BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **BRYAN JAMES BLEHM,** **Bar No. 023891** **Respondent.**	**PDJ-2023-9096** **ORDER GRANTING IN PART AND DENYING IN PART THE STATE BAR'S MOTION FOR SUMMARY JUDGMENT ON COUNT ONE** (State Bar Nos. 23-1165, 23-1985) **FILED APRIL 30, 2024**

The Presiding Disciplinary Judge (PDJ) has considered the briefing submitted in connection with the State Bar's Motion for Summary Judgment on Count One. For the following reasons, the PDJ concludes partial summary judgment in favor of the State Bar is appropriate.

Legal Standard

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).

Relevant Undisputed Facts

As relevant to the charges pending in these disciplinary proceedings, Respondent represented Arizona gubernatorial candidate Kari Lake in connection with a petition for review filed in the Arizona Supreme Court that sought to overturn rulings by the Superior Court and Court of Appeals. Count One of the State Bar's complaint arises out of the Supreme Court's May 4, 2023 order sanctioning Respondent for making "unequivocally false" representations in his filings with that court.

In sanctioning Respondent, the Supreme Court cited and relied on, *inter alia*, the "rules of attorney ethics," articulated the court's duty to "diligently enforce the rules of ethics," and stated:

> Candidates are free to timely challenge election procedures and results, and the public has a strong interest in ensuring the integrity of elections. Sometimes campaigns and their attendant hyperbole spill over into legal challenges. But once a contest enters the judicial arena, rules of attorney ethics apply. Although we must ensure that legal sanctions are never wielded against candidates or their attorneys for asserting their legal rights in good faith, *we also must diligently enforce the rules of ethics on which public confidence in our judicial system depends and where the truth-seeking function of our adjudicative process is unjustifiably hindered*. (Emphasis added)

The Supreme Court based its sanctions decision on ER 3.3, as well as other authorities.[1] ER 3.3(a) states that a lawyer shall not knowingly "make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." The Supreme Court explained its finding that Respondent knowingly made an "unequivocally false" representation as follows:

> In her Complaint, Lake set forth colorable claims, including ballot chain-of-custody claims, that were rejected following an evidentiary hearing in the trial court, and she duly but unsuccessfully (except for the laches issue) challenged those rulings on appeal. However, she has repeatedly asserted that it is an "undisputed" fact that 35,563 ballots were added or "injected" at Runbeck, the third-party vendor. Not only is that allegation strongly disputed by the other parties, this Court concluded and expressly stated that the assertion was unsupported by the record, and nothing in Lake's Motion for Leave to file a motion for reconsideration provides reason to revisit that issue. Thus, asserting that the alleged fact is "undisputed" is false; yet Lake continues to make that assertion in her Motion for Leave.
>
> Lake's Petition for Review stated that it was an "undisputed fact that 35,563 unaccounted for ballots were added to the total number of ballots at

[1] In addition to relying on the Arizona Rules of Professional Conduct, the court cited A.R.S. § 12-349(A) (authorizing sanctions for claims brought "without substantial justification"), ARCAP 25 (authorizing an appellate court "to impose sanctions on an attorney if it determines that an appeal or motion is frivolous"), and Rule 11(b), Ariz. R. Civ. P. ("[b]y signing a pleading, motion, or other document," an attorney "certifies that to the best of the person's knowledge, information, and belief," that "the factual contentions have evidentiary support").

> a third party processing facility." In her Opposition to Motion for Sanctions and Motion for Leave, she repeats this contention, stating that "[t]he record indisputably reflects at least 35,563 Election Day early ballots, for which there is no record of delivery to Runbeck, were added at Runbeck, . . ." As the Court of Appeals observed, Lake's argument was focused on one exhibit that included an estimate of the number of early ballot packets based on the number of trays and a different exhibit showing a precise count. Although Lake may have permissibly argued that an inference could be made that some ballots were added, there is no evidence that 35,563 ballots were and, more to the point here, this was certainly disputed by the Respondents. The representation that this was an "undisputed fact" is therefore unequivocally false.
>
> Because Lake's attorney has made false factual statements to the Court, we conclude that the extraordinary remedy of a sanction under ARCAP 25 is appropriate.

The Supreme Court quoted a comment to ER 3.3 in support of its sanctions order. That comment discusses a lawyer's duty of candor to judicial tribunals and provides:

> [ER 3.3] sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, . . . the lawyer must not mislead the tribunal by false statements of law or fact or evidence that the lawyer knows to be false.

Discussion

Both parties discuss the application of *Hancock v. O'Neil*, 253 Ariz. 509 (2022), to this case. *Hancock* arose out of a sanctions order issued in civil litigation against attorney Hancock (and others) by the federal district court. The State Bar initiated disciplinary proceedings against Hancock based on that order. The Presiding Disciplinary Judge thereafter "granted the Bar's motion for partial summary judgment, applying offensive non-mutual issue preclusion to prevent Hancock from relitigating the district court's fact findings." 253 Ariz. at 511. Hancock filed a petition for special action. The Arizona Supreme Court accepted jurisdiction and granted relief, holding that "a sanctions order in a prior lawsuit does not have preclusive effect in an attorney disciplinary proceeding." *Id*.

Language in *Hancock* is admittedly broad, and the PDJ is bound to follow Arizona Supreme Court precedent. Material differences exist between this case and *Hancock*, though . . . differences that lead the PDJ to conclude Respondent may not – in these disciplinary proceedings -- relitigate the Supreme Court's factual determination that he made an "unequivocally false" representation.

As discussed *supra*, in sanctioning Respondent, the Arizona Supreme Court specifically relied on the Rules of Professional Conduct. In *Hancock*, the court observed that its decision would have differed if the sanctions order at issue there had been an "exercise of disciplinary authority by the district court." *Id.* at 513. Here, a fair reading of the Supreme Court's sanctions order is that it was issued in furtherance of that court's disciplinary authority as "the ultimate body wielding the State's power over the practice of law." 253 Ariz. at 512. Another reason the Arizona Supreme Court declined to give preclusive effect to the *Hancock* sanctions order was that doing so would abrogate that court's "authority and duty to act as an independent trier of fact" in attorney discipline proceedings. 253 Ariz. at 514. No such concern exists here.

In the alternative, even assuming *Hancock* prevents the State Bar and PDJ from relying on the Supreme Court's factual findings as conclusive, judgment as a matter of law is appropriate for the reasons articulated by the State Bar. Respondent's assertion it was an "undisputed fact" that 35,563 ballots were added by the third-party processing facility was indisputably false, and Respondent knew it was false. Before the Arizona Supreme Court, Governor Hobbs labeled that claim "a complete fabrication," and Respondent knew from the lower court proceedings that this assertion was, to use the Supreme Court's language, "strongly disputed by the other parties." Even after the Supreme Court placed Respondent on notice that this claim was "unsupported by the record" and that sanctions were possible as a result, he continued to advance it.

Conclusion

Judgment as a matter of law in favor of the State Bar is appropriate as to the alleged violations of ER 3.1, ER 3.3(a)(1), ER 8.4(c), and ER 8.4(d), but not as to the alleged violation of ER 1.3 (requiring lawyers to "act with reasonable diligence and promptness in representing a client."). The State Bar claims Respondent violated ER 1.3 by failing to review the answering brief filed in the underlying Court of Appeals action "carefully enough to understand that he was comparing *estimates* to *actuals*, and therefore could only speculate as to whether a discrepancy existed." Based on the current record, this claim cannot be resolved as a matter of law.

IT IS ORDERED granting the State Bar's Motion for Summary Judgment on Count One as to the violations of ER 3.1, ER 3.3(a)(1), ER 8.4(c), and ER 8.4(d). If the State Bar wishes to litigate the alleged violation of ER 1.3, it may do so at the scheduled disciplinary hearing. Otherwise, the evidentiary hearing will proceed based on Count Two of the

complaint, with both parties retaining the opportunity to be heard regarding aggravating and mitigating circumstances and the appropriate sanction for the misconduct in Count One. The State Bar shall advise Respondent and the PDJ within 10 days whether it will proceed with the alleged violation of ER 1.3.

DATED this 30th day of April, 2024.

Margaret H. Downie
Margaret H. Downie
Presiding Disciplinary Judge

Copy of the foregoing e-mailed
this 30th day of April, 2024, to:

Hunter F. Perlmeter
Kelly A. Goldstein
LRO@staff.azbar.org

Bryan J. Blehm
bryan@blehmlegal.com

by: SHunt