practice law should be suspended under ABA *Standards* § 5.22
5 (suspension is appropriate when a government lawyer knowingly fails to follow proper procedures
6 or rules and causes injury or potential injury to a party or to the integrity of the legal process).
7 Alexander knew that she was incompetent to handle the RICO action yet she went forward and
8 prolonged the injury to the defendants in that case. Aggravating factors under ABA *Standards* § 9.2
9 are present in considering what sanction to impose on Alexander. She engaged in a pattern of
10 misconduct; multiple offenses; failed to cooperate; and refused to acknowledge the wrongful nature
11 of her conduct. ABA *Standards* § 9.22 (c), (d), (e), and (g).

12 13 V. CONCLUSION

14 The Hearing Panel must hold Thomas, Aubuchon and Alexander accountable for their
15 misconduct. Thomas, Aubuchon and Alexander undermined the public trust and inflicted great
16 damage to the system of justice. The only way to restore that trust and to repair the damage to the
17 system is to disbar Thomas and Aubuchon and suspend Alexander.

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1 By /s/ Nadine M. Cignoni

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