

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**VLADIMIR GAGIC,
Bar No. 021781**

Respondent.

PDJ 2022-9050

**DECISION AND ORDER
IMPOSING SANCTIONS**

(State Bar No. 22-0780)

FILED DECEMBER 6, 2022

Procedural History¹

The State Bar filed a complaint against Respondent Vladimir Gagic on July 27, 2022, alleging violations of ER 3.5(d), ER 8.2(a), ER 8.4(d), and Rule 41(b)(7), Ariz. R. Sup. Ct. The State Bar's complaint alleges the following general categories of misconduct: (1) Accusations Against the Honorable Roy "Chuck" Whitehead; (2) Accusations Against the Honorable Laura M. Reckart; (3) Accusations Against the Honorable Justin Beresky; (4) Accusations Against Opposing Counsel; and (5) Respondent's Conduct in Other Litigation.

Mr. Gagic filed an answer and counterclaim for "fraud" on August 7, 2022. Thereafter, the Presiding Disciplinary Judge (PDJ) granted the State Bar's motion to dismiss the counterclaim. During an initial case management conference on August 17, 2022, an evidentiary hearing was set for November 14, 2022.

¹ The ethical violations for which Mr. Gagic is being sanctioned were resolved by way of summary judgment. The PDJ's summary judgment ruling is appended to this decision as Attachment "A." The hearing panel does not repeat all of the findings of fact and conclusions of law set forth in that ruling but incorporates them by reference.

The State Bar filed a motion for summary judgment on August 18, 2022. After briefing, the PDJ granted the motion in part, ruling that, as a matter of law, Mr. Gagic “engaged in substantial and repeated violations of the Oath, the Creed, Rule 41(b)(7), ER 3.5(d), ER 8.2(a), and ER 8.4(d)” by making the following statements during his representation of a defendant in criminal proceedings pending in Maricopa County Superior Court and in his response to the bar charge filed by Judge Justin Beresky:

1. “I defy anyone to find a set of facts more extreme than the hostility and nastiness of not only Judge Reckart, but of the collective Maricopa County Superior Court judiciary has against me, Mr. Pennington’s lawyer.”
2. “I am concerned Judge Reckart is trying to sanitize the case file and deny as many defense motions as she can before another eventually [sic] judge takes over, making denials of defense motions law of the case. It also concerns me if there are other sanitation efforts, which would be more difficult to uncover, are underway or already done. . . It is a cover up.”
3. Judge Reckart “wrote in the minute entry that my motion for cause change of judge - ‘after defense counsel attempted to remove this judge’ had been ‘quelled.’ That is most bizarre choice of words I have read in a minute entry ever and I would ask Judge Reckart to explain why she seems to believe me an insurrectionist. If my first name was not the same as the most hated man in modern American history, Vladimir Putin, would she have used the words ‘quelled’ or ‘attempted to remove this judge’? Of course not. Those words are deliberate to evoke Russia-gate and the Capitol riots. It is a dogwhistle at my expense and my client’s expense.”
4. “Judge Reckart viciously insults me comparing me with a drunk, cocaine abusing derelict, who missed 30 days of court because he was in jail, and completely disdainful to his personal honor, and the honor of his profession and country. It is an insult without rival. That is Judge Reckart telling the whole world, on public court record that I am the typical dirty, drunk, Slavic brute deserving of nothing more than cheap shots to my face and professional reputation 20 years in making. Not withstanding [sic] my untermensch name and DNA, I am a law abiding

American citizen, I pay my taxes on time every time, I don't drink and drive, I don't hit women nor am I the least bit sexist, I brake for animals, I am an honorably discharged US Marine and volunteered to defend this country and its laws with my life. If Judge Reckart has any respect for her office, an office temporarily loaned to her safe keeping by the people of the state of Arizona, including me and my client, she will unequivocally apologize to me and retract the filth immediately."

5. "I write the denial [of my motion to dismiss for selective prosecution] was seemingly out of nowhere because before that minute entry denial, coming after Judge Reckart issued her infamous minute entry of 8.6.21 . . . containing McCarthyite Red bating [sic] innuendo I am traitor and failed insurrectionist and noted my character as that of a drunk, drug abusing, and criminal, not criminal defense, but criminal lawyer who missed 30 days of court because he was in jail, there was about a 3 week period in which the case judge was, as far as I could figure out, TBD."
6. "Judge Reckart statement that the defense filed a motion to compel the interview 'in turn' after the state had filed it is a flat out, unequivocal lie."
7. "Judge Reckart is [prosecutor Fisher's] apologist and parrots DCA Fisher's lie the state filed the motion to compel first and I only did so 'in turn.' Judge Reckart's minute entry ignores the fact of the defense' [sic] motion to compel in entirety . . . All this is to avoid admonishing DCA Fisher for her lying to the court on 5.27.21 that the state had filed the motion first. That point is so clear and obvious a very slow and stupid child would recognize it instantly."
8. "If I had lied as blatantly as DCA Fisher did in open court, is there any doubt Judge Reckart would have hammered me with joyful relish and it would not be the Sgt. Schultz 'I see nothing. I hear nothing' routine as with DCA Fisher? Of course not. I would have been sitting in jail for contempt and disbarred within the hour. But if any judge or prosecutor thinks bullying me with a threat to take my license will stop me from challenging state misconduct, molon labe."
9. "Judge Reckart also now lays claim to being the adult in the room, but entirely ignored without apology is Judge Reckart's conduct as fire-starter and narrative engineer. The court slanders me, in no particular order, as a drunk, traitor, insurrectionisht, drug addict, jail denizen, and the all around general sleaze bag."

10. Respondent alleged, without corroboration, “a systematic pattern of anti-Slavic ideology within Maricopa County and scheme to penalize me for, among other things, for my exercise of my 1st Amendment rights. And the easiest way to punish me is by removing me from this case, on a pretext, which is exactly what Judge Reckart tried to do.”
11. “To the surprise of no one, not one bureaucrat has given one moment of one thought to the optics of all-Anglo police officers and all-Anglo detectives and all-Anglo prosecutors, with a generous hand from all-Anglo judges and indifference from an all-Anglo save one – judicial commission, manufacturing the guilt of a very black man named Jamal. That is not to mention the high school slurs directed at that very same very black man’s very non-Anglo lawyer named Vladimir. Judge Reckart’s behavior has been an anachronism, behavior that would not be believable if it was to be told in the typical over the top and self righteous John Grisham novel. But this is not the Raj of a White Man’s Burden and 2022 is not 1922.”
12. “Obviously, Beresky’s plan was to deny all the defense motions and find reasons, not necessarily good reasons but any contrived reason will do, to justify denying all defense motions after the fact. Deny then justify.”
13. “What is far worse however, is Beresky’s finding that ‘evidence . . . does in and of itself exculpate the Defendant . . .’. That burden of ‘in and of itself exculpate the defendant’ is far worse than even ‘clear and convincing’. While Beresky does not cite any authority for imposing that monster of a burden upon Mr. Pennington, I can only guess the source was the Spanish Inquisition or Stalin’s show trials or something else more domestic.”
14. “Judge Beresky denied the motion in his typical haughty manner.”
15. “Amusingly, in all self-important seriousness, Beresky even claimed that although he does not know what I.H. said . . . that does not prevent his keen Sherlock Holmes like insight knowing why she said it.”
16. “Why is Beresky presuming Mr. Pennington to be guilty of the crimes the state has charged him as the very means to deny Mr. Pennington’s motion to prove he is not guilty of those crimes? Did Beresky and the state have an evidentiary hearing and just not tell me about it, or is

Beresky not aware that Mr. Pennington is innocent until proven guilty beyond a reasonable doubt?"

17. "So to make this simple, if judges have such contempt for me, born from whatever cause, and will glibly subvert Mr. Pennington's rights, then at least have the courage to say that to his face like a grown man, and then let him decide what he wants to do going forward."
18. In response to the bar charge filed against him by Judge Beresky, Respondent called a statement Judge Beresky made in a ruling "a dirty lie," accused Judge Beresky of "brazenly" lying to the State Bar, and stated that "neither Judge Reckart nor the self-righteous Judge Beresky ever address my concerns of ethic [sic] stereotyping" and stated, "I can only conclude it is because he is full agreement [sic] with such stereotyping and ethnic race baiting."
19. In his response to the bar charge, Respondent stated: "Beresky ought neither be a judge nor a lawyer. He does not have the ethical capacity for either, and further he is a by the numbers xenophobe."

In addition to the above-quoted statements, the State Bar alleged in its complaint that other statements Mr. Gagic made violated the Rules of Professional Conduct and/or the Rules of the Supreme Court. As to those statements, the PDJ ruled:

Based on the current record, the PDJ cannot resolve these allegations as a matter of law and does not enter summary judgment as to them. If the State Bar wishes to litigate these allegations, it may do so at the scheduled November 14, 2022 disciplinary hearing. If, on the other hand, the State Bar elects not to pursue the remaining allegations, the hearing on November 14, 2022 will be converted to an aggravation/mitigation hearing based on the violations found herein. The State Bar shall advise Respondent and the PDJ within five business days whether it will litigate additional alleged violations, and if so, shall specifically identify the allegations to be litigated at the hearing.

The State Bar subsequently filed a notice advising that it would not pursue additional claims not resolved by the grant of partial summary judgment. The PDJ then issued an order converting the November 14, 2022 hearing into an

aggravation/mitigation hearing, whereupon Mr. Gagic filed a "Supplement to Motion in Aggravation by Defense," stating, in pertinent part:

As far as rescheduling the aggravation hearing, a telephone conference is not necessary. I am not going to any such hearing regardless of when it is scheduled because in all seriousness, I do not have the stomach to force myself to be in close proximity with either this court or bar counsel. It's not like anything I have to say matters anyway. So have it at your leisure.

Mr. Gagic did not appear for the November 14, 2022 hearing, which proceeded in his absence before a hearing panel comprised of PDJ Margaret H. Downie, attorney member Stephen H. Leshner, and public member Ellen Kirschbaum. Kelly A. Goldstein appeared on behalf of the State Bar. Exhibits 1-59 were received into evidence.

SANCTIONS DISCUSSION

Sanctions imposed against lawyers "shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA Standards"). Rule 58(k), Ariz. R. Sup. Ct. Based on the ABA Standards, the State Bar asks that Mr. Gagic be suspended for one year or, at a minimum, six months and one day.

In fashioning an appropriate sanction, the hearing panel considers the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating and mitigating factors. *See In re Scholl*, 200 Ariz. 222, 224 (2001). "[W]e should focus on such considerations as the maintenance of the integrity of the profession in the eyes of the public, the protection of the public from unethical or incompetent lawyers, and the deterrence of other lawyers from engaging in unprofessional conduct." *In re Murray*, 159 Ariz. 280, 282 (1988); *see also Alcorn & Feola*, 202 Ariz. 62, 75 (2002) ("Perhaps more important than rehabilitation of an individual

attorney, however, is the value of discipline as a deterrent to other attorneys and as a process that maintains ‘the integrity of the profession in the eyes of the public.’”).

Mr. Gagic violated core ethical duties owed as a professional. He acted knowingly and intentionally and expresses no remorse for his conduct. “Because intentional or knowing conduct threatens more harm than does negligent conduct, it is sanctioned more severely.” *In re White-Steiner*, 219 Ariz. 323, 325 (2009). Mr. Gagic’s conduct also disrupted and expanded the superior court proceedings and necessitated changes in assigned judicial officers.

The following ABA Standards are relevant:

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

Mr. Gagic’s conduct was not negligent, so Standard 7.3 (reprimand) is inapplicable. Standard 7.1 (disbarment) is not a precise fit because of the “intent to obtain a benefit” element, though it could be argued the intended benefit was to bully and force capitulation by opposing counsel and judicial officers on terms favorable to Mr. Gagic’s client. On balance, though, Standard 7.2 (suspension) is the most clearly applicable standard.

The panel next considers aggravating and mitigating factors – both of which must be supported by reasonable evidence. *In re Abrams*, 227 Ariz. 248, 252 (2011).

The State Bar established the following aggravating factors by reasonable evidence:

9.22(d) – multiple offenses. Mr. Gagic repeatedly engaged in misconduct directed at judicial officers. A lawyer may respectfully challenge rulings and express disagreement with judges without resorting to name-calling and speculative attacks on their integrity and objectivity. *See, e.g., The Florida Bar v. Norkin*, 132 So. 2d 77, 92-93 (Fla. 2013) (“One can be professional and aggressive without being obnoxious. Attorneys should focus on the substance of their cases, treating judges and opposing counsel with civility, rather than trying to prevail by being insolent toward judges . . .”). “[A]n attorney’s ethical duty to advance the interests of his client is limited by an equally solemn duty to comply with the law and standards of professional conduct.” *Nix v. Whiteside*, 106 S. Ct. 988, 995 (1986). The Oath of Admission to the Bar requires lawyers to “treat the courts of justice and judicial officers with respect,” and the Lawyer’s Creed of Professionalism requires attorneys to be “courteous and civil, both in oral and written communication” and conduct themselves “with dignity” and not be “rude or disrespectful.” Mr. Gagic’s violations of the Oath and Creed are discussed in detail in the ruling granting partial summary judgment to the State Bar.

9.22(e) – bad faith obstruction of the disciplinary proceedings. Mr. Gagic obstructed the disciplinary proceedings by repeatedly filing groundless pleadings,

motions, and notices. In addition to filing a frivolous counterclaim for fraud, his pre-hearing submissions include the following:

- Motion for Use of Recording Device in Courtroom (July 29, 2022)
- Motion to Strike Under Rule 12(F) (August 1, 2022)
- Motion to Dismiss Disciplinary Proceedings for Miscarriage of Justice (August 1, 2022)
- Notice of Defense Unclean Hands (August 3, 2022)
- Motion to Dismiss for Failure to State Claim (August 5, 2022)
- Motion for Judgment on Pleadings and Dismissal with Prejudice (August 12, 2022)
- Notice of Defense Unclean Hands, Estoppel, Waiver (August 15, 2022)
- Notice of Defense; Unclean Hands, Estoppel, Waiver & Laches (August 16, 2022)
- Motion for Summary Judgment All Allegations Rule 56 (August 17, 2022)
- First Supplement to Motion for Summary Judgment All Allegations Per Rule 56 (August 17, 2022)
- Motion to Dismiss All Charges for Misconduct and Disqualify MCAO (August 19, 2022)
- Motion to Disqualify Bar Counsel (August 22, 2022)
- Supplement to Motion to Disqualify Bar Counsel (August 22, 2022)
- Motion for Discovery Tier Reassignment (August 23, 2022)
- 3rd Defense Motion for Summary Judgment to Dismiss Complaint (August 29, 2022)
- Second Supplement to Motion to Disqualify Bar Counsel (August 30, 2022)
- Motion in Aggravation by Defense (September 16, 2022)
- Motion for Discovery for Reckart's SBA File (September 20, 2022)
- Supplement to Motion in Aggravation by Defense (September 21, 2022)
- Supplement Defense Disclosure (October 3, 2022)

During the initial case management conference, bar counsel asked the PDJ to preclude Mr. Gagic from filing additional motions. The PDJ declined to do so on due process grounds, despite the fact that his filings were almost entirely non-meritorious, failed to comply with applicable rules, and needlessly expanded the proceedings.

9.22 (g) - refusal to acknowledge wrongful nature of conduct. In some respects, this aggravating factor is the most troubling. *See, e.g., Bemis*, 189 Ariz. at 122-23

("Although respondent has no prior disciplinary record in ten years of practice, he apparently still fails to recognize the wrongful nature of his conduct. . . .The court is most concerned with respondent's refusal to accept that his conduct cannot be justified by any perceived unfairness in the judges' rulings.").

9.22(i) - substantial experience in the practice of law. Mr. Gagic has been practicing law since 2002.

Mr. Gagic chose not to attend the aggravation/mitigation hearing and thus offered no mitigating evidence. Bar counsel appropriately advised the hearing panel, though, that the record supports one mitigating factor: **9.32(a) - absence of a prior disciplinary record.** *But see In re Peasley*, 208 Ariz. 27, 38 (2004) (absence of a prior disciplinary record is not by itself proof of good conduct); *Bemis*, 189 Ariz. at 122-23 ("Although respondent has no prior disciplinary record in ten years of practice, he apparently still fails to recognize the wrongful nature of his conduct. . . . The court is most concerned with respondent's refusal to accept that his conduct cannot be justified by any perceived unfairness in the judges' rulings.").

Suspension is the presumptive sanction under the ABA Standards. The aggravating factors dictate in favor of a long-term suspension. The hearing panel agrees with the State Bar that Mr. Gagic should be required to prove his rehabilitation before resuming the practice of law, which will require, *inter alia*, identification of "just what weaknesses caused the misconduct" and a demonstration of how "he has overcome those weaknesses." *In re Arrotta*, 208 Ariz. 509, 513 (2004) (discussing applicant's burden of proof after suspension of more than six months). A long-term suspension also serves the

recognized objective of deterring Mr. Gagic and other attorneys from engaging in the same or similar misconduct. See *In re Zawada*, 208 Ariz. 232, 236 (2004).

CONCLUSION

For the reasons stated, the hearing panel orders as follow:

1. Vladimir Gagic is suspended from the practice of law for one year, effective 30 days from the date of this order.
2. If Mr. Gagic is reinstated, terms of probation will be considered by the hearing panel that presides over the reinstatement proceedings.
3. Mr. Gagic shall pay the State Bar's costs and expenses incurred in these proceedings.

DATED this 6th day of December, 2022.

/s/ Margaret H. Downie
Presiding Disciplinary Judge

/s/ Stephen H. Leshner
Attorney Member

/s/ Ellen Kirschbaum
Public Member

Copy of the foregoing e-mailed
this 6th day of December, 2022, to:

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by: SHunt

ATTACHMENT “A”

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**VLADIMIR GAGIC,
Bar No. 021781**

Respondent.

PDJ 2022-9050

**RULING ON STATE BAR'S
MOTION FOR SUMMARY
JUDGMENT RE: VIOLATION OF
ETHICAL RULES**

[State Bar No. 22-0780]

FILED SEPTEMBER 15, 2022

The Presiding Disciplinary Judge (PDJ) has reviewed the briefing submitted in connection with the State Bar's Motion for Summary Judgment Re: Violation of Ethical Rules. Oral argument regarding the motion would not be of assistance. For the following reasons, the PDJ concludes that summary judgment in favor of the State Bar is appropriate as to some of the allegations included in the complaint filed against Respondent on July 27, 2022. Other allegations cannot be resolved as a matter of law at this juncture.

Respondent is charged with violating Rule 41(b)(7), Ariz. R. Sup. Ct. and Rule 42, Ariz. R. Sup. Ct., specifically, ER 3.5(d), ER 8.2(a), and ER 8.4(d). The majority of the State Bar's allegations are based on statements Respondent made in writing regarding Judge Roy "Chuck" Whitehead, Judge Laura M. Reckart, Judge Justin Beresky, and then-Maricopa County Deputy Attorney Lacey Fisher while he was representing a criminal defendant in Maricopa County Superior Court. The complaint also includes allegations based on Respondent's conduct during litigation he filed against Maricopa County after his contract with the Office of Public Defense Services was suspended.

Rule 56 of the Arizona Rules of Civil Procedure applies in attorney discipline proceedings. See Rule 48(b), Ariz. R. Sup. Ct. Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Rule 56(a), Ariz. R. Civ. P. When, as here, the movant has made a prima facie showing under Rule 56(a), the burden shifts to the non-moving party to produce sufficient competent evidence to defeat summary judgment. See *GM Development Corp. v. Community American Mortgage Corp.*, 165 Ariz. 1, 5 (App. 1990); *Nat'l Bank of Ariz. v. Thurston*, 218 Ariz. 112, 119, ¶ 26 (App. 2008).

As a threshold matter, Respondent failed to comply with Rule 56(c)(3)(B), Ariz. R. Civ. P., which required him to file a separate statement of facts in the form prescribed by Rule 56(c)(3)(A), Ariz. R. Civ. P. Moreover, in his response to the motion for summary judgment, Respondent does not controvert any portion of the State Bar's statement of facts, discuss the ethical rules at issue, or cite relevant legal authority. He instead makes conclusory assertions such as:

- "The only predicate for my SBA discipline is retaliation, a racket to cover for state and judicial misconduct."
- "And now the SBA sees fit to enable that retaliation by whatever means necessary and to whatever extent necessary. I never would have guessed 'goons for the prosecution' is what the SBA had in mind by 'enriching the practice' and 'protecting the public.'"
- "They seek to punish me for me doing my job, proving in a nutshell this bar complaint is the SBA's attempted fraud upon the public."

Based on the rule-based deficiencies alone, summary judgment in favor of the State Bar could be entered. But even overlooking Respondent's complete failure to comply with Rule 56, summary judgment is substantively appropriate as to certain allegations that are supported by competent, admissible evidence as to which Respondent has offered no competent, admissible controverting evidence. *See GM Development Corp.*, 165 Ariz. at 5.

Unprofessional conduct during the practice of law may result in the imposition of discipline pursuant to Rule 41(b)(7), Ariz. R. Sup. Ct. Rule 41, cmt 1. Unprofessional conduct includes "substantial or repeated violations of the Oath of Admission to the Bar or the Lawyer's Creed of Professionalism of the State Bar of Arizona." Rule 41(a).

The Oath of Admission to the Bar ("the Oath") provides, in pertinent part, that lawyers: (1) "will treat the courts of justice and judicial officers with respect;" (2) "will avoid engaging in unprofessional conduct;" (3) "will not advance any fact prejudicial to the honor or reputation of a party or witness unless required by [their] duties to [their] client or the tribunal;" and (4) "will at all times faithfully and diligently adhere to the rules of professional responsibility and A Lawyer's Creed of Professionalism of the State Bar of Arizona."

The Creed of Professionalism of the State Bar of Arizona ("the Creed") requires lawyers to conduct themselves in accordance with the Creed when dealing with clients, opposing parties, opposing counsel, tribunals, and the general public. Lawyers must be "courteous and civil, both in oral and written communication." In negotiations,

depositions, and other proceedings, they are to conduct themselves “with dignity” and not “be rude or disrespectful.”

As a matter of law, Respondent engaged in substantial and repeated violations of the Oath, the Creed, Rule 41(b)(7), ER 3.5(d), ER 8.2(a), and ER 8.4(d). Respondent admits making the following written statements, and he has asserted no cognizable defense to the charged ethical violations or come forward with competent, relevant evidence that controverts any of the State Bar’s proffered evidence. The following statements by Respondent are actionable as a matter of law:

20. “I defy anyone to find a set of facts more extreme than the hostility and nastiness of not only Judge Reckart, but of the collective Maricopa County Superior Court judiciary has against me, Mr. Pennington’s lawyer.” (Exh. K to State Bar’s Statement of Facts)
21. “I am concerned Judge Reckart is trying to sanitize the case file and deny as many defense motions as she can before another eventually [sic] judge takes over, making denials of defense motions law of the case. It also concerns me if there are other sanitation efforts, which would be more difficult to uncover, are underway or already done. . . It is a cover up.” (Exh. M to State Bar’s Statement of Facts, exh. 3)
22. Judge Reckart “wrote in the minute entry that my motion for cause change of judge - ‘after defense counsel attempted to remove this judge’ had been ‘quelled.’ That is most bizarre choice of words I have read in a minute entry ever and I would ask Judge Reckart to explain why she seems to believe me an insurrectionist. If my first name was not the same as the most hated man in modern American history, Vladimir Putin, would she have used the words ‘quelled’ or ‘attempted to remove this judge’? Of course not. Those words are deliberate to evoke Russia-gate and the Capitol riots. It is a dogwhistle at my expense and my client’s expense.” (Exh. M to State Bar’s Statement of Facts, exh. 3)
23. “Judge Reckart viciously insults me comparing me with a drunk, cocaine abusing derelict, who missed 30 days of court because he was in jail, and completely disdainful to his personal honor, and the honor of his profession and country. It is an insult without rival. That is Judge Reckart telling the whole world, on public court record that I am the typical dirty, drunk, Slavic brute deserving of nothing more than cheap shots to my face and professional reputation 20 years in making. Not withstanding [sic] my untermensch name and DNA, I am a law abiding American citizen, I pay my taxes on time every time, I don’t drink and drive, I don’t hit women nor am I the least bit sexist, I brake for animals, I am an honorably discharged US Marine and volunteered

to defend this country and its laws with my life. If Judge Reckart has any respect for her office, an office temporarily loaned to her safe keeping by the people of the state of Arizona, including me and my client, she will unequivocally apologize to me and retract the filth immediately." (Exh. M to State Bar's Statement of Facts, exh. 3)

24. "I write the denial [of my motion to dismiss for selective prosecution] was seemingly out of nowhere because before that minute entry denial, coming after Judge Reckart issued her infamous minute entry of 8.6.21 . . . containing McCarthyite Red bating [sic] innuendo I am traitor and failed insurrectionist and noted my character as that of a drunk, drug abusing, and criminal, not criminal defense, but criminal lawyer who missed 30 days of court because he was in jail, there was about a 3 week period in which the case judge was, as far as I could figure out, TBD." (Exh. N. to State Bar's Statement of Facts)
25. "Judge Reckart statement that the defense filed a motion to compel the interview 'in turn' after the state had filed it is a flat out, unequivocal lie." (Exhibit Q to State Bar's Statement of Facts)
26. "Judge Reckart is [prosecutor Fisher's] apologist and parrots DCA Fisher's lie the state filed the motion to compel first and I only did so 'in turn.' Judge Reckart's minute entry ignores the fact of the defense' [sic] motion to compel in entirety . . . All this is to avoid admonishing DCA Fisher for her lying to the court on 5.27.21 that the state had filed the motion first. That point is so clear and obvious a very slow and stupid child would recognize it instantly." (Exhibit Q to State Bar's Statement of Facts)
27. "If I had lied as blatantly as DCA Fisher did in open court, is there any doubt Judge Reckart would have hammered me with joyful relish and it would not be the Sgt. Schultz 'I see nothing. I hear nothing' routine as with DCA Fisher? Of course not. I would have been sitting in jail for contempt and disbarred within the hour. But if any judge or prosecutor thinks bullying me with a threat to take my license will stop me from challenging state misconduct, molon labe." (Exhibit Q to State Bar's Statement of Facts)
28. "Judge Reckart also now lays claim to being the adult in the room, but entirely ignored without apology is Judge Reckart's conduct as fire-starter and narrative engineer. The court slanders me, in no particular order, as a drunk, traitor, insurrectionist, drug addict, jail denizen, and the all around general sleaze bag." (Exhibit Q to State Bar's Statement of Facts)

29. Respondent alleged, without corroboration, “a systematic pattern of anti-Slavic ideology within Maricopa County and scheme to penalize me for, among other things, for my exercise of my 1st Amendment rights. And the easiest way to punish me is by removing me from this case, on a pretext, which is exactly what Judge Reckart tried to do.” (Exh. K to State Bar’s Statement of Facts)
30. “To the surprise of no one, not one bureaucrat has given one moment of one thought to the optics of all-Anglo police officers and all-Anglo detectives and all-Anglo prosecutors, with a generous hand from all-Anglo judges and indifference from an all-Anglo save one – judicial commission, manufacturing the guilt of a very black man named Jamal. That is not to mention the high school slurs directed at that very same very black man’s very non-Anglo lawyer named Vladimir. Judge Reckart’s behavior has been an anachronism, behavior that would not be believable if it was to be told in the typical over the top and self righteous John Grisham novel. But this is not the Raj of a White Man’s Burden and 2022 is not 1922.” (Exhibit Q to State Bar’s Statement of Facts)
31. “Obviously, Beresky’s plan was to deny all the defense motions and find reasons, not necessarily good reasons but any contrived reason will do, to justify denying all defense motions after the fact. Deny then justify.” (Exhibit V to State Bar’s Statement of Facts)
32. “What is far worse however, is Beresky’s finding that ‘evidence . . . does in and of itself exculpate the Defendant . . .’. That burden of ‘in and of itself exculpate the defendant’ is far worse than even ‘clear and convincing’. While Beresky does not cite any authority for imposing that monster of a burden upon Mr. Pennington, I can only guess the source was the Spanish Inquisition or Stalin’s show trials or something else more domestic.” (Exhibit U to State Bar’s Statement of Facts)
33. “Judge Beresky denied the motion in his typical haughty manner.” (Exhibit V to State Bar’s Statement of Facts)
34. “Amusingly, in all self-important seriousness, Beresky even claimed that although he does not know what I.H. said . . . that does not prevent his keen Sherlock Holmes like insight knowing why she said it.” (Exhibit V to State Bar’s Statement of Facts)
35. “Why is Beresky presuming Mr. Pennington to be guilty of the crimes the state has charged him as the very means to deny Mr. Pennington’s motion to prove he is not guilty of those crimes? Did Beresky and the state have an evidentiary

hearing and just not tell me about it, or is Beresky not aware that Mr. Pennington is innocent until proven guilty beyond a reasonable doubt?" (Exhibit V to State Bar's Statement of Facts)

36. "So to make this simple, if judges have such contempt for me, born from whatever cause, and will glibly subvert Mr. Pennington's rights, then at least have the courage to say that to his face like a grown man, and then let him decide what he wants to do going forward." (Exhibit U to State Bar's Statement of Facts)
37. In response to the bar charge filed against him by Judge Beresky, Respondent called a statement Judge Beresky made in a ruling "a dirty lie," accused Judge Beresky of "brazenly" lying to the State Bar, and stated that "neither Judge Reckart nor the self-righteous Judge Beresky ever address my concerns of ethnic [sic] stereotyping" and stated, "I can only conclude it is because he is full agreement [sic] with such stereotyping and ethnic race baiting." (Exhibit Z to State Bar's Statement of Facts)
38. In his response to the bar charge, Respondent stated: "Beresky ought neither be a judge nor a lawyer. He does not have the ethical capacity for either, and further he is a by the numbers xenophone." (Exhibit Z to State Bar's Statement of Facts)

By making the above-quoted statements, Respondent violated Rule 41(b)(7), Ariz. R. Sup. Ct., as a matter of law. Rule 41(b)(7) "is not merely aspirational." *In re Martinez*, 248 Ariz. 458, 465 (2020) (interpreting former Rule 41(g)). Diligent and competent representation of a client does not require or justify denigrating, disrespectful, belittling language. *See, e.g., In re Bemis*, 189 Ariz. 119, 122 (1997) ("Respondent says that he would not have behaved as he did if the judge had acted properly . . . Regardless of respondent's belief that his actions were necessary to protect the clients' interests, his behavior was inexcusable."); *The Florida Bar v. Norkin*, 132 So. 2d 77, 92-93 (Fla. 2013) ("Attorneys should focus on the substance of their cases, treating judges and opposing counsel with civility, rather than trying to prevail by being insolent toward judges and purposefully offensive toward opposing counsel.").

As a matter of law, Respondent also violated ER 8.4(d), which states that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice." ER 8.4(d) "does not require a mental state other than negligence." *In re Alexander*, 232 Ariz. 1, 11 (2013). "When lawyers themselves generate conflict, rather than addressing the dispute between the parties they represent, it undermines our adversarial system and erodes the public's confidence that justice is being served." Justice Sandra Day O'Connor, 78 Or. L. Rev. 385 (1999). As the State Bar observes, "Respondent repeatedly rushed to harsh judgments about judicial officers . . .

without conducting a reasonable inquiry into the facts and then took actions based on his uninvestigated and unsubstantiated assumptions.” Respondent’s conduct necessitated judicial reassignments, needlessly consumed scarce judicial resources, and prolonged the criminal proceedings.

Respondent also violated ER 3.5(d), which prohibits lawyers from engaging in conduct likely to disrupt a tribunal. The comment to ER 3.5 states, in pertinent part:

The advocate’s function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate’s right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge’s default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

The State Bar further established that, as a matter of law, Respondent violated ER 8.2(a). As relevant here, ER 8.2(a) prohibits a lawyer from making a statement the lawyer knows to be false “or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.” The State Bar made a prima facie showing of this violation, and Respondent failed to come forward with competent evidence or legal authority in opposition.

In *In re Levy*, PDJ 2019-9044, the Arizona Supreme Court issued a Decision Order that offers guidance regarding the pending matter.² The court discussed abusive, unprofessional language used by the respondent lawyer in that case during civil litigation and while responding to the ensuing bar charge and made clear that an objective standard applied in determining whether such language was “reasonably necessary to advance the litigation and respond to the Bar Charges.” In language equally applicable to the case at bar, the court stated:

The Court is mindful that the purpose of professional discipline is to protect the public and deter similar conduct by others. The heat of litigation may foment anger and result in an occasional poorly-worded epithet. However, a relentless campaign to malign and embarrass opposing counsel and the judiciary is clearly prohibited conduct. (internal citations omitted)

² The Decision Order can be found on the Arizona Supreme Court’s website at [Order \(azcourts.gov\)](http://azcourts.gov).

The Supreme Court further noted in *Levy* that it intentionally rejected language included in the Preamble to the ABA Model Rules of Professional Conduct stating that lawyers have an obligation to “zealously” protect and pursue their clients’ legitimate interests. *See also Nix v. Whiteside*, 106 S. Ct 988, 995 (1986) (“an attorney’s ethical duty to advance the interests of his client is limited by an equally solemn duty to comply with the law and standards of professional conduct”).

Respondent has not asserted, and the record does not suggest, that the language quoted *supra* was objectively and reasonably necessary to advance the criminal proceedings or to respond to the bar charge. In *Bemis*, our Supreme Court made clear that disagreement with legal rulings does not justify vituperative attacks on the judiciary:

The court is most concerned with respondent’s refusal to accept that his conduct cannot be justified by any perceived unfairness in the judges’ rulings. As the commission noted, “this matter was the result of [his] misguided, overzealous efforts to obtain a successful result for his clients.” Respondent must realize that “[z]ealous advocacy has limits. It clearly does not justify ethical breaches.”

189 Ariz. at 122. And as the court observed in *Levy*, “*Bemis* involved only one instance of drafting inappropriate comments, whereas here Respondent’s abusive rhetoric began with his response to [an email] and then unapologetically escalated during the Bar investigation.”

The State Bar also contends that other written statements by Respondent violated the ethical rules, including statements he made about opposing counsel in the criminal proceedings and statements made in connection with litigation Respondent filed against Maricopa County. Based on the current record, the PDJ cannot resolve these allegations as a matter of law and does not enter summary judgment as to them. If the State Bar wishes to litigate these allegations, it may do so at the scheduled November 14, 2022 disciplinary hearing. If, on the other hand, the State Bar elects not to pursue the remaining allegations, the hearing on November 14, 2022 will be converted to an aggravation/mitigation hearing based on the violations found herein. The State Bar shall advise Respondent and the PDJ within five business days whether it will litigate additional alleged violations, and if so, shall specifically identify the allegations to be litigated at the hearing.

For the reasons stated,

IT IS ORDERED granting in part and denying in part the State Bar’s Motion for Summary Judgment re: Violation of Ethical Rules.

IT IS FURTHER ORDERED denying what Respondent has labeled a “Counter-Motion for Summary Judgment” as part of his response to the State Bar’s motion for summary judgment. The motion does not comply with Rule 56, Ariz. R. Civ. P.

DATED this 15th day of September 2022.

Margaret H. Downie
Margaret H. Downie
Presiding Disciplinary Judge

COPY of the foregoing e-mailed
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