No._____

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IN THE

SUPREME COURT OF THE UNITED STATES

_____

MARK LEE WILLIAMS – APPLICANT

vs.

ARIZONA STATE BAR – RESPONDENT

_____

**EMERGENCY APPLICATION FOR A STAY OF THE MARCH 5, 2021 AMENDED DECISION ORDER OF THE ARIZONA SUPREME COURT AND FOR AN ADMINISTRATIVE STAY**

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To the Honorable Elena Kagan,
Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Ninth Circuit

_____

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Pro Se Applicant

## PARTIES TO THE PROCEEDING

The Pro Se Applicant (Appellant below and Respondent in the bar proceedings at issue below) is Mark Lee Williams, an attorney in the State of Arizona, a citizen of the United States and the great State of Arizona.

The Respondent (Appellee below and Plaintiff in the bar proceedings at issue below) is the State Bar of Arizona.

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TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT

This case has broad legal significance for lawyers in bar disciplinary proceedings across the United States and addresses attorneys' rights to Due Process in bar disciplinary proceedings.

The present case involving Pro Se Applicant attorney Mark Lee Williams represents a regrettable example of how an attorney in bar proceedings can have his Due Process rights guaranteed by the 5th and 14th Amendments to the U.S. Constitution and Article 2, §4 of the Arizona Constitution ***violated*** by a constitutionally defective bar complaint (App. 50-56) that failed to give fair notice of the conduct that allegedly constituted a violation of the 6 Ethical Rule (ER) violations and failed to cite the alleged rules/statutes that were violated, and by disciplinary proceedings that were not conducted according to Federal and Arizona law.

Sadly, the record and the decisions below demonstrate that, the Arizona Supreme Court and the disciplinary Hearing Panel (which is comprised of 3 people of which is the Presiding Disciplinary Judge) (hereinafter "PDJ") abused their discretion and reached clearly erroneous decisions in violation of Applicant's right to Due Process that resulted in them finding 6 ER violations resulting in a 30-day suspension from the practice of law set to commence on April 5, 2021 and other sanctions.

A review of the record and decisions below will make it clear to this Court that the March 5, 2021 Amended Decision Order (App. 2-5) and March 3, 2021 Decision Order (App. 6-9) of the Arizona Supreme Court and the Decision and Order Imposing Sanctions (App. 12-49) of the PDJ should all be set aside and vacated and the constitutionally defective bar complaint (App. 50-56) dismissed with prejudice and until that happens this Court should grant a stay of the March 5, 2021 Amended Decision Order of the Arizona Supreme Court.

## STATEMENT OF FACTS AND CASE

Respondent commenced disciplinary proceedings against Applicant by filing a constitutionally defective bar complaint (App. 50-56) on August 20, 2019 that failed to give Applicant fair notice of the charges and deprived Applicant of his federal and Arizona state right Due Process guaranteed by the 5th and 14th Amendments to the U.S. Constitution and Article 2, Section 4 of the Arizona Constitution.

Applicant filed his response to the constitutionally defective bar complaint App. 72-77.

An Initial Case Management Conference was held on October 2, 2019 and the Order from that Conference set a motions deadline of November 1, 2019 and a Hearing [trial (hereinafter "Hearing")] date of December 2, 2019.

On November 25, 2019, Applicant filed and served his Separate Prehearing Memorandum which identified to the Hearing Panel and Respondent the specific constitutional defects in the complaint and for each of the 6 alleged ER violations App. 78-87.

An expedited hearing conference was held on November 27, 2019 and the Order from that conference set the motions deadline for December 6, 2019 and reset the Hearing on the matter, to January 15, 2020.

Respondent failed to file a motion to amend the constitutionally defective complaint by the December 6, 2020 motion's deadline.

A Hearing was held on January 15, 2020. Respondent failed to seek an amendment to the constitutionally defective complaint before or at the Hearing and failed to seek an amendment to the pleadings.

Applicant made a motion to dismiss the complaint which the PDJ would not consider and did not allow Applicant to make a record of. (App. 94 lines 20-25 to App. 95 lines 1-7).

On February 27, 2020 the Hearing Panel issued its Decision finding 6 ER violations and imposing a suspension of 6 months and 1 day along with other sanctions App 12-49.

Applicant timely made his appeal to the Arizona Supreme Court on March 9, 2020 from the Hearing Panel's Decision App. 88-89.

On March 17, 2020 the PDJ granted Applicant's request for a stay with conditions of supervision while the matter proceeded to the Arizona Supreme Court on appeal. (App. 10-11).

Applicant timely filed his transcript of the and January 15, 2020 Hearing select portions of which are at App. 90-101.

Applicant filed October 8, 2020 his Opening Brief at App. 102-143 and on December 9, 2020 filed his Reply Brief at App. 144-173 with the Arizona Supreme Court; both briefs raised the constitutional defects which are discussed below.

On **March 3, 2021** the Arizona Supreme Court issued its Decision Order (App. 6-9) ***granting*** Applicant's Appeal and in the process reduced the suspension to 30 days effective 30 days from March 3, 2020, ordered 2 years of probation, ordered compliance with Rule 72, Arizona Rules of Supreme Court (which requires in pertinent part for Applicant to withdraw from his current cases and notify his clients, opposing counsel, and the courts of his suspension within 10 business days of March 3, 2021), and ordered costs to be paid by Applicant. (App. 6-9).

On ***March 5, 2021*** the Arizona Supreme Court issued its Amended Decision Order (App. 2-5) ***granting*** Applicant's Appeal and in the process reduced the suspension to 30 days effective 30 days from March 5, 2020, ordered 2 years of probation, ordered compliance with Rule 72, Arizona Rules of Supreme Court (which requires in pertinent part for Applicant to withdraw from his current cases and notify his clients, opposing counsel, and the courts of his suspension within 10 business days of March 5, 2021 (which is ***March 19, 2021***) which Respondent calculates to be ***April 5, 2021***), and ordered costs to be paid by Applicant.

Applicant filed his Motion for a Stay (App. 176-186) and Supplement to a Motion for a Stay (App. 187-192) with the Arizona Supreme Court.

The Arizona Supreme Court denied Applicant's motion for a stay. (App. 1).

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## OPINIONS AND ORDERS BELOW

The Arizona Supreme Court's March 9, 2021 order denying Applicant's motion for a stay and supplement to motion for a stay is at App. 1. The Arizona Supreme Court's March 5, 2021 Amended Decision Order that Applicant seeks to have stayed is at App. 2-5. The Arizona Supreme Court's March 5, 2021 Decision Order is at App. 6-9. The March 17, 2020 Hearing Panel's order granting stay with conditions of supervision is at App. 10-11. The February 27, 2020 decision and order imposing sanctions of the Hearing Panel is at App. 12-49. The constitutionally defective bar complaint that violates the 5th and 14th Amendments to the U.S. Constitution is at App. 50-56. The Arizona ethical rules at issue are at App. 57-71. Other relevant pleadings are at App. 72-192.

## JURISDICTION

Pursuant to 28 U.S.C. §2101(f), Rule 23 of the Rules of this Court, and the All Writs Act, 28 U.S.C. §1651, Applicant Mark Lee Williams, respectfully applies on an emergency basis for a stay of the March 5, 2021 Amended Decision Order of the Arizona Supreme Court (App. 2-5), pending the filing and disposition of a petition for a writ of certiorari to review the March 5, 2021 Amended Decision Order of the Arizona Supreme Court (App. 2-5) and any further proceedings in this Court.

Applicant also respectfully requests an administrative stay pending disposition of this application. By "administrative stay", Applicant is requesting that this Court immediately stay the March 5, 2021 Amended Decision Order of the

Arizona Supreme Court (App. 2-5) until this Court has had time to rule on the Emergency Application for a Stay.

Applicant was and is the named defendant [Respondent] in the bar complaint at App. 50-56. Applicant was the Appellant on Appeal to the Arizona Supreme Court.

Respondent is the plaintiff [Arizona State Bar] in the bar complaint at App. 50-56 and the Appellee on Appeal to the Arizona Supreme Court

Rule 10, Rules of U.S. Court states:

> "(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court."

The Amended Decision Order of the Arizona Supreme Court (App. 2-5) is exceptionally important because it erroneously decided an important question of law that conflicts with Applicant's Due Process rights guaranteed by the 5th and 14th Amendments to the U.S. Constitution. Sup. Ct. R. 10(c).

This case also has broad legal significance for lawyers in bar disciplinary proceedings across the nation.

This case is an optimal vehicle for review.

And the balance of the equities weighs strongly in applicant's favor. The application for a stay should be granted.

In Arizona, the Arizona Supreme Court has the ultimate responsibility for deciding appropriate attorney discipline. *In re Neville*, 147 Ariz. 106, 115, 708 P.2d 1297, 1306, (1985). Applicant has requested from the Arizona Supreme Court a stay

which it denied (App. 1). The Arizona Supreme Court is the highest court in the State of Arizona and there is no other court Applicant can seek relief, except the U.S. Supreme Court.

## REASONS FOR GRANTING THE APPLICATION

The Applicant respectfully requests that this Court grant an emergency stay of the March 5, 2021 Amended Decision Order of the Arizona Supreme Court (App. 2-5) pending the final decision of this Court on Applicant's forthcoming Petition for Writ of Certiorari and further proceedings in this Court.

A stay pending a petition for a writ of certiorari is appropriate if there is (1) "a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari"; (2) "a fair prospect that a majority of the Court will conclude that the decision below was erroneous"; and (3) "a likelihood that irreparable harm will result from the denial of a stay." *Conkright v. Frommert*, 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers) (brackets, citation, and internal quotation marks omitted); *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curium); see 28 U.S.C. §2101(f). "In close cases" the Court will also "balance the equities and weigh the relative harms to the applicant and to the respondent." *Hollingsworth*, 558 U.S. at 190. All these factors overwhelmingly favor granting the Emergency Application for a stay.

The Applicant also requests an administrative stay while this Court considers this emergency application, to preserve the status quo and prevent irreparable harm.

This application concerns a constitutionally defective bar complaint (App. 50-56) the results of which inflict irreparable harm on Applicant. Relief from this Court is therefore urgently needed before **March 19, 2021.** And this application readily meets this Court's criteria for granting a stay.

First, the Court's review of the March 5, 2021 Amended Decision Order of the Arizona Supreme Court (App. 2-5), the PDJ's Decision and Order Imposing Sanctions (App. 12-49), and the constitutionally defective bar complaint (App. 50-56) is plainly warranted.

Second, there is more than a fair prospect that this Court will vacate the March 5, 2021 Amended Decision Order of the Arizona Supreme Court (App. 2-5), the PDJ's Decision and Order Imposing Sanctions (App. 12-49), and the constitutionally defective bar complaint (App. 50-56).

Third, absent a stay, the March 5, 2021 Amended Decision Order of the Arizona Supreme Court (App. 2-5) is guaranteed to impose irreparable harm on and before ***March 19, 2021*** by causing Applicant to notify his clients, opposing counsel, and the courts that he has been suspended and will cause further harm by suspending Applicant from his only source of income from his practice of law commencing ***April 5, 2021.***

The March 5, 2021 Amended Decision Order of the Arizona Supreme Court (App. 2-5) should therefore be stayed in its entirety. But at minimum, the March 5, 2021 Amended Decision Order of the Arizona Supreme Court (App. 2-5) requiring Applicant to be suspended from the practice of law effective ***April 5, 2021*** and

requiring Applicant to comply with Rule 72, Arizona Rules of Supreme Court should be stayed before ***March 19, 2021*** pending the final decision of this Court on Applicant's forthcoming Petition for Writ of Certiorari and further proceedings in this Court.

Finally, because the March 5, 2021 Amended Decision Order of the Arizona Supreme Court (App. 2-5) will cause immediate and irreparable harm to Applicant if allowed to take effect, the Applicant respectfully requests that this Court enter an administrative stay while it considers this Emergency Application for a Stay.

## I. THIS COURT IS LIKELY TO GRANT CERTIORARI AND THERE IS AT LEAST A FAIR PROSPECT THAT THIS COURT WILL SET ASIDE AND VACATE THE MARCH 5, 2021 AMENDED DECISION ORDER OF THE ARIZONA SUPREME COURT AND DISMISS THE CONSTITUTIONALLY DEFECTIVE BAR COMPLAINT WITH PREJUDICE

There is (1) "a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari"; (2) "a fair prospect that a majority of the Court will conclude that the decision below was erroneous"; and (3) "a likelihood that irreparable harm will result from the denial of a stay." *Conkright* at 1402 (citation omitted).

The 14th Amendment to the U.S. Constitution states:

> "Section 1.
> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. ***No state shall*** make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ***nor shall any state deprive any person of life, liberty, or property, without due process of law***; nor deny to any person within its jurisdiction the equal protection of the laws." [Emphasis added]

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The 5th Amendment to the U.S. Constitution states:

> "*No person shall ... be deprived of life, liberty, or property, without due process of law* ... ." [Emphasis added]

Article 2, Sction 4 of the Arizona Constitution states:

> "***No person shall be deprived of life, liberty, or property without due process of law.***" [Emphasis added]

In the case of *Konigsberg v. State Bar of California*, 353 U.S. 252 (1957) this Court found a violation of Due Process in violation of the Fourteenth Amendment and stated:

> "While this is not a criminal case, its consequences for Konigsberg take it out of the ordinary run of civil cases. The Committee's action prevents him from earning a living by practicing law. This deprivation has grave consequences for a man who has spent years of study and a great deal of money in preparing to be a lawyer." *Id.* at 257-258.

As in *Konigsberg*, Applicant's bar case is not a criminal case; however, the consequences take the case out of the ordinary run of civil cases. The March 5, 2021 Amended Decision Order of the Arizona Supreme Court (App. 2-5) prevents Applicant from earning a living by practicing law for thirty days commencing April 5, 2021. This deprivation has grave consequences for Applicant, a man who has spent many years of study, 17 years in the practice of law, and a great deal of money preparing for and being a lawyer.

The March 5, 2021 Amended Decision Order of the Arizona Supreme Court (App. 2-5) and Decision of the Hearing Panel (App. 12-49) should be vacated and the constitutionally defective bar complaint (App. 50-56) dismissed with prejudice because the decisions and defective bar complaint violated Applicant's right to Fair

Notice/Due Process guaranteed by the 5th and 14th Amendments to the U.S. Constitution.

This Court held in the case of *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957):

> "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." *Id.* at 238-239.

In *Matter of Ruffalo,* 390 U.S. 544, 550-551, 88 S.Ct. 1222, 1226, 20 L.Ed.2d 117 (1968), this Court held that an attorney charged with unethical conduct is entitled to procedural due process which includes fair notice of the charge *before* the proceedings commence:

> "He is accordingly entitled to procedural due process, which includes fair notice of the charge. See *In re Oliver*, 333 U.S. 257, 273, 68 S.Ct. 499, 507, 92 L.Ed. 682....
> These are adversary proceedings of a ***quasi-criminal nature.*** Cf. *In re Gault*, 387 U.S. 1, 33, 87 S.Ct. 1428, 1446, 18 L.Ed.2d 527. The charge must be known before the proceedings commence." [Emphasis added]

This Court held that quasi-criminal proceedings, like attorney discipline trigger procedural due process because attorneys have a property interest in their licenses to practice law, procedural due process is more than just a hearing and "it is not satisfied by merely formal procedural correctness, nor is it confined by an absolute rule such as that which the Sixth Amendment contains in securing to an accused the assistance of counsel for his defense." *Foster v. Illinois*, 332 U.S. 134, 136 (1947).

The Arizona Supreme Court in *In Re Tocco*, 194 Ariz. 453, 984 P.2d 539, 543 (1999) recognized *Ruffalo*:

"Because [attorney] disciplinary proceedings are quasi-criminal, an attorney must be alerted in advance to the charges against her. See *In re Ruffalo*, 39 U.S. 544, 551, 88 S. Ct. 1222, 1226, 20 L.Ed.2d 117 (1968)."

The Respondent's constitutionally defective bar complaint is at App. 50-56 and is reproduced below:

"Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice on November 24, 2003.

COUNT ONE (File no. 18-2955/Garcia)

2. Jesus Emilio Garcia hired Respondent in July of 2016 for representation in his divorce.
3. The parties were married in Mexico in 1991 and lived there until 2007. In March of 2015, they moved to Arizona.
4. On September 23, 2016, Respondent emailed Garcia a blank Affidavit of Financial Information (AFI) to be filed with the court, but did not provide him with a due date and did not follow-up with Garcia regarding the status of the document. As a result, Respondent failed to timely file the AFI.
5. Respondent represented Garcia at trial. The trial court awarded Garcia's ex-wife spousal maintenance and awarded her attorney's fees of $2,500 for Garcia's failure to file the AFI. The trial court noted that Respondent failed to file a pre-trial statement in the case.
6. Following trial, Respondent appealed the trial court's ruling.
7. On August 31, 2018, The Court of Appeals issued its decision. Regarding attorneys' fees, the court affirmed that Respondent's client failed to file an AFI and "was in violation of his ongoing duty to disclose." The court noted that Respondent argued that Wife would not be entitled to spousal maintenance under Mexican law and that the court should apply Mexican law "for the time the parties resided in that country." The court determined that Mexican law did not apply.
8. The decision included the following criticisms of Respondent's briefing:

> Although Jesus [Garcia] claims the court abused its discretion in determining the amount and duration of the award, he has failed to develop any legal arguments to support his position. He also failed to include appropriate citations to the record or relevant legal authority. The same can be said about his arguments that the court erred by ordering him to pay ana's [Wife's] post-separation debts, failing to grant his proposed findings of fact and conclusions of law, and ordering

him to pay Ana's attorney fees. We therefore conclude all these claims are waived or abandoned on appeal and do not address them further.

9. The court also noted that while Respondent claimed under Mexican law, Ana would not be entitled to spousal maintenance and the court was obligated to apply the law of Mexico for the time the parties resided in that country.... Nothing within the language of the statute supports the proposition that a court must look to the law of the place where the marriage was contracted to resolve other issues in a dissolution action.... Thus, even assuming Ana would not be entitled to spousal maintenance under the law of Mexico, that law does not apply.
10. Respondent's Statement of Facts in his opening brief is almost entirely a cut and paste of the trial transcript. Specifically, 14 pages of the Statement of Facts are simply an excerpt from this client's testimony on direct examination introduced with the following statement: "Below are important portions of Respondent (sic) testimony on direct for Respondent's case in chief."
11. Respondent argued, without any legislative history or legal support, "[i]t is believed that it was the intention of the Arizona legislature in considering an award of spousal maintenance (it was assumed) that the parties lived married all their lives in the United States."
12. When the Court of Appeals issued its August 31, 2018 decision, Respondent failed to notify his client of the decision. Instead, on September 29, 2018, Garcia learned on his own that he had lost his appeal.
13. Respondent's conduct violated ERs 1.1, 1.3, 1.4, 3.1, 3.4(c), and 8.4(d)."

The Respondent failed to give ***notice*** in its constitutionally defective complaint to Applicant explaining which of the first 12 paragraphs and which of all the sentences contained in those 12 paragraphs apply to which of the 6 alleged ER violations.

Additionally, ER 1.4 has various sections and subsections and no section nor subsection was identified in the complaint. Respondent failed to identify which section and which subsection of ER 1.4 Applicant allegedly violated.

Like charges in a criminal complaint, each of the 6 ERs contain different and distinct elements.

ER 1.1. Competence states:

> "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." (App. 57-58).

Which sentence in the first 12 paragraphs in the constitutionally defective complaint or which of the first 12 paragraphs give notice to Applicant as to how he is alleged to have violated ER 1.1? The answer is none. Respondent failed to give notice to Applicant.

ER 1.3. Diligence states:

> "A lawyer shall act with reasonable diligence and promptness in representing a client." (App. 59-60).

Which sentence in the first 12 paragraphs in the constitutionally defective complaint or which of the first 12 paragraphs give notice to Applicant as to how he is alleged to have violated ER 1.3? The answer is none. Respondent failed to give notice to Applicant.

ER 1.4. Communication states:

> "(a) A lawyer shall:
> (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in ER 1.0(e), is required by these Rules;
> (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
> (3) keep the client reasonably informed about the status of the matter;
> (4) promptly comply with reasonable requests for information; and
> (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) In a criminal case, a lawyer shall promptly inform a client of all proffered plea agreements." (App. 61-63).

Which paragraph of ER 1.4 did Applicant allegedly violate? Was it paragraph (a)? (a)(1)? (a)(2)? (a)(3)? (a)(4)? (a)(5)? (b)? (c)? Respondent failed to identify the section.

Which sentence in the first 12 paragraphs in the constitutionally defective complaint or which of the first 12 paragraphs give notice to Applicant as to how he is alleged to have violated ER 1.4? The answer is none. Respondent failed to give notice to Applicant.

ER 3.1. Meritorious Claims and Contentions states:

"A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous, which may include a good faith and nonfrivolous argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established." (App. 64-65).

Which sentence in the first 12 paragraphs in the constitutionally defective complaint or which of the first 12 paragraphs give notice to Applicant as to how he is alleged to have violated ER 3.1? The answer is none. Respondent failed to give notice to Applicant.

ER 3.4. Fairness to Opposing Party and Counsel states:

"A lawyer shall not:...

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists..." (App. 66-67).

Which sentence in the first 12 paragraphs in the constitutionally defective complaint or which of the first 12 paragraphs give notice to Applicant as to how he is alleged to have violated ER 3.4? The answer is none. Respondent failed to give notice to Applicant.

ER 8.4. Misconduct states:

> "It is professional misconduct for a lawyer to:...
> (d) engage in conduct that is prejudicial to the administration of justice..." (App. 68-71).

What conduct of Applicant was allegedly "prejudicial to the administration of justice"? It is not identified. Which sentence in the first 12 paragraphs in the constitutionally defective complaint or which of the first 12 paragraphs give notice to Applicant as to how he is alleged to have violated ER 8.4? The answer is none. Respondent failed to give notice to Applicant.

Rule 46, Arizona Rules of Supreme Court ("Ariz. R. Sup. Ct.") gives the following definition:

> "7. "***Complaint***" means a formal complaint prepared and filed with the disciplinary clerk pursuant to these rules." (Emphasis added.)

Rule 48, Ariz. R. Sup. Ct. states:

> "**(d) Standard of Proof.** Allegations in a ***complaint*** .... shall be established by clear and convincing evidence." (Emphasis added.)

The constitutionally defective complaint also violated Rule 58(a), Ariz. R. Sup. Ct. which states:

> "**Complaint.** Formal discipline proceedings shall be instituted by ***bar counsel*** filing a ***complaint***... with the disciplinary clerk. ***The complaint shall be sufficiently clear and specific to inform a respondent of the alleged misconduct.***" (Emphasis added.)

Rule 58(j), Ariz. R. Sup. Ct. states in relevant part:

> "3. *Procedure.* The state bar shall prove the allegations contained ***in the complaint*** by clear and convincing evidence." (Emphasis added.)

Respondent's constitutionally defective bar complaint violated Applicant's right to Due Process guaranteed by the 5th and 14th Amendments to the U.S. Constitution, Article 2, §4 of the Arizona Constitution by failing to give Applicant the required notice of the conduct that constituted the specific ER violation and violated Rule 58(a), Ariz. R. Sup. Ct. by failing to give Applicant notice of the of the conduct that constituted the specific ER violation, and these violations require that the Amended Decision Order (App. 2-5) and Decision Order (App. 6-9) of the Arizona Supreme Court and the decision and order imposing sanctions of the hearing panel (App. 12-49) be vacated and dismissed, and the constitutionally defective bar complaint (App. 50-56) dismissed with prejudice.

It is not Applicant's obligation but rather Respondent's obligation and duty to file a complaint which complies with the requirements of the rules, and notice requirement guaranteed by *Ruffalo*, and by the Due Process clause contained in the 5th and 14th Amendments to the U.S. Constitution, Article 2, §4 of the Arizona Constitution, and Rule 58(a), Ariz. R. Sup. Ct.

Respondent cannot ***dispense with, ignore, waive, circumvent, transfer, redirect, assign, delegate, nor shift*** its duty to file a complaint that gives fair notice as required by the 5th and 14th Amendments to the U.S. Constitution, Article 2, §4 of the Arizona Constitution, and Rule 58(a), Ariz. R. Sup. Ct., and its failure to do so ***must*** have legal consequences, such as dismissal with prejudice. Respondent's duty

existed from the filing of its complaint through the January 15, 2020 Hearing and did not ***evaporate nor dissipate***.

Respondent never sought to amend its constitutionally defective complaint and ***ignored*** the December 6, 2019 motion's deadline. The Respondent could have easily filed a motion to amend its complaint to correct its numerous defects but failed and chose not to do so. See Rule 47(a) and (b)2, Ariz. R. Sup. Ct. There was no express nor implied consent of the parties to have issues tried that were not raised by the pleadings. Rule 47(b)1, Ariz. R. Sup. Ct.

All of the authority cited above shows that ***only*** the Respondent is authorized make allegations in a complaint or amended complaint if a motion to amend is granted. The Arizona Rules of Supreme Court do not authorize nor allow the Respondent to make allegations anywhere else other than in a complaint or amended complaint.

Respondent's constitutionally defective complaint did not give Applicant the Fair Notice/Due Process required by the Due Process Clause of the 5th and 14th Amendments to the U.S. Constitution, *In Matter of Ruffalo,* 390 U.S. 544, 550-551, 88 S.Ct. 1222, 1226, 20 L.Ed.2d 117 (1968), Article 2, §4 of the Arizona Constitution, nor the requirement contained in Rule 58a, Ariz. R. Sup. Ct. that the "complaint shall be sufficiently clear and specific to inform a respondent of the alleged misconduct."

Respondent has no excuse for its failures. On ***November 25, 2019*** (*almost 2 months before the January 15, 2020 Hearing* took place), Applicant gave the

Hearing Panel, the PDJ, and Respondent notice of the Respondent's constitutionally defective bar complaint when he filed and served his Separate Prehearing Memorandum:

> "Every hearing panel addresses the specific allegations within the complaint. It is that pleading that gives fair notice (which is lacking in this case and will be addressed at the start of the hearing) of the basis of the claim. The State Bar must prove each of its allegations. It is bound by its pleadings and is entitled to no greater or different relief than arise from those allegations. ...
> **ER 1.1...**
> The State Bar did not state which of its allegations apply to ER 1.1. ...
> **ER 1.3...**
> The State Bar did not state which of its allegations apply to ER 1.3. ...
> **ER 1.4...**
> The State Bar did not identify which section nor subsection of ER 1.4 that was allegedly violated.
> The State Bar did not state which of its allegations apply to ER 1.4, its sections, nor sub-sections. ...
> **ER 3.1...**
> The State Bar did not state which of its allegations apply to ER 3.1. ...
> **ER 3.4(c)...**
> The State Bar did not state which of its allegations apply to ER 3.4(c). ...
> **ER 8.4(d)...**
> The State Bar did not state which of its allegations apply to ER 8.4(d) nor which other ethical rule forms the basis for the alleged violation of ER8.4(d)." (App. 78-87)

At the beginning of the January 15, 2020 Hearing Applicant made an oral motion to dismiss the defective complaint:

> "And before I making my opening comment, I had a preliminary motion that I was hoping to run by you that concerns this action. ... I would call it a Motion to Dismiss some or all of the allegation in the Complaint. If I could be heard on that?
> PRESIDING DISCIPLINARY JUDGE: You're too late for that. We're at the hearing.
> MR. WILLIAMS: Could I make an offer of proof for the record?
> PRESIDING DISCIPLINARY JUDGE: Nope." (App. 94 lines 20-25 to App. 95 lines 1-4)

The PDJ abused his discretion in not allowing Applicant to make his motion, not granting it, and in not allowing him to make a record.

At the conclusion of the January 15, 2020 Hearing Applicant argued in his closing argument:

> "Your Honor, it – the allegations in the Complaint are supposed to be established by clear and convincing evidence. My argument is that the State Bar has failed to do that. (App. 96 lines 4-5.)
>
> "Your Honor, the allegations in the Complaint – there's -- there's a number of them, I think 13 or so in this Complaint. They specifically don't say what – what rules are – are – Ethical Rules are being violated. It – it's just kind of like a – there'll all thrown together without specifically saying in the Complaint which allegation refers to which Etherical Rule violation." (App. 97 lines 16-22.)
>
> "With respect to ER 1.4.... The State Bar failed to identify which subsection in its Complaint it's referring to or – or—or which allegation applies to the one that they want to – they—they want to allege has been violated." (App. 98 lines 14-21.)
>
> "With respect to the State Bar's allegation in 3.4 – ER 3.4(c).... Again, I point out in the Complaint it doesn't state which allegation is – supports this—this violation. I submit that the State Bar has – has not – has not established a violation by clear and convincing evidence of this ER." (App. 99 lines 24-25 to App. 100 lines 1-8.)
>
> "With respect to, Your Honor, ER8.4(d),... Again, the same point, the allegation in the Complaint doesn't state which specific allegation applies to this particular alleged rule violation." (App. 100 lines 11-15.)

The PDJ abused his discretion in not dismissing the complaint after oral argument.

Rule 48(a), Ariz. R. Sup. Ct. states "[d]iscipline ... proceedings are neither civil nor criminal, but are *sui generis*"; however, the U.S. Supreme Court in *Ruffalo*

referred to bar disciplinary proceedings as being of a "quasi-criminal nature" which include notice of the charge before the proceedings commence.

Since bar disciplinary proceedings are of "quasi-criminal nature", Applicant urges this Court to consider the notice this Court requires of a criminal indictment ***and*** the notice Arizona requires of a criminal indictment and apply the same notice requirement to the Respondent when it is filing its complaints, including Applicant's case at hand.

This Court in *United States v. Cruikshank,* 92 U.S. 542, 558, 23 L.Ed. 588 (1875) held that the charging of a criminal offense is regulated by the requirement found in the Sixth Amendment that in all criminal prosecutions, the accused shall enjoy the right... to be informed of the nature and cause of the charges against him ... with respect to charging an offense, this requirement, generally referred to as the "notice" component of the Amendment, means that the indictment or information must describe the offense with sufficient specificity so as to enable the accused to prepare a defense and to permit and to avail himself of the protection against double jeopardy.

Rule 13.1, Arizona Rules of Criminal Procedure states:

> "(a) General Definition. ***An "indictment" or "information" is a plain, concise statement of the facts sufficiently definite to inform the defendant of a charged offense.***
> **(b) Indictment Defined.** An "indictment" is a written statement charging the defendant with the commission of a public offense ... and presented to the court ....
> **(d) Charging the Offense.** ***Each count of an indictment or information must state the official or customary citation of the statute, rule, regulation or other provision of law the defendant allegedly violated....***" (Emphasis added.)

The Respondent's constitutionally defective complaint (App. 50-56) could have and should have given notice to Applicant by stating independently each alleged ER violation, e.g., ER 1.1, and then described the alleged facts/conduct that comprised the alleged ER 1.1 violation or it could have and should have alleged specific facts/conduct and then alleged that the facts/conduct violated a specific ER such as ER 1.1.

ER 1.4 has 3 sections and the first section has 5 subsections so the complaint should have and could have *identified* in ER 1.4 the specific section and/or subsection and then described the alleged facts/conduct that comprised the alleged ER 1.4 violation.

Applicant made his constitutional arguments in his Opening Brief (App. 102-143) and Reply Brief (App. 144-173) filed in the Arizona Supreme Court

The Arizona Supreme Court ruled in its March 5, 2021 Amended Decision Order (App. 2-5):

> "First, Respondent argues that he was denied due process in the discipline proceedings because the complaint failed to give fair notice of the conduct and charges. Due process in an attorney discipline proceeding requires "fair notice of the charges and a meaningful opportunity to defend against them." *In re Aubuchon*, 233 Ariz. 62, 65 ¶ 7 (2013); *In re Peasley,* 208 Ariz. 27, 34 ¶ 26 (2004). On these facts, Respondent has not demonstrated that he was denied fair notice of the charges.
> The allegations in the Complaint are straightforward and, except for the ER 1.4 charge, it is clear which facts relate to which charged ethical rule. Respondent is correct that ER 1.4 has several subparts, and the Complaint did not specify which subpart Respondent was alleged to have violated. This deficiency, however, did not deny Respondent due process or cause him prejudice. In prehearing memoranda, the State Bar consistently described Respondent's alleged misconduct as failing to keep his client "reasonably informed about the status of the matter." This requirement appears in ER 1.4(a)(3). Respondent does not allege that he was unaware of the specific

> charge and did not file a motion challenging the sufficiency of the Complaint. While the Complaint could have been more specific, Respondent has not demonstrated that he was denied fair notice of the charges or that he suffered any prejudice." (App. 2-3.)

The ultimate decision nor the rationale given by the Arizona Supreme Court holding that the "allegations in the Complaint are straightforward" do not withstand scrutiny and misses the point.

There is no notice to Applicant of which of the allegations contained in the first 12 paragraphs are alleged to have violated any of the 6 ERs. Respondent failed to give fair notice to Applicant as required by Due Process of which of the allegations contained in the sentences of the first 12 paragraphs (or which paragraph) in the constitutionally defective bar complaint is alleged to have violated which specific ER.

The prejudice at the January 15, 2020 Hearing was so great to Applicant by having his constitutional right to Fair Notice/Due Process violated by the constitutionally defective bar complaint that the evidence presented at the Hearing (presented in violation of Applicant's right to Fair Notice/Due Process) should have been disregarded. The presumption of prejudice is rooted in the principle that "some constitutional errors require reversal without regard to the evidence in the particular case." *Rose v. Clark,* 478 U.S. 570, 577, 106 S.Ct. 3101, 92 L.Ed.2d 460 (1986).

The Amended Decision Order (App. 2-5) and Decision Order (App. 6-9) of the Arizona Supreme Court and the Decision and Order Imposing Sanctions of the Hearing Panel (App. 12-49) should be vacated and the bar complaint dismissed with

prejudice because a judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. *Pennoyer v. Neff,* 95 U.S. 714, 95 U. S. 732-733 (1878).

## II. IRREPARABLE HARM WILL OCCUR TO APPLICANT WITHOUT A STAY AND GRANTING A STAY WILL NOT HARM THE RESPONDENT

The balance of equities overwhelmingly favors a stay.

The Amended Decision Order (App. 2-5) will cause immediate, direct, precipitous harm to the Applicant. On the other hand, Respondent has no harm if the application for the stay is granted, and, in any event, if there was any harm it would be insufficient to overcome the Applicant's countervailing interests.

On March 5, 2021 this Court issued its Amended Decision Order (App. 2-5) which ordered in relevant part:

> "IT IS ORDERED granting the [Mr. Williams'] appeal.
> IT IS FURTHER ORDERED modifying the sanction to reflect a thirty-day suspension, effective thirty days from the date of this order.
> IT IS FURTHER ORDERED that, effective the date of this order, Respondent is placed on probation for two years under the following terms and conditions:
>
> 1) Within thirty days of this order, Respondent must contact the Compliance Monitor at the State Bar and submit to a LOMAP assessment, as necessary. Respondent shall enter into a LOMAP contract based on the recommendations following any assessment. Respondent shall be responsible for any costs associated with LOMAP.
> 2) The State Bar shall report material violations of the terms of probation pursuant to Rule 60(a)(5)(C), and a hearing may be held within thirty days to determine if the terms of probation have been violated and if an additional sanction should be imposed. The burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.
>
> IT IS FURTHER ORDERED that Respondent must comply with all applicable provisions of Rule 72 and shall promptly inform this Court

and the Disciplinary Clerk of his compliance with this Order as provided in Rule 72(e).

IT IS FURTHER ORDERED that Respondent shall be assessed the costs and expenses of the disciplinary proceedings as provided in Rule 60(d)(2)(B)."

Rule 72, Arizona Rules of Supreme Court at App. 174-175 requires that Applicant, under penalty of contempt, notify his clients, opposing counsel, and the court that he has been suspended for 30 days and requires that Applicant withdraw from representing his clients as follows:

> "(a) **Recipients of Notice; Contents.** Within ten (10) days after the date of an order or judgment issued by the presiding disciplinary judge, a hearing panel, or the court imposing discipline or transfer to disability inactive status, or the date of resignation, a respondent suspended, disbarred, transferred to disability inactive status, or who has resigned, shall notify the following persons by registered or certified mail, return receipt requested, of the order or judgment, and of the fact that the lawyer is disqualified to act as lawyer after the effective date of same:
>
> 1. all clients being represented in pending matters; and
> 2. any co-counsel in pending matters; and
> 3. any opposing counsel in pending matters, or in the absence of such counsel, the adverse parties; and
> 4. each court and division in which respondent has any pending matter, whether active or inactive.
>
> **(b) Association of Counsel; Duty to Withdraw.**
>
> 1. *Association of Counsel.* In the case of suspensions of sixty (60) days or less, the suspended lawyer may choose, with the written consent of the client, to associate with another lawyer in matters pending in any court or agency during the period of suspension. This rule does not modify the suspended lawyer's duty not to practice law during the period of suspension. It shall be the responsibility of the suspended lawyer to file the "Notice of Association During Pendency of Suspension" in the relevant matters prior to the effective date of the suspension. It shall also be the responsibility of the lawyer, upon reinstatement to active status, to file either a notice of appearance as counsel of record and dissolve the association, or move for leave to withdraw in the relevant matters. In the event the suspended lawyer is not reinstated pursuant to Rule 64(e)(2) within one hundred twenty (120) days of the effective date of the suspension, the lawyer shall promptly move for leave to withdraw in the relevant matters.

2. *Duty to Withdraw.* In the case of suspensions for longer than sixty (60) days, or suspensions of sixty (60) days or less when the client does not consent to the association of counsel, and in all cases of disbarment, transfer or resignation, it shall be the responsibility of the disbarred, suspended, transferred or resigned lawyer to move in the court or agency in which the proceeding is pending for leave to withdraw in the event the client does not obtain substitute counsel before the effective date of the sanction, transfer or resignation.

**(c) Return of Client Property.** Respondent shall deliver to all clients being represented in pending matters any papers or other property to which they are entitled and shall notify them, and any counsel representing them, of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property. Respondent shall deliver all files and records in pending matters to the client, notwithstanding any claim of an attorney lien.

**(d) Effective Date of Order; Pending Matters.** Judgments imposing suspension or disbarment shall be effective thirty (30) days after entry, unless the presiding disciplinary judge or the court specifies an earlier date. Judgments and orders imposing other sanctions or transfer to disability inactive status are effective immediately upon entry. Respondent, after entry of a judgment of disbarment or suspension, shall not engage in the practice of law, except that during the period between entry and the effective date of the order, respondent may complete on behalf of any client all matters that were pending on the entry date. Respondent shall refund any part of any fees paid in advance which have not been earned.

**(e) Affidavit filed with hearing panel and court.** Within ten (10) days after the effective date of the judgment of disbarment or suspension, transfer to disability inactive status, or resignation, respondent shall file with the disciplinary clerk and with the court an affidavit showing:

1. respondent has fully complied with the provisions of the order and with these rules;
2. all other state, federal and administrative jurisdictions in which respondent is admitted to practice;
3. respondent's residence and other addresses where communications may thereafter be directed; and
4. respondent has served a copy of such affidavit upon bar counsel, the chief judge of every federal circuit court of appeals in which respondent is admitted, the chief judge and chief deputy clerk of every United States district court in which respondent is admitted, and the chief bankruptcy judge and the divisional manager of every bankruptcy court in which respondent is admitted.

**(f) Duty to Maintain Records.** A disbarred or suspended lawyer, or a lawyer on disability status to the extent able, or the conservator shall keep and maintain records constituting proof of compliance with this rule. Proof of

compliance, which shall include copies of notice sent pursuant to subsection (a) of this rule and signed returned receipts, shall be provided to chief bar counsel. Proof of compliance is a condition precedent to any application for reinstatement.
**(g) Contempt.** Failure to comply with the provisions of this rule may be punishable by contempt."

The March 5, 2021 Amended Decision Order suspending Applicant Mr. Williams from the practice of law for 30 days is effective ***April 5, 2021***, requiring him to comply with Rule 72 Ariz. R. Sup. Ct. (within 10 business days of March 5, 2021, which is March 19, 2021) which is including, but not limited to, notifying his clients, opposing counsel, and the courts of the suspension, and duty to withdraw etc., being placed on probation, are going to cause immediate and irreparable injury to Applicant Mr. Williams and his law practice.

Applicant's only source of income to support himself and his children comes from his work as an attorney.

If Applicant prevails in this Court with his petition for writ of certiorari and the proceedings that follow then there will be no way to undo the harm caused by the Amended Decision Order of the Arizona Supreme Court. (App. 2-5).

If this Court grants Applicant's Emergency Application for a Stay, it will merely have the effect of maintaining the status quo until this Court rules on his forthcoming petition for writ of certiorari and the proceedings that follow.

On March 17, 2020 the PDJ issued an Order Granting Stay with Conditions of Supervision:

1. Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of this order. Respondent shall submit to a LOMAP [Law Office Management Assistance Program]

examination of their office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein and shall last until there is a final judgment and order is issued. Respondent shall be responsible for any costs associated with LOMAP.

2. Respondent shall complete the following continuing legal education courses within thirty (30) days from the date of this order: Working with the Arizona Court of Appeals (2018) for 6.25 credit hours.
3. Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of this order to schedule an assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. Respondent shall be responsible for any costs associated with participation with compliance. (App. 10-11).

Applicant timely completed the Working with the Arizona Court of Appeals (2018) continuing legal education course.

Applicant contacted Yvette Penar Compliance Monitor of the Arizona State Bar on March 17, 2020.

Ms. Penar scheduled a LOMAP Evaluation on April 28, 2020 which Applicant submitted to.

Ms. Penar sent Terms of Supervision to Applicant which he signed and returned to her on May 15, 2020.

Applicant has timely submitted all LOMAP reports as required.

Applicant paid in full all fees associated with LOMAP.

On March 3, 2021 the Arizona Supreme Court issued its Decision Order. (App. 6-9).

On March 3, 2021 Applicant emailed to Ms. Penar, the Compliance Manage, a copy the Decision Order filed on March 3, 2021, brought it to her attention the

Decision Order regarding LOMAP which ordered Applicant to 1) contact the Compliance Monitor at the State Bar, 2) submit to a LOMAP assessment, 3) enter into a LOMAP contract based on recommendations following an assessment, and 4) be responsible for any costs and, believing he had already complied with the first 3 requirements above, asked if he had already complied. A true and correct copy of the email is at App. 184-185.

Ms. Penar on March 3, 20201 sent an email in response stating:

> "Mr. Williams,
> Yes, if the new order requires you to participate in LOMAP you have complied with that term and continue to comply."

A true and correct copy of the email is at App. 186.

Applicant has met all Court ordered deadlines and complied completely and fully with the March 17, 2020 Order Granting Stay with Conditions of Supervision issued by the PDJ. (App. 10-11). Applicant has complied completely and fully with his LOMAP Terms of Supervision.

Applicant has paid in full his annual bar dues.

The Amended Decision Order (App. 2-5) prevents Applicant from continuing to practice law for 30 days effective April 5, 2021, so absent a stay, Applicant will have no source of income to provide for himself.

If this Court grants the Emergency Application for a Stay and the administrative stay Applicant has request, Applicant must still continue to comply with the stay order of the PDJ at App. 10-11.

/// ///

There is no harm nor prejudice to Respondent if this Court grants the application for a stay. If Respondent does not succeed with his Petition for Writ of Certiorari and the proceedings that follow then the sanctions imposed by the Arizona Supreme Court will take effect. If there were any harms to the Respondent, and there are not, they do not outweigh the irreparable injuries to Applicant described above.

If Applicant prevails in this Court with his Petition for Writ of Certiorari and the proceedings that follow then there will be no way to undo the harm caused by the Amended Decision Order's 30-day suspension and the requirement that he comply with Rule 72, Ariz. R. Sup. Ct.

## CONCLUSION

The Amended Decision Order of the Arizona Supreme Court (App. 2-5) should be stayed in its entirety pending Applicant's forthcoming petition for writ of certiorari and further proceedings in this Court. This Court should also grant an administrative stay while it considers this application. Respectfully submitted.

Dated March 13, 2021

Mark Lee William
Pro Se Applicant

No._____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

MARK LEE WILLIAMS – APPLICANT

vs.

ARIZONA STATE BAR – RESPONDENT

_____

**APPENDIX TO EMERGENCY APPLICATION FOR A STAY OF THE MARCH 5, 2021 AMENDED DECISION ORDER OF THE ARIZONA SUPREME COURT AND FOR AN ADMINISTRATIVE STAY**

_____

To the Honorable Elena Kagan,
Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Ninth Circuit

_____

Mark Lee Williams
969 N. Grand Ave. #1
Nogales, AZ 85621
Tel: (520) 287-4500
Email: marklexrex2002@yahoo.com
Pro Se Applicant

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| MARK LEE WILLIAMS, Attorney No. 22096 | Office of the Presiding Disciplinary Judge No. PDJ20199058 |
| Respondent. | |

**FILED 03/09/2021**

**O R D E R**

Upon consideration of Respondent's "Motion for a Stay" and "Supplement to Motion for a Stay,"

**IT IS ORDERED** denying the motion.

DATED this 9th day of March, 2021.

/s/
ANN SCOTT TIMMER
Duty Justice

TO:
Mark Lee Williams
Hunter F Perlmeter
Susan Hunt

SUPREME COURT OF ARIZONA

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| In the Matter of a Member of the State Bar of Arizona | Arizona Supreme Court No. SB-20-0017-AP |
| MARK LEE WILLIAMS, Attorney No. 22096 | Office of the Presiding Disciplinary Judge No. PDJ20199058 |
| Respondent. | |

**FILED 03/05/2021**

**AMENDED DECISION ORDER**

Pursuant to Rule 59, Rules of the Supreme Court, Respondent Mark Lee Williams appealed the hearing panel's decision and sanction suspending him for six months and one day. The Court has considered the parties' briefs and the record in this matter.

In disciplinary appeals, we accept the panel's factual findings unless they are not supported by reasonable evidence and are clearly erroneous. *In re Alexander*, 232 Ariz. 1, 5 ¶ 11 (2013). Conclusions of law are reviewed de novo. Rule 59(j). We review the imposed sanction de novo as a question of law. *In re Isler*, 233 Ariz. 534, 541 ¶ 39 (2014).

First, Respondent argues that he was denied due process in the discipline proceedings because the complaint failed to give fair notice of the conduct and charges. Due process in an attorney discipline proceeding requires "fair notice of the charges and a meaningful opportunity to defend against them." *In re Aubuchon*, 233 Ariz. 62, 65 ¶ 7 (2013); *In re Peasley*, 208 Ariz. 27, 34 ¶ 26 (2004). On these facts, Respondent has not demonstrated that he was denied fair notice of the charges.

The allegations in the Complaint are straightforward and, except for the ER 1.4 charge, it is clear which facts relate to which charged ethical rule. Respondent is correct that ER 1.4 has several subparts, and the Complaint did not specify which subpart Respondent was alleged to have violated. This deficiency, however, did not deny Respondent due process or cause him prejudice. In prehearing memoranda, the State Bar consistently described Respondent's alleged misconduct as failing to keep his client "reasonably informed about the status of the matter." This requirement appears in ER 1.4(a)(3). Respondent does not allege that he was unaware of the specific charge and did not file a motion challenging the sufficiency of the Complaint. While the Complaint could have been more specific,

Respondent has not demonstrated that he was denied fair notice of the charges or that he suffered any prejudice.

Second, Respondent argues the panel made clearly erroneous findings regarding the facts of the case, pointing to evidence he presented that conflicted with the panel's determinations. In reviewing the panel's factual findings, the Court does not reweigh conflicting evidence. *In re Isler*, 233 Ariz. at 716 ¶ 17. Except for the findings discussed below, the Court rejects Respondent's challenges to the panel's findings. The record provides clear and convincing evidence that Respondent failed to properly communicate with his client about disclosure requirements and that he failed to timely inform his client about the outcome of the appeal. Further, the evidence establishes that Respondent failed to provide competent representation by raising a frivolous argument on appeal. This conduct negatively impacted his client and the courts. Accordingly, the Court accepts the panel's findings that Respondent's conduct violated ERs 1.1. 1.3, 1.4(a)(3), 3.1, 3.4(c), and 8.4(d).

We agree with Respondent that certain findings or conclusions of the panel were "unsupported by any reasonable evidence." *In re Van Dox*, 214 Ariz. 300, 304 ¶ 15 (2007). We reject the panel's finding that the Court of Appeals "deemed all arguments on appeal waived." Decision and Order Imposing Sanctions, p. 2. The Court of Appeals reviewed on the merits the issue of whether the law of Mexico should apply to the determination of spousal maintenance; the issue was not considered waived. We also reject the panel's conclusion that Respondent engaged in unethical conduct by copying large portions of the trial transcript into his opening brief or by failing to strictly comply with Rule 13(a)(7), Arizona Rules of Civil Appellate Procedure. While Respondent's briefing does not represent best practices, it does not rise to the level of professional misconduct. Finally, we reject the panel's finding that the awards of attorney fees pursuant to A.R.S. § 25-324 were imposed as sanctions. But the trial court and Court of Appeals clearly considered the conduct and unreasonable positions taken on behalf of the client during the proceedings in awarding fees. It is not clear on these facts, however, that the awards were imposed as a sanction. *See Quijada v. Quijada*, 246 Ariz. 217, 222 ¶ 17 (App. 2019) (fee-shifting provisions of A.R.S. § 25-324 are intended to ensure that the poorer party has the proper means to litigate the action, not to punish the litigants).

The panel's mistakes made concerning these findings, however, do not compel us to vacate the panel's finding that Respondent's conduct violated the above-listed ethical rules. The argument concerning the law of Mexico's application to reduce the spousal maintenance award had no supporting authority and did not explain why existing

authority should logically extend to embrace Respondent's argument. The unreasonableness of this position undoubtedly contributed to the lower courts' decisions to award attorney fees against Respondent's client. *See* § 25-324 (authorizing an award of fees if appropriate "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings").

With respect to the appropriate sanction, we agree with the panel that suspension is the presumptive sanction. Respondent repeatedly failed to communicate with his client, resulting in the failure to comply with the disclosure requirements. This conduct negatively impacted the client and the courts. Under ABA Standard 4.42(b), suspension is the presumptive sanction when "a lawyer engages in a pattern of neglect and causes injury or potential injury to a client." Respondent's recent past disciplinary violations also counsel suspension. With one exception, the Court accepts the panel's findings in aggravation and mitigation. We reject the panel's finding that Respondent had a dishonest or selfish motive to "conceal" the Court of Appeals decision. The record supports a finding that Respondent did not timely inform the client of the Court of Appeals decision. There is no evidence, however, that Respondent concealed the information from the client, or that his delay was intended to or did benefit himself.

The panel imposed a suspension of six months and one day. The State Bar, however, recommended a thirty-day suspension and a period of probation including supervision by the Law Office Management Assistance Program (LOMAP). The Court finds that a thirty-day suspension is appropriate on these facts. Further, Respondent would benefit from LOMAP oversight during a period of probation. Accordingly,

**IT IS ORDERED** granting the appeal.

**IT IS FURTHER ORDERED** modifying the sanction to reflect a thirty-day suspension, effective thirty days from the date of this order.

**IT IS FURTHER ORDERED** that, effective the date of this order, Respondent is placed on probation for two years under the following terms and conditions:

1) Within thirty days of this order, Respondent must contact the Compliance Monitor at the State Bar and submit to a LOMAP assessment, as necessary. Respondent shall enter into a LOMAP contract based on the recommendations following any assessment.

Respondent shall be responsible for any costs associated with LOMAP.

2) The State Bar shall report material violations of the terms of probation pursuant to Rule 60(a)(5)(C), and a hearing may be held within thirty days to determine if the terms of probation have been violated and if an additional sanction should be imposed. The burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

**IT IS FURTHER ORDERED** that Respondent must comply with all applicable provisions of Rule 72 and shall promptly inform this Court and the Disciplinary Clerk of his compliance with this Order as provided in Rule 72(e).

**IT IS FURTHER ORDERED** that Respondent shall be assessed the costs and expenses of the disciplinary proceedings as provided in **Rule 60(d)(2)(B)**.

**IT IS FURTHER ORDERED** denying the Request to Take Judicial Notice and the Request for Oral Argument.

DATED this 5th day of March, 2021.

/s/
ROBERT BRUTINEL
Chief Justice

TO:
Mark Lee Williams
Hunter F Perlmeter
Susan Hunt
Sandra Montoya
Maret Vessella
Don Lewis
Beth Stephenson
Mary Pieper
Raziel Atienza
Lexis Nexis

SUPREME COURT OF ARIZONA

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|---|---|
| In the Matter of a Member of the State Bar of Arizona | Arizona Supreme Court No. SB-20-0017-AP |
| MARK LEE WILLIAMS, Attorney No. 22096 | Office of the Presiding Disciplinary Judge No. PDJ20199058 |
| Respondent. | |
| | **FILED 03/03/2021** |

**DECISION ORDER**

Pursuant to Rule 59, Rules of the Supreme Court, Respondent Mark Lee Williams appealed the hearing panel's decision and sanction suspending him for six months and one day. The Court has considered the parties' briefs and the record in this matter.

In disciplinary appeals, we accept the panel's factual findings unless they are not supported by reasonable evidence and are clearly erroneous. *In re Alexander*, 232 Ariz. 1, 5 ¶ 11 (2013). Conclusions of law are reviewed de novo. Rule 59(j). We review the imposed sanction de novo as a question of law. *In re Isler*, 233 Ariz. 534, 541 ¶ 39 (2014).

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**IT IS ORDERED** granting the appeal.

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Respondent shall be responsible for any costs associated with LOMAP.

2) The State Bar shall report material violations of the terms of probation pursuant to Rule 60(a)(5)(C), and a hearing may be held within thirty days to determine if the terms of probation have been violated and if an additional sanction should be imposed. The burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

**IT IS FURTHER ORDERED** that Respondent must comply with all applicable provisions of Rule 72 and shall promptly inform this Court and the Disciplinary Clerk of his compliance with this Order as provided in Rule 72(e).

**IT IS FURTHER ORDERED** that Respondent shall be assessed the costs and expenses of the disciplinary proceedings as provided in Rule 60(b)(2)(B).

**IT IS FURTHER ORDERED** denying the Request to Take Judicial Notice and the Request for Oral Argument.

DATED this 3rd day of March, 2021.

/s/
ROBERT BRUTINEL
Chief Justice

TO:
Mark Lee Williams
Hunter F Perlmeter
Susan Hunt
Sandra Montoya
Maret Vessella
Don Lewis
Beth Stephenson
Mary Pieper
Raziel Atienza
Lexis Nexis