

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
FEB 24 2011
FILED *M. Smith*
BY _____

LAW OFFICES
BROENING OBERG WOODS & WILSON
PROFESSIONAL CORPORATION
POST OFFICE BOX 20527
PHOENIX, ARIZONA 85036
(602) 271-7700
DONALD WILSON, JR. (005205)
TERRENCE P. WOODS (004957)
BRIAN HOLOHAN (009124)

Attorneys for Respondent Andrew Thomas

BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA

In the Matter of a Member of)
the State Bar of Arizona,)
ANDREW P. THOMAS,)
Bar No. 0014069,)
Respondent.)

No. PDJ 2011-9002

**MOTION TO DISQUALIFY
INDEPENDENT BAR COUNSEL**

Respondent Andrew Thomas moves to disqualify John S. Gleason from acting as Bar counsel in this matter on the basis Mr. Gleason is not admitted to practice in Arizona and is therefore engaging in the unauthorized practice of law. This motion is supported by the following Memorandum of Points and Authorities.

DATED this 24 day of February, 2011.

BROENING, OBERG, WOODS,
& WILSON, P.C.

By _____
Donald Wilson, Jr.
Terrence P. Woods
Brian Holohan
Attorneys for Respondent

1 By endeavoring to act as Independent Bar counsel, Mr. Gleason
2 is literally engaging in the unauthorized practice of law.

3 Mr. Gleason will undoubtedly point to Administrative Order No.
4 2010-41, by which the Chief Justice appointed him to the position
5 of Independent Bar counsel. Admittedly, the Chief Justice noted in
6 prefatory language that the appointment was "notwithstanding Rule
7 31, Rules of the Supreme Court and other rules concerning the
8 admission to the Arizona Bar[.]" Whether the Chief Justice had the
9 legal authority to appoint Mr. Gleason the Independent Bar counsel
10 in the first instance is discussed in the Motion to Dismiss, but
11 even if the Chief Justice had the authority to appoint independent
12 Bar counsel, she lacked the legal authority to separately confer
13 upon the appointee the privilege to practice law without a license.

14 Neither Rule 34 nor Rule 38, rules promulgated by the full
15 Court to discharge the Court's constitutional mandate under Article
16 III to determine, "'who shall practice law in Arizona and under
17 what condition,'" In re Creasy, 198 Ariz. 539, 541, ¶6, 12 P.3d
18 214, 216 (2000) (quoting In re Smith, 189 Ariz. 144, 146, 939 P.2d
19 422, 424 (1979)), authorize the Chief Justice to waive by
20 administrative order the application, examinations and screening by
21 the Committee on Character and Fitness every other person has to
22 satisfy to enjoy the privilege of practicing law in Arizona. By
23 the same token, there is no grant of authority under Article III
24 (or any of the Court's cases interpreting its authority over the
25 regulation of the practice of law) permitting the Chief Justice to
26 specially admit a person to practice law.

1 Article VI, §3 of the Arizona Constitution does give the Chief
2 Justice the authority to "exercise the court's administrative
3 supervision over all the courts of the State[,] " but that power
4 relates to the operation of the court system. The Court has held
5 time and again its power to regulate Bar admission is separately
6 conferred by Article III, so the Chief Justice's Article VI power
7 cannot be the source of the authority for her extraordinary
8 administrative order.

9 Mr. Gleason is without the lawful authority to litigate this
10 Bar discipline action. He should be disqualified.

11 DATED this 24 day of February, 2011.

12 BROENING, OBERG, WOODS,
13 & WILSON, P.C.

14
15 By _____

16 Donald Wilson, Jr.
17 Terrence P. Woods
18 Brian Holohan
19 Attorneys for Respondent

20 COPY of the foregoing was mailed
21 on February 24, 2011, to:

22 John S. Gleason, Esq.
23 Independent Bar Counsel
24 1560 Broadway, Suite 1800
25 Denver, CO 80202

26 Lisa M. Aubuchon
8400 S. Kyrene, #123
Tempe, AZ 85284-2119
Respondent

///

1 Scott H. Zwillinger
2 Zwillinger Greek Zwillinger & Knecht PC
3 2425 E. Camelback Road, Suite 600
4 Phoenix, AZ 85016-4214
5 Respondent Rachel R. Alexander's
6 Counsel of Record

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
BY  _____

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
APPOINTMENT OF INDEPENDENT)	Administrative Order
BAR COUNSEL TO HANDLE)	No. <u>2010 - 41</u>
CERTAIN LAWYER MISCONDUCT)	(Affecting Administrative
COMPLAINTS FILED AGAINST)	Order No. 2010-33)
MARICOPA COUNTY ATTORNEY)	
ANDREW THOMAS)	
)	

The Supreme Court has jurisdiction over any person engaged in the practice of law within the State of Arizona, Ariz. R. Sup. Ct. 31, and all lawyers are subject to the disciplinary jurisdiction of this Court, *id.* R. 48. This Court has delegated the duty to investigate and, when necessary, prosecute lawyer discipline matters to the State Bar of Arizona.

The Executive Director of the State Bar of Arizona has requested the appointment of independent counsel to investigate allegations of misconduct against Maricopa County Attorney Andrew Thomas resulting from the findings entered by the Honorable John S. Leonardo in *State of Arizona v. Wilcox*, CR-2010-005423-001/OC-2010-005423-001, and other pending or future allegations of misconduct against Mr. Thomas stemming from related cases or matters.

Although the Office of Chief Counsel for Bar Discipline of the State Bar of Arizona would usually handle these matters, good cause exists to appoint counsel independent of the State Bar of Arizona. Counsel named as Independent Bar Counsel in Administrative Order 2010-33 has now withdrawn.

Now, therefore, pursuant to Article VI of the Arizona Constitution, and notwithstanding Rule 31, Rules of the Supreme Court and other rules concerning admission to the Arizona Bar,

IT IS ORDERED as follows:

1. The Colorado Supreme Court, Office of Attorney Regulation under the direction of Regulation Counsel, John Gleason, is appointed to serve in this matter as Independent Bar Counsel.
2. Independent Bar Counsel Gleason shall have all the power and authority granted to Bar Counsel pursuant to rules, orders, or decisions of the Arizona Supreme Court.

3. Independent Bar Counsel Gleason shall investigate and, as he determines appropriate, prosecute allegations of ethical misconduct stemming from the prosecution in *State v. Wilcox*.
4. Independent Bar Counsel Gleason shall investigate and, as he determines appropriate, prosecute any other allegations of misconduct filed against Maricopa County Attorney Andrew Thomas or lawyers in his employ, arising out of criminal investigations or prosecutions involving the Maricopa County Board of Supervisors and its staff, collectively or individually, or the judges of the Superior Court in Maricopa and their staff, collectively or individually.
5. Independent Bar Counsel Gleason shall investigate and, as appropriate, prosecute any other allegations of misconduct filed against Maricopa County Attorney Andrew Thomas, or lawyers in his employ, arising out of matters assigned by Special Master Ruth V. McGregor.
6. Independent Bar Counsel Gleason shall investigate and, as appropriate, prosecute any other allegations of misconduct that are substantially similar or related to the allegations arising out of the matters set forth in number 4 above.
7. Independent Bar Counsel Gleason may, at his sole discretion, designate lawyers to assist him and employ other staff as reasonably necessary to carry out his duties as Independent Bar Counsel.
8. Independent Bar Counsel Gleason and lawyers he designates to assist him shall be immune from civil suit and from disciplinary complaints as provided by Supreme Court Rule 48(l) and (m), respectively.

IT IS FURTHER ORDERED that:

The State Bar of Arizona shall pay reasonable fees, costs for services provided, and expenses incurred by Independent Bar Counsel Gleason as necessary to carry out the duties required by this Order.

Dated this 23rd day of March, 2010.

REBECCA WHITE BERCH
Chief Justice