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BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE STATE BAR OF ARIZONA

In the Matter of Members of the State Bar of Arizona, **Andrew P. Thomas, Bar No. 014069** **Lisa M. Aubuchon, Bar No. 013141** **and** **Rachel R. Alexander, Bar No. 020092**	**COMPLAINT**

Independent Bar Counsel, John S. Gleason, Regulation Counsel for the Colorado Supreme Court, acting by appointment of Rebecca White Berch, the Chief Justice of the Arizona Supreme Court, as set forth in her Administrative Order No. 2010-41 entered March 23, 2010, files the following complaint.

I. JURISDICTION

1. Andrew P. Thomas ("Thomas") was admitted to the Bar of the State of Arizona on October 26, 1991. His Bar Number is 014069.

2. Lisa M. Aubuchon ("Aubuchon") was admitted to the Bar of the State of Arizona on October 27, 1990. Her Bar Number is 013141.

3. Rachel R Alexander ("Alexander") was admitted to the Bar of the State of Arizona on May 19, 2000. Her Bar Number is 020092.

4. Thomas, Aubuchon and Alexander are each subject to the jurisdiction of the Arizona Supreme Court pursuant to Arizona Rules of the Supreme Court 31.

5. Andrew Thomas was elected Maricopa County Attorney in 2004. He was reelected in 2008. He resigned from that office effective on April 6, 2010, in order to run for Arizona Attorney General.

6. Lisa Aubuchon began working at the Maricopa County Attorney's Office ("MCAO") in 1996. In summer 2010 she was placed on administrative leave and was terminated by Interim County Attorney Rick Romley in October 2010.

7. Rachel Alexander worked in the Maricopa County Attorney's Office from about 2005 to 2010.

8. About a year after Thomas assumed office as County Attorney, disputes began between him and the judges of the Superior Courts.

9. Thomas also had disputes with the Maricopa County Board of Supervisors (referred to herein as "the Board" or "MCBOS") beginning no later than early 2006.

10. These disputes are relevant to the allegations in this complaint because in December 2008 and December 2009 Thomas and Aubuchon charged individuals with whom they had disputes with various crimes.

11. In December 2009, Thomas, Aubuchon and Alexander also filed a federal RICO action against many of the people involved in these disputes.

Disputes with Superior Court

12. Thomas filed a lawsuit against Presiding Judge Barbara Rodriguez Mundell and other officers of the Superior Court in federal district court in February 2006 (Case no. CV-06-00598-PHX-EHC).

13. In that suit, Thomas alleged that certain programs adopted and supervised by the superior court violated his federal constitutional and statutory rights. Thomas challenged the establishment of Spanish-speaking DUI courts, which were established in 2002 by then-Presiding Judge Collin Campbell.

14. The case Thomas brought was dismissed by the trial judge for lack of standing, and Thomas appealed to the Ninth Circuit Court of Appeals. *Thomas v. Mundell*, 572 F.3d 756 (9th Cir. 2009).

15. Judge Mundell was one of the defendants named by Thomas in what is now commonly known as the RICO case filed in December 2009. *See* p. 46 below.

16. The Ninth Circuit Court of Appeals held that Thomas did not have standing to bring this action against the courts. The Court of Appeals upheld the trial court dismissal of the lawsuit.

17. Thomas also disagreed with the Superior Courts about Proposition 100 and its application. This law effectively denies bail to persons charged with a crime who are in the U.S. illegally. Thomas took the position that the courts were not enforcing the law and he was vocal in the press about this.

18. On June 17, 2007, Presiding Judge Mundell published an article in the Arizona Republic stating that Thomas had an obligation to work through the courts, including appellate courts, if he did not agree with the way the courts were

implementing Prop. 100. She stated that prosecutors (in Thomas's office) had created a politically motivated controversy, using the media to agitate the public. She stated that Thomas's criticism was unfounded and unfair.

19. On about June 22, 2007, Thomas filed a Special Action concerning this issue.

20. This lawsuit was dismissed soon after when a new law signed by then-governor Napolitano established probable cause as the evidentiary standard to be applied to determine an immigrant defendant's status. The Supreme Court also issued emergency rules (see R-07-0003 July 3, 2007) which replaced an earlier Supreme Court administrative order (07-0003, April 3, 2007).

21. In December 2008, Thomas and Aubuchon filed criminal charges against Supervisor Donald Stapley. At the outset of that case, they alleged in letters and pleadings that Judge Mundell and Judge Anna Baca were assigning the case to Judge Kenneth Fields because he was biased against Thomas.

Disputes with MCBOS.

22. In or about March 2006, a dispute developed between Thomas and the Board over the appointment of lawyers from outside MCAO to represent the county. Occasionally, the county must be represented by an attorney other than the elected county attorney due to conflicts of interest or other issues.

23. In early 2006 the Board believed that Thomas was making these appointments for political reasons. The Board perceived that Thomas' appointments were based upon who was favorable to him, not necessarily upon who was best qualified to represent the county.

24. Additionally, the Board was concerned that the money spent on outside counsel was increasing above what was acceptable. Supervisor Stapley was chair of the Board at this time and the Board asked him to talk to Thomas about its concerns. Stapley and Thomas met and Stapley explained the Board's concerns. Stapley and Thomas did not reach an agreement about the Board's authority over the appointment of outside counsel.

25. Thomas then wrote a series of letters to Stapley about this dispute.

26. On March 2, 2006, Thomas wrote to Stapley stating, among other things, that he could not agree to allow the Board to make the selection of counsel independently or to retain counsel outside MCAO. Stapley had taken the position that the Board had supervisory authority over attorneys representing the county. The Board also wanted to determine which counsel to hire if the County Attorney had a conflict.

27. On March 13, 2006, Thomas again wrote to Stapley about this subject. He stated that:

> a.) he wanted to emphasize once again that the Board of Supervisors does not have the lawful authority to retain its own legal counsel outside the County Attorney's Office, and that he had neither the authority nor the intention to consent to such an arrangement;
>
> b.) he would not meet again with Stapley if Stapley wanted to discuss retention of private outside counsel;
>
> c.) a proposed resolution of the Board to appoint General Counsel separate from the County Attorney was unlawful and that if the Board did so it would be a violation of Arizona statutes and case law;

d.) Board members are immune from suit when they rely in good faith upon opinions of the County Attorney, but no such immunity would apply and they may be personally liable for actions on advice of other counsel; and

e.) he would be obligated to commence litigation against the Board should the Board move forward to pay outside counsel.

28. A week later, on March 20, 2006, Thomas again wrote to Stapley and stated that:

a) Thomas had learned that the Board planned to meet in executive session that day, and that attorney Tom Irvine had attended a Board meeting on March 15, 2006, as "Outside Counsel;"

b) the County Attorney had not retained Mr. Irvine to represent the Board in the matter;

c) Mr. Irvine could not provide legal advice to the Board in either executive or open session;

d) he had instructed his civil division to delete Mr. Irvine from the agenda;

e) Thomas was to provide legal advice to the Board;

f) the Board was entitled to separate legal counsel in only two limited situations: i) if the County Attorney's Office is unwilling or unable to represent the Board (which he claimed was not the case); or ii) if there was an actual conflict of interest;

g) mere disagreement by the Board with the County Attorney's opinion did not constitute a conflict of interest; and

h) no conflict existed.

29. Mr. Irvine attended that meeting at the invitation of the Board.

30. On April 17, 2006, Thomas wrote to Stapley stating that the Board could not amend the County Restated Declaration of Trust to allow the Board to select private counsel for civil litigation.

31. The Board planned to amend the Declaration of Trust concerning the self-insurance of the county to give itself more control over which lawyers would be selected.

32. In his April 17, 2006, letter, Thomas stated that his opinion was that the Board could not select counsel to defend civil lawsuits without the consent of the County Attorney's Office. He wrote:

> It would be contrary to law for the Board to seek to exclude the county attorney from the process of selecting counsel for opposing claims against the county. Accordingly, should the Board seek to take this action, our office would be obliged to initiate litigation. As in my earlier correspondence to you on these matters, this legal advice is offered merely in an attempt to explain the full legal consequences of the proposed action.
>
> I have decided to assign outside counsel to provide legal advice to the Board on the sole issue of the legality of this proposed action, and to defend against any lawsuit this office may initiate related to same. Because our office did not learn of this possible action until late last week, I have been unable to secure outside counsel prior to the executive session scheduled for today. As I explained in regard to Mr. Irvine's recent improper actions, you or other Board members should not solicit legal advice from this counsel on unrelated matters. I will instruct this counsel not to provide such advice. You will be informed of which counsel has been selected for this matter in the near future. . .

33. The Board placed its proposed action on its agenda, and on May 18, 2006, the Board did amend the Revised Restated Declaration of Trust for Maricopa County.

34. In a letter to Stapley on May 23, 2006, Thomas said that the Board had acted to give itself the authority to manage, supervise and direct the County Attorney in the exercise of his duties.

35. Thomas further stated that it was inconceivable that the Board would be permitted to veto a decision made by the County Attorney pursuant to a clear statutory mandate. He then stated:

> Finally, the immunity granted to the Board by A.R.S. § 38-446 requires "good faith reliance on written opinions of –. . . a county attorney." Here, the Board has acted contrary to the written opinions of this office and will not be entitled to immunity if it acts in accordance with the invalid Trust Agreement.

CLAIM ONE
ER 1.7(a)(2)
Conflicts of Interest
(Thomas)

36. All prior factual allegations are incorporated herein.

37. Concerning the appointment of lawyers outside the county attorney's office, Thomas viewed his rights and obligations and those of the MCBOS in one way; MCBOS viewed them differently.

38. Thomas wanted to make appointments of outside lawyers on his own, unimpeded by the Board.

39. In the above-described series of letters, Thomas advised his client, MCBOS, about how his client should conduct itself in choosing counsel to represent it.

40. Thomas's advice concerned issues in which Thomas's personal interest and his interest as County Attorney conflicted with the interests of his client.

Nonetheless, Thomas counseled his client not to take action that would compromise his own personal interests.

41. When he advised the Board about its rights and obligations in the appointment of outside counsel, Thomas violated ER 1.7(a)(2).

42. That rule provides that a lawyer shall not represent a client if the representation involves a concurrent conflict of interest.

43. A concurrent conflict of interest existed because there was a significant risk that the representation of one or more clients would be materially limited by Thomas's personal interest.

44. Thomas advised the Board about matters in which he had a vested personal interest. He wanted to maintain the power to make the appointments of outside counsel without the involvement of the Board. The Board, however, wanted the power to make those decisions. Thomas advised the Board that it could not do what it wanted to do. This advice was limited by his own personal and political interests as County Attorney. Thomas violated ER 1.7(a)(2).

WHEREFORE, complainant requests relief at the conclusion hereof.

CLAIM TWO
ER 1.6(a)
Disclosure of Confidential Information
(Thomas)

45. All prior factual allegations are incorporated herein.

46. The dispute between MCBOS and Thomas about appointment of outside counsel continued.

47. On June 14, 2006, Thomas filed a civil action against the Board seeking a declaratory judgment concerning the relative rights and obligations of the County Attorney and the Board about selection and appointment of outside private counsel. *Thomas v. MCBOS*, Maricopa County Superior Court, CV 2006-008971. MCBOS was represented in this lawsuit by Tim Casey.

48. On June 14, 2006, the same day that he filed the action against the Board, Thomas released a public statement that he was suing MCBOS.

49. In that statement, Thomas said that:

> a) he filed the action to defend the County Attorney's Office against the board's unlawful attempts to undermine the independence of the office that he held.
>
> b) he had discussed on numerous occasions his concerns with all five supervisors and had sent Stapley, the chairman of the Board, no fewer than five letters making plain the illegality of "his" proposed actions.

50. The Board did not file an answer, and the matter was resolved in August 2006 by a Memorandum of Understanding (MOU) between the parties. The MOU contains the following agreement:

> The Board agrees, to the extent the law permits, not to file any lawsuit, complaint, or action that in any manner or in any way arises from, or is related to, the complaint, the County Attorney's Statement dated June 14, 2006, or the conduct of the County Attorney between June 14, 2006 and the date this MOU is signed by the parties.

51. In the MOU Thomas agreed that he would dismiss the action and that he and MCBOS would follow a system with regard to appointment of outside counsel. The MOU expired by its terms on December 1, 2008.

52. Prior to June 14, 2006, while the above dispute was occurring, two County officers sued the County.

53. Sandra Dowling, the County School Superintendant, filed one lawsuit, and Philip Keen, the County Medical Examiner, filed the other.

54. Thomas had hired Tom Irvine to assist in the Dowling matter and when the lawsuit was filed Mr. Irvine defended the County in the Dowling case. From January 2006 Irvine was assigned to assist MCAO, and worked together with MCAO to assist MCAO.

55. In March and April 2006, MCBOS had passed resolutions that concerned the Dowling situation. MCAO had counseled the MCBOS on those resolutions and MCAO had been assisted in that effort by Mr. Irvine.

56. The County hired other outside counsel to represent it in the Keen case.

57. Thomas's June 14, 2006, statement addressed not only the suit Thomas brought against the Board, but also the cases brought by Dowling and Keen. Thomas stated that the County's position in those two cases was unsupportable, despite the fact that Thomas's had an attorney-client relationship with the Board.

58. Thomas added that his suit against the County was not unique and that it was the third, including his, against County officers in less than a month.

59. Thomas stated that in all three cases the Board had unlawfully sought to arrogate powers vested in other County agencies.

60. Additionally Thomas stated:

> It bears noting that these recent lawsuits [against the county] had occurred during, and largely because of, the unusual chairmanship of Supervisor Don Stapley. **While respecting the**

> **attorney-client relationship I hold with Mr. Stapley and other members of the board**, I would be remiss if I did not help the people of Maricopa County understand why the board has attracted so many costly lawsuits in such a brief period of time.
>
> I cannot in good conscience defend the Board of Supervisors in the two legal actions brought by Ms. Dowling and Mr. Keen, as I believe these complaints [against the county] have merit. (Emphasis added).

61. Thomas had an attorney-client relationship with the Board and the County itself.

62. ER 1.6(a) states that a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent. There are exceptions to this general rule that are not applicable in this matter.

63. Thomas violated ER 1.6(a) by publicly revealing information relating to the representation of a client.

64. Thomas revealed his opinion that the county's positions in these two lawsuits were unsupported. Thomas formed his opinion based on his view of his client's rights and obligations. Thomas should not have made any public statement about his views of his client's case. Instead, Thomas used the Dowling and Keen cases in an attempt to buttress his own position against the Board and the County.

WHERFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM THREE
ER 3.6(a)
Improper Public Statements
(Thomas)

65. All prior averments are incorporated herein.

66. Thomas violated ER 3.6(a) by issuing his public statement about his view of the Keen and Dowling cases.

67. Thomas made extrajudicial statements that he knew or reasonably should have known would be disseminated by means of public communication and would have a substantial likelihood of materially prejudicing an adjudicative proceeding.

68. The information was not permitted to be disclosed under the exceptions to the general rule contained in ER 3.6(b).

WHERERFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM FOUR
ER 4.4(a)
Filing Charges Against Stapley to Embarrass or Burden
(Thomas and Aubuchon)

69. All prior averments are incorporated herein.

70. In 2006 Thomas began to see Supervisor Stapley as a political adversary.

71. In late 2008, Thomas and Aubuchon filed criminal charges against Stapley, *State v. Stapley*, CR2008-009242.

72. Aubuchon presented this case to a grand jury. The grand jury returned an indictment and it was filed in court on November 20, 2008. On about December 2, 2008, a summons was served on Stapley.

73. The 118 count indictment charged Stapley with felonies and misdemeanors regarding his yearly financial disclosures as a county supervisor and his periodic candidate disclosures dating back to 1994.

74. An attorney for MCAO argued for the issuance of a warrant and the setting of a bond in the amount of $100,000. A commissioner denied that request and ordered the issuance of a summons to Stapley. During a hearing about whether a summons or warrant requiring bond should be issued to Stapley, a commissioner recognized that there was a statute of limitations issue.

75. Thomas's written press release about the Stapley indictment stated that the case was the result of investigations by the joint anti-corruption task force with the Sheriff (Maricopa County Anti-Corruption Effort, "MACE"). Thomas announced that the investigation was not over and that other county employees were also being investigated.

76. Upon information and belief, the investigation of Stapley was not begun as a result of a tip or some information being given to MCSO or MCAO about possible criminal activity.

77. Rather, in 2007, the joint task force between Thomas's office and the Sheriff's Office began to look into Stapley's business dealings and his financial disclosures on their own initiative.

78. Chief Hendershott of the Sheriff's Office asked Sgt. Brandon Luth of the Sheriff's Office to start investigating Stapley in January 2007, but to keep it confidential.

79. Aubuchon and/or another deputy county attorney, Mark Goldman (referred to as "Goldman"), began in January 2007 to research Stapley on the Internet. Either Aubuchon or Goldman downloaded documents regarding Stapley's business and personal activity from the Internet as early as January 2007.

80. Aubuchon stated in a pleading in the Stapley case that the matter was not initiated through a confidential informant.[1] However, in that pleading she refused to disclose who initiated the investigation or why it was initiated. She did state that much of the evidence implicating Stapley was readily available through proper search of the Internet.[2]

81. Goldman attended MACE meetings and handed out information about Stapley at one of those meetings in 2007.

82. The substance of the indictment returned by the grand jury against Stapley at the direction of Aubuchon shows Thomas's and Aubuchon's personal and political attack on Stapley.

83. The Indictment charges 118 separate criminal violations dating back to 1994.

84. Upon information and belief this was the first time in Arizona history that a county supervisor's financial disclosures were the subject of criminal charges.

85. ER 4.4(a) states that in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden any other person.

86. Thomas and Aubuchon each violated this rule by filing charges against Stapley.

87. There was no substantial purpose in filing the charges against Stapley other than to burden and embarrass him.

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[1] State's Response to Defendant's Motion to Disqualify Maricopa County Attorney Andrew Thomas For Improper Bias and Prejudice, p. 4, filed February 9, 2009.
[2] *Id.*

88. Thomas and Aubuchon did not prosecute Stapley to seek justice but rather to pursue the political and personal interests of Thomas.

89. Thomas and Aubuchon brought more than 40 of these charges against Stapley knowing that the statute of limitations barred those charges.

90. Thomas also identified Stapley along with other Board members as threatening Thomas's power to appoint attorneys to represent the County without interference by the Board.

91. While prosecutors have broad discretion to charge, the fact that Thomas and Aubuchon charged crimes they knew were outside the statute of limitations and the fact that they charged so many crimes, including felonies of forgery and perjury, for essentially the same types of acts and omissions shows their motive to retaliate, harm and burden Stapley.

92. In doing so Thomas and Aubuchon violated ER 4.4(a).

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM FIVE
ER 1.7(a)(1) and ER 1.7(a)(2)
Conflicts of Interest
(Thomas and Aubuchon)

93. All prior factual allegations are incorporated herein.

94. ER 1.7(a) (1) provides that a lawyer shall not represent one client against another client.

95. Thomas and Aubuchon violated ER 1.7(a) (1) because they represented one client, the State, against another client - Supervisor Stapley - in the criminal case against Stapley.

96. Stapley consulted about his official duties with the deputy county attorneys assigned to the MCAO's civil division.

97. Thomas himself recognized that he had an attorney-client relationship with Stapley as he stated in his news release of June 14, 2006, quoted above in paragraph 54. Thomas never terminated that relationship and never advised Stapley about Thomas's conflict or sought a waiver.

98. ER 1.7(a)(2) provides that a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest is defined as existing if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person *or by the personal interest of the lawyer*.

99. Thomas and Aubuchon violated ER 1.7(a)(2).

100. Thomas and Aubuchon had a personal interest in charging Stapley which limited their duties as prosecutors and as representatives of the State.

101. Thomas's and Aubuchon's personal motives to attack Stapley date back to at least March 2006, when, as noted above, Thomas blamed "the unusual chairmanship of Supervisor Stapley" for various lawsuits against the county, including the one brought by Thomas against the Board.

102. There is additional evidence of tension between Thomas and Stapley regarding the Arizona Meth Project that had been implemented through the Board and Stapley. Before this project, anti-drug television ads had featured Thomas as a figure-head discouraging the use of methamphetamines.

103. At the direction of the Board and Stapley, Maricopa County joined in the Arizona Meth Project which used television spots excluding Thomas in favor of an anti-meth message based on the effects of the drug.

104. The Board thought that Thomas had been using the previous ads for political gain rather than for the purpose of discouraging drug use. According to Stapley, Thomas was not happy about this change, which was spearheaded by Stapley.

105. Thomas challenged the Board regarding the procurement for this program. He confronted the Board and threatened to prosecute or sue the Board about a procurement violation.

106. Additionally, there were disputes between the Board, including Stapley, on one side and Thomas and Sheriff Arpaio on the other during the time period before Stapley was indicted. The Board had initiated a freeze on capital spending and Thomas and the Sheriff had refused to work with the Board on this issue.

107. Thomas and Aubuchon had several political motives for charging Stapley. As noted above, Thomas had identified him as the supervisor whose "unusual chairmanship" of the Board had led to the county being sued.

108. Thomas and Aubuchon also violated ER 1.7(a)(2) in charging and prosecuting Supervisor Stapley.

109. Thomas and Aubuchon owed the State of Arizona the duty of conflict-free representation. However, their representation was limited by their personal animus against Supervisor Stapley.

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM SIX
ER 3.3(a)
Misrepresentation to Court
(Thomas and Aubuchon)

110. All prior averments are incorporated herein.

111. On December 23, 2008, Stapley's attorney Tom Henze filed a Motion for Determination of Counsel and Motion for Scheduling Order.

112. The Motion for Determination of Counsel argued that Thomas should be disqualified as the prosecutor because of a conflict of interest under ER 1.7, and that his actions had the appearance of impropriety. The motion argued that Thomas and his office should not be permitted to prosecute Stapley because there had been an attorney-client relationship between MCAO and Stapley.

113. Aubuchon filed a response to the motion arguing among other things that the case against Stapley was based upon public records only, and that there was a "Chinese Wall"[3] between the criminal and civil divisions of the County Attorney's Office in the prosecution of the case.

[3] The term "Chinese Wall" is more properly referred to as "screening" to describe how attorneys can be isolated from involvement in a particular case.

114. Aubuchon specifically stated, "There has been and is a 'Chinese wall' between the criminal and civil division of the County Attorney's Office in the prosecution of this case." *See* State's Response to Motions for Determination of Counsel and Scheduling Order, p. 7, lines 4-6.

115. At the time Aubuchon made this statement there was no formal screening of some lawyers from others in the county attorney's office.

116. Further there was no formalized or written screening policy ever implemented in general or in particular about *Stapley I*.

117. Aubuchon implied that there was such a formalized policy in existence.

118. Aubuchon's statement to the court was dishonest and a material misrepresentation; she was trying to mislead the court into concluding that County Attorney had established screening precisely to guard against information being shared by the civil division with the criminal division, and vice versa specifically in the Stapley case.

119. Aubuchon violated ER 3.3(a) because she knowingly made a misrepresentation of fact to the court. She stated to the court in a pleading that a "Chinese Wall" had been created between the civil and criminal divisions of the county attorney's office.

120. Thomas also knew that there was no such formal screening between the criminal and civil divisions of MCAO.

121. Thomas is equally culpable for this misrepresentation to the court because, according to Aubuchon, everything that she filed in court was approved by the County Attorney, Thomas.

122. Thomas also violated ER 3.3(a).

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM SEVEN
ER 3.3(a)
Misrepresentation to the Court
(Thomas and Aubuchon)

123. All prior averments are incorporated herein.

124. After the *Stapley I* [4] case was filed, Judge Mundell assigned it to retired Judge Kenneth Fields.

125. Thomas and Aubuchon asserted that the assignment of Judge Fields to the *Stapley I* case was made because Judge Fields was biased against Thomas.

126. On December 10, 2008, Aubuchon, on behalf of Thomas, filed a Motion for Voluntary Recusal Or If Denied Motion for Change of Judge For Cause.

127. In her motion Aubuchon stated that Judge Mundell and Stapley had worked together closely on numerous fiscal and countywide issues. Aubuchon stated that Judge Mundell had recently negotiated with Stapley about the funding for the county court tower.

128. Aubuchon alleged that Judge Mundell had interjected herself into the Stapley case and had chosen Judge Fields who had a history of bias and prejudice as well as judicial activism against Thomas and his office.

[4] This case, CR2008-009242, is referred to as "*Stapley I*" to distinguish it from a second criminal case Thomas and Aubuchon filed against Stapley in December 2009.

129. In her motion Aubuchon stated, "Judge Fields is the complainant in an open and pending State Bar matter that he initiated against County Attorney Thomas."[5] Aubuchon knew that this statement was untrue because she attached to her motion Judge Fields' letter to the Bar regarding attorney Dennis Wilenchik. This letter was not about Thomas.

130. Judge Fields never initiated a State Bar matter against Thomas.

131. Aubuchon had no evidence that Judge Fields had filed a bar complaint against Thomas.

132. Aubuchon's statement was a knowing misrepresentation to the court.

133. Aubuchon violated ER 3.3(a) because she knowingly made a misrepresentation of fact to the court.

134. Thomas is equally culpable for this misrepresentation to the court because, as pled above and according to Aubuchon, everything that she filed in court was approved by the County Attorney, Thomas.

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM EIGHT
ER 8.4(D)
Conduct Prejudicial to Administration of Justice
(Aubuchon)

135. All prior factual allegations are incorporated herein.

[5] State's Motion for Voluntary Recusal, p.6, Dec. 10, 2008, CR2008-009242.

136. On about December 11, 2008, Aubuchon wrote to Presiding Criminal Judge Anna Baca requesting that she submit to an interview about the reasons for the selection of retired Judge Fields in *Stapley I*.

137. Judge Baca responded by order on about December 16, 2008, stating that the court declined to accept or read the letter from the County Attorney since such an off-the-record communication may relate to the case. She directed that the County attorney communicate in pleading form.

138. On about December 11, 2008, Aubuchon hand delivered a letter to Judge Mundell requesting to interview her about the assignment of Judge Fields.

139. Judge Mundell responded on December 15, 2008, stating that among other things lawyers do not write letters that are not part of the public file; rather, they file motions. Judge Mundell also stated that it was not appropriate for Aubuchon to attempt to ascertain Judge Mundell's thought processes in making a judicial decision.

140. Contrary to Thomas's and Aubuchon's assertions, Judge Mundell was not and is not aware of any bias by Judge Fields against Thomas or in favor of Stapley.

141. Judge Mundell chose a retired judge based upon her concern about a potential conflict because of budget problems affecting sitting judges that would ultimately be decided by the Board. A retired judge would not have a concern about those problems and would not have the appearance of doing something to favor one of the supervisors.

142. Judge Mundell had two judges in mind and chose Judge Fields because he called her back before the other judge did.

143. Aubuchon engaged in conduct prejudicial to the administration of justice and violated ER 8.4(d) in her contacts with the judges and in her attempts to determine why Judge Fields had been appointed to *Stapley I*.

144. Aubuchon requested by private letter to interview or depose Judges Mundell, Baca and Fields concerning their thought processes in the assignment of Judge Fields to the *Stapley I* case.

145. Aubuchon's proposed inquiry intruded into judicial discretion and had the potential to undercut the separation of powers between the judicial and executive branches of Maricopa County government.

146. Aubuchon's proposed depositions (with questions concerning whether the Judges had conspired to appoint a Judge supposedly biased against Thomas) also had the potential to intimidate the Judges and other judges of the Superior Court.

147. By requesting interviews of and moving for depositions of the Judges, Aubuchon engaged in conduct prejudicial to the administration of justice (ER 8.4(d)).

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM NINE
Conduct Prejudicial to the Administration of Justice
ER 8.4(d)
(Aubuchon and Thomas)

148. All prior averments are incorporated herein.

149. Thomas and Aubuchon charged many of the misdemeanor crimes alleged in the indictment against Stapley knowing that the statute of limitations had run on those misdemeanors.

150. The statue of limitations, A.R.S. § 13-107, provides:

> (b) Except as otherwise provided in this section, prosecutions for other offenses [i.e., homicide, violent sexual assault, among others] must be commenced within the following periods after actual discovery by the state or the political subdivision having jurisdiction of the offense or discovery by the state or the political subdivision that should have occurred with the exercise of reasonable diligence, whichever first occurs:
>
> For a class 2 through a class 6 felony, seven years.
>
> For a misdemeanor, one year.

151. The investigation of Stapley began as early as January 2007.

152. Sgt. Brandon Luth, of the Maricopa County Sheriff's Office ("MCSO") was told by Chief Hendershott to begin investigating Stapley on January 23, 2007.

153. Chief Hendershott told Sgt. Luth that he wanted to investigate the business dealings of Don Stapley.

154. Sgt. Luth researched Stapley's business holdings and dealings for a couple of days in January 2007, and then stopped.

155. Sgt. Luth knew there was a statute of limitations issue in the Stapley case when the charges were filed by Thomas and Aubuchon in late 2008.

156. Upon information and belief, Aubuchon began investigating Stapley's financial disclosures in January 2007.

157. Mark Stribling, who is now Chief of Investigations of MCAO, was contacted by Thomas in early May 2008 and asked to work on an investigation of Stapley.

158. Thomas told Stribling that he would be working with Sgt. Luth.

159. Stribling was provided no information of how any of the information about the case came to the attention of MCAO, but Thomas told him that Aubuchon had done Internet searches on the properties owned by Stapley or his affiliates and that Aubuchon would be the prosecuting attorney.

160. On May 14, 2008, Aubuchon, Sgt. Luth, Stribling, another investigator from MCAO (Tadlock), MCSO Captain James Miller, and MCSO Lieutenant Anglin attended a meeting.

161. At the May 14, 2008, meeting Aubuchon handed out documents which she stated she had researched on line that showed Stapley had filed false and/or incomplete disclosure statements.

162. Some of the documents that Aubuchon handed out showed that they had been printed from the Internet in January or February 2007.

163. At the May 14, 2008 meeting, Aubuchon also handed out a draft indictment which set forth 79 counts. This draft indictment includes allegations of misconduct by Stapley beginning in 1994.

164. Sgt. Luth asked Aubuchon at the May 14, 2008 meeting if her handing out all the information made her a witness in the matter. She responded, "That's why we are going to have you guys [MCSO] do it."

165. Lieutenant Travis Anglin of MCSO was also concerned about the statute of limitations issue. He asked Aubuchon about that issue and she assured him it was okay. She also told him to use that date (probably May 14, 2008) as the date for the MCSO report.

166. The only Sheriff's Departmental Report that has been discovered about the *Stapley I* matter is dated May 14, 2008. That report does not indicate why the investigation was commenced or what research or investigation had been done before that date.

167. In June 2007, a notebook of information was given to someone at MCSO.

168. This notebook or a memo in it had a sticky note attached saying that it was "rec'd Weds. June 20, 2007 @ 1600 from Sally Wells." Ms. Wells was third in charge of MCAO behind Thomas and Phil MacDonnell. She attended weekly meetings of MACE in 2007.

169. The information in the notebook includes a memo with the following heading: "Yavapai County Matters; Issues Related to MCSO Investigation of Donald Stapley."

170. Section IV of the memo is headed "Filing Financial Disclosure Statements with False or Misleading Information." Under that section various criminal statutes are noted including forgery, theft and A.R.S. §§ 38-504, 38-543 and 38-544. The memo and the information in this notebook indicate that Stapley's financial disclosures were under investigation earlier than June 20, 2007.

171. The Stapley matter was discussed at MACE (Maricopa County Anti-Corruption Effort) meetings in May and June 2007.

172. Deputy County Attorney Vicki Kratovil went to MACE meetings from December 2006 through about June 2007.

173. She kept a notebook containing among other things the agenda for MACE meetings. These agendas were written by Bruce Tucker, formerly of MCSO.

174. The Stapley matter is listed on the agenda for MACE meetings occurring May 9, May 23, June 6, June 13, June 20, and June 27, 2007. After Stapley's name it is noted in parentheses that these matters are being referred to Yavapai County. (This is not the referral that was done later in April 2009.)

175. This notation is consistent with the memo in the notebook that was described in the paragraph immediately above.

176. The meeting agenda for June 13, 2007, states that a public records request was to be drafted with the assistance of "Deputy Maricopa County Attorney Mark Goldman."

177. The actual indictment of Stapley charges misdemeanor violations of A.R.S §38-542 and §38-544, Failure to File and/or filing False or Incomplete Financial Disclosures.

178. As noted above the investigation of Stapley began in January 2007, and no later than early June 2007. Therefore, the State had to commence prosecution of Stapley by June 2008 on 44 of the misdemeanors charged in the indictment. However, Stapley was indicted on November 20, 2008.

179. The statute of limitations had run on 44 misdemeanor charges Aubuchon and Thomas filed against Stapley.

180. Aubuchon and Thomas charged Supervisor Stapley with 44 misdemeanors when the Arizona statute of limitations barred those charges.

181. The State, through Yavapai County Attorney, Sheila Polk has conceded that the statute of limitations barred those charges.[6]

182. The statute of limitations is triggered when the state actually discovers, or through exercise of reasonable diligence should have discovered that there was probable cause to believe that the offense was committed.

183. MCAO and MCSO believed beginning in January 2007 that there was probable cause that Stapley allegedly committed offenses. However if that belief was not held in January 2007, it was formed no later than June 2007.

184. In Arizona the court lacks jurisdiction to consider crimes against a person on which the statute of limitations has run.

185. Aubuchon and Thomas knew that most of the misdemeanor charges they brought against Stapley were commenced outside the statue of limitations.

186. Aubuchon never presented information to the grand jury, which returned the indictment against Stapley, that the statute of limitations had run or was even an issue.

187. Aubuchon did not elicit any testimony from the one witness who testified in front of the grand jury about the time frame of the investigation or who began it. This is further evidence of conduct prejudicial to the administration of justice in violation of ER 8.4(d).

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[6] *See* Appellant's Reply Brief, fn. 1, *State v. Stapley,* Arizona Court of Appeals, 1 CA-CR 09-0682, May 3, 2010.

188. Thomas's conduct and Aubuchon's conduct violated ER 8.4(d) because they obtained an indictment knowing that the court did not have jurisdiction over Stapley for those 44 alleged violations.

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM TEN
ER 8.4(c)
Engaging in Conduct Involving Dishonesty,
(Aubuchon)

189. All prior factual allegations are incorporated herein.

190. As pled above, Aubuchon never presented information to the grand jury, which returned the indictment against Stapley, that the statute of limitations had run on 44 misdemeanor counts.

191. Aubuchon did not elicit any testimony from the one witness who testified in front of the grand jury about the time frame of the investigation or who began it.

192. ER 8.4(c) prohibits an attorney from engaging in conduct involving dishonesty, misrepresentation, fraud or deceit.

193. Aubuchon engaged in dishonesty, deceit, fraud and misrepresentation by failing to tell the grand jury that many of the misdemeanor charges were barred by the statute of limitations.

194. Because the statute of limitations is a jurisdictional matter in Arizona, if a prosecutor knows that charges are barred, then she must inform the grand jury and should advise the grand jury not to indict on charges arising from conduct outside the statute.

195. Instead, Aubuchon presented an indictment listing all of the charges including 44 barred by the statute. Aubuchon's failure to tell the grand jury about the State's lack of jurisdiction to proceed against Stapley on those charges was dishonest.

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM ELEVEN
ER 3.6(a)
Improper Public Statements about Stapley Case
(Thomas)

196. All prior factual allegations are incorporated herein.

197. In March or early April 2009, Thomas transferred *Stapley I* to the Yavapai County Attorney, Sheila Polk.

198. At this time Stapley's motion for determination of counsel was still pending in front of Judge Fields.

199. In addition to the challenge to MCAO's ability to act as counsel for the State in the Stapley case, a bar complaint had been filed against Thomas alleging a conflict of interest in that case. *See* Bar Complaint 08-2289.

200. That bar complaint was transferred and assigned to retired Superior Court Judge Rebecca Albrecht to handle as independent bar counsel.

201. Judge Albrecht dismissed the matter on May 4, 2009, on the condition that Thomas withdraw from the case and transfer it to Yavapai County. She stated in her letter, however, that the issues were highly concerning and should similar conflict of interest concerns come up in the future, the file could be reviewed anew.

202. On April 2, 2009, the Yavapai County Attorney, Sheila Polk, agreed with Thomas to take over the prosecution of *Stapley I*.

203. Ms. Polk also agreed that she would handle pending investigations regarding members of the board of supervisors including allegations against Supervisor Wilcox and an investigation of the "court tower project."

204. On April 6, 2009, Thomas wrote to Supervisor Max Wilson and stated that it was "An Open Letter to the People of Maricopa County." He stated that he referred the *Stapley* case to Polk and that he was also transferring to her the completion of the investigation related to the Maricopa County Superior Court Tower as well as current or future investigations or prosecutions involving the MCBOS or county management.

205. Also on April 6, 2006, Thomas issued a News Release captioned, "County Attorney Offers Compromise to End Infighting, Sends Stapley case, Investigations to Yavapai County; Proposes Mediation."

206. Ms. Polk entered her appearance on April 15, 2009 and asked former Navajo County Attorney Melvin Bowers to serve as the prosecutor in the case.

207. Attorneys for Mr. Stapley filed motions to dismiss the criminal charges against him based upon grounds other than MCAO's conflicts of interest.

208. First, they asked the court to dismiss the case for vagueness. They also filed a motion to dismiss based upon the county's failure to follow the requirements of A.R.S. § 38-545 to promulgate standards for financial disclosure.

209. On August 24, 2009, Judge Fields denied the vagueness motion, but granted the second motion in part and dismissed many counts.

210. Thomas issued a public statement on the same day as Judge Fields' ruling. Although Polk was the prosecutor for the State on that day, Thomas nevertheless issued this press release.

211. In his public statement Thomas urged Ms. Polk to appeal the ruling. Thomas further stated the following:

> It is unjust and improper for this criminal defendant to be able to claim that as a member of the board of supervisors, he failed to properly pass or amend the very laws he's accused of violating. For him to be able to take advantage of the improper performance of his own public duties is wrong by any measure. It's equally wrong that the people of Maricopa County have just been told they're the only citizens of Arizona whose elected county officials don't have to disclose their private business dealings to the voters.
>
> The ruling today reinforces our office's concerns about the impartiality of Judge Fields. He was handpicked for this case in violation of the rules of court, despite his having filed a bar complaint against the Maricopa County Attorney (which was dismissed) and having campaigned for Mr. Thomas' opponent in last year's election. Four esteemed experts in judicial ethics have stated that Judge Fields was ethically required to recuse himself from this case.

212. Thomas violated ER 3.6(a) in making the above statement when Judge Fields dismissed some of the counts against Stapley.

213. ER 3.6(a) applies to a lawyer who is participating or has participated in the investigation or litigation of a matter.

214. Thomas had participated in both the investigation and litigation of the *Stapley I* case.

215. Thomas made an extrajudicial statement that he knew or reasonably should have known would be disseminated by means of public communication and

that would have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

General Allegations Concerning CLAIM 12 through CLAIM 32

216. ***The Court Tower Investigation.*** In late 2008, Thomas and the Maricopa County Sheriff began to question the decision to build the new court tower, a decision in which they had no official role.

217. MCAO and MCSO launched a criminal investigation into the Court Tower because they were concerned about the County's decision to cut jobs without making any cuts to the $347 million Court tower project.

218. Chief Hendershott testified in front of a grand jury in January 2010 that there was concern at a MACE unit meeting that the Court Tower should not be built.[7]

219. Chief Hendershott, Thomas and Aubuchon were also concerned that attorney Thomas Irvine was being paid as a space planner on the Court Tower.

220. Aubuchon stated that the Court Tower investigation was initiated because it was not clear why the Board would still be going forward with the project in the face of an economic downturn.[8]

221. Ms. Aubuchon stated to Supervisor Kunasek in February 2010 that it was "basically a little odd" that the Board slashed county budgets, laid people off and

[7] January 4, 2010, GJ transcript, p. 44.

[8] Transcript of taped discussion between Supervisor Kunasek, his attorney, and Aubuchon, February 10, 2010.

went forward with a three hundred and fifty million dollar project that was not really needed.[9]

222. Aubuchon expressed concern about the hiring of Mr. Irvine to assist with the court project. [10]

223. As noted in a Maricopa County Sheriff's Office (MCSO) Departmental Report ("DR") in the case against Judge Donahoe (Sheriff's Office Supplemental Report - DR# 09-225204), officials of both the sheriff's office and MCAO perceived that the Board began "to act against the County Attorney" after the *Stapley I* indictment was served or filed.

224. The DR states that "they," meaning the Board, hired attorney Tom Irvine to "block investigations and prosecutions directed toward them (Board Members)."

225. Sgt. Luth of the MCSO stated that he did not know who the complainant was on the Court Tower investigation.

226. He stated that he asked Lisa Aubuchon where the complaint came from and she stated, "it was your guys' case."

227. There is no evidence justifying the initiation of the Court Tower investigation. The motivation for initiating this investigation was personal animosity by Thomas, Aubuchon and the Sheriff against the Board, county officials and attorney Thomas Irvine.

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[9] *Id.*
[10] *Id.*, p. 3

228. ***Ruling by Donahoe Re: GJ Subpoena***. On February 6, 2009, Judge Gary Donahoe ruled on a motion in the Court Tower Grand Jury Case (Case No. 462 GJ 350).

229. Judge Donahoe's ruling covered three pending motions: 1) MCBOS's motion to quash the subpoena duces tecum on the County; 2) Thomas and Aubuchon's motion to disqualify Irvine's firm; and 3) Thomas and Aubuchon's motion to assign an out-of-county judge to rule on the motion to quash and the motion to disqualify.

230. Judge Donahoe denied the motion to appoint an out of county judge, stating that he had no interest in the court tower project.

231. Judge Donahoe disqualified MCAO. He stated that the issue was the ethical propriety of the Board's attorney (Thomas) seeking documents from his client (MCBOS) as a part of a grand jury investigation. He found that MCAO was counsel for the Board and gave the Board legal advice regarding the court tower, and therefore they had a conflict of interest that disqualified MCAO from conducting an investigation of its client on the very topic on which it gave legal advice to its client. Judge Donahoe also denied Thomas' and Aubuchon's motion to disqualify Irvine's firm.

232. Thomas and Aubuchon then filed a special action requesting review of Donahoe's rulings in the court of appeals, CA-SA 09-0056, and then in the Supreme Court, CV 09-0165 PR.

233. The Court of Appeals declined to take jurisdiction in May 2009. The Supreme Court declined to review it on December 1, 2009.

234. Neither Thomas nor Aubuchon had attempted to appeal Judge Donahoe's February 6, 2009, ruling in a timely manner.

235. After the Supreme Court declined review there was no other review available. Judge Donahoe's ruling stands.

236. ***Hiring Irvine regarding Thomas Conflicts***. On about December 5, 2008, four county supervisors (Stapley recused himself) met and decided to hire attorney Tom Irvine to review Thomas' conflicts in representing the Board.

237. The hiring of Mr. Irvine was pursuant to the MOU, described above. In 2007, MCBOS had entered into a contract with Mr. Irvine's firm and two other firms in the event that MCBOS needed advice because of a conflict.

238. It was generally known that Irvine had been hired by the Maricopa County Superior Court to assist with the court tower project.

239. He had openly attended and noted his attendance in writing to various meetings about the Court Tower project as working for the court.

240. Irvine's providing counsel to the courts became an issue later when Deputy County Attorney Elizabeth Ortiz filed a pleading on behalf of MCAO claiming that it was "newly discovered" that Mr. Irvine worked for the courts. *See Thomas v. Donahoe*, Amended Petition for Review, Supreme Court CV 09-0165 PR. This pleading did not contain Lisa Aubuchon's signature, but she is identified on the cover page as one of the lawyers representing the County Attorney.

241. ***MCBOS Acts to Manage Civil Litigation***. On about December 23, 2008, the Board voted to manage all of the civil legal actions in which the County was a party.

242. MCBOS delegated to County Manager David Smith the implementation of that action. Eventually a civil litigation department separate from the county attorney's office was established with Wade Swanson, Esq., as the director.

243. Both Mr. Smith and Mr. Swanson were also later named as defendants in the RICO action as described below.

244. ***Declaratory Judgment Action***. On December 31, 2008, Thomas and the Sheriff sued the Board over their authority to hire lawyers. *Thomas and Arpaio v. MCBOS*, CV 2008-033194, Maricopa County Superior Court (commonly referred to as "the Dec Action," short for declaratory judgment action.)

245. Thomas Irvine represented the Board in the suit.

246. MCAO was represented by three named lawyers at Ogletree, Deakins, Nash, Smoak & Stewart, including Eric Dowell.

247. The complaint in the Dec Action asked for, among other things, an order that the Board could not hire Mr. Irvine, or any other counsel to advise it about Thomas's conflicts; that the Board could not choose its own counsel if there was conflict in Thomas's representation of the Board; and that only the county attorney, not the Board, could determine if *he* had a conflict of interest.

248. Judge Mundell assigned the Dec Action to retired Judge Daughton. In response to a motion by the Board, Judge Daughton ordered MCAO to disclose any conflicts.

249. The Board, through Mr. Irvine, filed an Answer and a Counterclaim on April 6, 2009, asking the court to declare that Thomas's conflicts made him unavailable to act as the Board's attorney, and to declare that the Board could

choose its own counsel because the county attorney was unavailable due to his conflicts.

250. Judge Daughton ruled against Thomas in this case and in favor of the Board as discussed below.

251. ***Quo Warranto Action***. In December 2008 Thomas sued Tom Irvine individually at the same time he sued MCBOS. *Thomas v. Irvine, Shughart Thomson & Kilroy and Richard Romley*, CV 2008-033193 Maricopa County Superior Court.

252. This action claimed that Irvine had usurped the authority of the County Attorney. No answer was filed, and the case was voluntarily dismissed on December 7, 2009. The parties agreed that this action would be determined by the outcome of the Dec Action, and for that reason there was no substantive litigation of this matter.

253. In addition to suing Irvine and the County over the hiring of Irvine, Thomas sent letters to the county employees threatening them with criminal prosecution if they paid any money to Irvine or his firm.

254. In a letter to Supervisor Kunasek, dated December 5, 2008, Thomas, through Deputy Philip MacDonnell, urged Supervisor Kunasek to consult about this issue with the Civil Division of the County Attorney, and that if the Board hired Mr. Irvine's firm the Board would be performing an illegal act and subject the Board to actions for recovery of money paid.

255. In a letter to County Manager Smith, Deputy Manager Wilson, and chief Financial Officer Manos, Thomas demanded that they issue no payment warrants for outside counsel and stated that the Board's action taken on December 5, 2008 was

unlawful. If any moneys were paid to Mr. Irvine's firm, Thomas threatened legal action to recover funds from them personally.

256. Thomas sent this letter to County Treasurer Hos Hoskins who was being represented by the Ogletree Deakins firm. When Mr. Hoskins's disputed the county's ability to pay its bills based upon Thomas's letters, MCBOS obtained an injunction ordering the Treasurer to pay all bills presented if the county had money. *See Hoskins v. MCBOS*, CV 2008-0022519 Maricopa County Superior Court, Jan. 28, 2009, J. Douglas Rayes.

257. ***"Sweeps" Lawsuit***. On February 27, 2009, Arpaio and Thomas sued the Board in a new action about funds that had been appropriated or encumbered by the supervisors. *Arpaio and Thomas v. MCBOS*, CV2009-006709 Maricopa County Superior Court (referred to as "the Sweeps" case).

258. The case arose out of the State's decision to withhold funds from each county entity because of a budgetary crisis. Irvine represented MCBOS.

259. In part the defendants alleged that Thomas should be precluded from bringing this suit because it essentially equated to a lawyer suing his own client for an act that he had previously approved.

260. Judge Klein did not rule on this issue in his order, but he granted summary judgment for the county on June 10, 2009, finding that Thomas and Arpaio had no standing.

261. The Court of Appeals affirmed the trial court's decision, *Arpaio v. MCBOS*, 225 Ariz. 358, 238 P.3d 626 (August 10, 2010). Interim County Attorney Rick Romley dismissed MCAO from the lawsuit. *Id.* at fn 5. Therefore the opinion

does not include the County Attorney. Petition for Review of this decision was denied by the Supreme Court January 4, 2011.

262. ***Ruling by Daughton regarding Declaratory Judgment Action***. On Aug. 27, 2009, Judge Daughton ruled on motions filed in the Dec Action. He found 1) that the County Attorney was subject to the Rules of Professional Conduct; 2) that he had not complied with his professional obligations concerning client conflicts; 3) that Thomas is not the one to decide if there is a conflict; and 4) that MCBOS actions on December 5 and 23, 2008, were appropriate.

263. The court entered judgment against MCAO.

264. This matter was appealed to the court of appeals by route of Special Action, Case No. CA-SA 09-0212. On October 27, 2010, the Court of Appeals issued its opinion in this matter. In summary the opinion upholds Judge Daughton's ruling but remands it to the trial court to determine conflicts of interest on a case-by-case basis. *Romley v. Daughton*, 225 Ariz. 521, 241 P.3d 518 (App. 2010).

265. ***Thomas Takes Stapley II and Other Cases Back From Polk***. In September 2009, under pressure from Sheriff Arpaio, Thomas took back from Yavapai County Attorney Sheila Polk control of *Stapley II,*[11] the investigation of Supervisor Wilcox, what is known as the court tower investigation and the "bug sweep" investigation against county officials.

[11] *Stapley II* refers to a second criminal investigation and the subsequent case filed against Donald Stapley in December 2009, CR2009-007891.

266. Thomas did so because he was pressured by the Sheriff who thought that Ms. Polk was not cooperative in issuing subpoenas that were desired by Sheriff's investigators.

267. Thomas never informed the State Bar or Judge Albrecht that he was doing so. Judge Albrecht had dismissed the Bar complaint against Thomas because Thomas represented that he had withdrawn from the matter. Even if Thomas did not agree with Judge Albrecht's handling of the investigation, or her statement that his conduct raised serious concerns, he should have informed her or the bar that he was taking these investigations back.

268. ***Thomas's Efforts to Appoint Special Prosecutors.*** After taking the cases back Thomas wanted to appoint two lawyers from Washington, D.C. to investigate the court tower matters and to handle *Stapley I*. This led to another fight with the MCBOS because they would not approve his choice for outside counsel.

269. MCBOS was concerned about persons not appointed properly by MCBOS appearing in front of the grand jury.

270. MCBOS filed its Notice and Motion re Unauthorized County Representation. Aubuchon on behalf of the State filed various responses and motions. *See* Judge Roland Steinle's ruling, December 15, 2009.

CLAIM TWELVE
ER 4.4(a)
Using Means with no Substantial
Purpose other than to Embarrass, Delay or Burden
(Thomas)

271. All prior factual allegations are incorporated herein.

272. Thomas violated ER 4.4(a) by sending letters to Supervisor Kunasek and other county employees threatening them that the payment to Mr. Irvine's firm would be unlawful and would subject them to action to recover the funds from them personally.

273. The sole purpose of Thomas' threats was to intimidate and to burden county employees and Mr. Irvine.

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM THIRTEEN
ER 4.4(a)
Using Means with no Substantial
Purpose other than to Embarrass, Delay or Burden
(Thomas and Aubuchon)

274. All prior factual allegations are incorporated herein.

275. The grand jury subpoena that Aubuchon and Thomas issued in December 2008 was broad and overreaching.

276. The subpoena was directed to "Maricopa County Administration" and was to the attention of David Smith, County Manager and required the production of budgets; records about funding; documents regarding proposed usage, occupancy, RFP's, contracts re: planning and design; contracts re: construction; contracts re: consultants; and any and all documents, correspondence and email referring to the Court Tower project.

277. The purported justification for this subpoena was that, as noted above, the Board was going forward with the Court Tower project while in an economic

downturn, and Treasurer of the County, Hoskins, was allegedly unable to get information from the MCBOS about how the money was being spent on the court tower; and general concern that attorney Irvine was being paid too much money.

278. In addition to the grand jury subpoena, Thomas also issued public records requests to the county.

279. Thomas was making public records requests to his own client.

280. The public records requests were broad and burdensome and cost the county substantial amounts of money in order to comply.

281. Thomas and Aubuchon violated ER 4.4(a) in issuing the grand jury subpoena and the public records requests.

282. Considering the totality of the circumstances, including the overbroad scope of the requests and the political motivations behind them, Thomas's public records requests had no substantial purpose other than to burden the county and its employees.

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM FOURTEEN
ER 1.7(a)(1) and
ER 1.7(a)(2)
Conflicts of Interest in Court Tower Investigation
(Thomas and Aubuchon)

283. All prior factual allegations are incorporated herein.

284. Thomas and Aubuchon violated ER 1.7(a)(1) in investigating the court tower matter.

285. They were representing the State as prosecutors and investigating their client the Board of Supervisors.

286. As found by Judge Donahoe, they were investigating a matter about which MCAO had advised the Board.

287. They represented one client against another, which is a concurrent conflict of interest in violation of ER 1.7(a)(1).

288. Additionally, Thomas and Aubuchon violated ER 1.7(a)(2) by initiating and conducting the court tower investigation.

289. Their representation of the State of Arizona as prosecutors was limited by their own personal interests.

290. They were motivated to investigate the court tower because of their personal disagreement and hostility toward the Board and others including Thomas Irvine.

291. This conflict of interest led to Thomas issuing needless public records requests to the County through county attorney employee Mike Scerbo (not a licensed lawyer).

292. The Sheriff had also made public records requests.

293. These public records requests were extensive and cost the county hundreds of thousands of dollars in order to comply.

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM FIFTEEN
ER 4.4(a)
Using Means That Have No Other Purpose than To Burden or Embarrass A Person
(Thomas, Aubuchon and Alexander)

294. All prior factual allegations are incorporated herein.

295. On November 30, 2009, Judge Gary Donahoe set a hearing to occur on December 9, 2009.

296. The hearing Judge Donahoe set would consider a Notice and Motion filed by MCBOS as described in paragraph 269 above.

297. On December 1, 2009, Thomas and Aubuchon filed a federal civil RICO action against various defendants (the "RICO" case).

298. The purported plaintiffs in the RICO case were Thomas and Sheriff Joe Arpaio. Lisa Aubuchon signed the complaint.

299. The signature block appears as:

ANDREW P. THOMAS
MARICOPA COUNTY ATTORNEY

By: s/Lisa M. Aubuchon
Lisa M. Aubuchon
Deputy County Attorney

300. Thomas appears as both a plaintiff and the lawyer for plaintiffs in this civil case.

301. The RICO complaint named the following defendants:

- Maricopa Board of Supervisors, a body politic and corporate;
- Fulton Brock, Supervisor;
- Andrew Kunasek, Supervisor;
- Donald T. Stapley, Supervisor;
- Mary Rose Wilcox, Supervisor;

- Max Wilson, Supervisor;
- David Smith, County Manager;
- Sandi Wilson, Deputy County Manager;
- Wade Swanson, Office of General Litigation;
- Judge Barbara Mundell, Superior Court;
- Judge Anna Baca, Superior Court;
- Judge Gary Donahoe, Superior Court;
- Judge Kenneth Fields, Superior Court;
- Thomas Irvine, attorney;
- Edward Novak, attorney.

302. The RICO complaint itself is confusing, difficult to analyze, and does not set out the required legal or factual elements of a RICO civil action.

303. The RICO complaint is deficient because at a minimum it fails to properly allege an enterprise, fails to properly identify the racketeering activity, and fails to properly allege injury or damages to a plaintiff who can sue.

304. To establish liability under a civil RICO claim, one must show that a defendant was involved in (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Miller v. Yokohama Tire Corp.*, 358 F.3d 616, 620 (9th Cir. 2004).

305. The complaint filed by Thomas and Aubuchon does not establish what the "enterprise" was.

306. There are no specific allegations in the complaint as to what the enterprise was and what its structure was.

307. There was and is no evidence that the defendants named in the RICO case were in an "enterprise" as defined by the pertinent statute.

308. Although Thomas and Aubuchon mentioned bribery and extortion in various places in the RICO complaint, they did not specifically allege any conduct of a specific defendant or enterprise constituting bribery or extortion.[12]

309. The complaint fails to set forth any factual basis that establishes racketeering activity as contemplated by the RICO statute.

310. A plaintiff in a RICO action can only recover damages to his business or property by reason of the conduct of an enterprise through a pattern of racketeering activity. *See* 18 U.S.C. § 1964(c).

311. Thomas and Aubuchon alleged that some of the defendants had instigated frivolous investigations of Thomas and MCAO prosecutors with the State Bar of Arizona, or had threatened to go to the State Bar about Thomas.[13]

312. MCAO deputy county attorney Rachel Alexander continued to make this assertion in a response she filed to motions to dismiss. Alexander argued that part of the injury to Thomas was that the defendants attempted to deprive him of his license to practice law.[14]

313. In asserting these claims Thomas, Aubuchon and Alexander disregarded Rule 48(l) of the Arizona Supreme Court which states that anyone who complains to the State Bar about an attorney is immune from civil suit.

314. There is no evidence that an investigation was conducted into the facts alleged in the complaint and no MCAO file has been produced to establish otherwise.

[12] RICO Complaint, ¶¶ 1, 34, 70, 79 and 81.
[13] RICO Complaint, ¶¶ 31, 39, 58, 64, 70 and 76.
[14] Plaintiffs' Response to Defendants' Motions to Dismiss, pp 29-31.

Aubuchon has admitted as much to attorney Kate Baker who conducted an investigation into Aubuchon's conduct.[15]

315. Rather, Aubuchon and Thomas drafted the RICO complaint based not on facts but on their personal animosity toward all the defendants.

316. Many of the defendants filed motions to dismiss the RICO case.

317. Alexander filed a frivolous response to these motions and, as noted above, her response continued the suit needlessly and without justification.

318. Alexander's response was not based on any facts, any independent investigation or any other investigation.

319. Alexander did not obtain any facts or any investigative file on which to base her argument that the complaint should not be dismissed.

320. Alexander had been warned by another Deputy County Attorney, Peter Spaw, that she needed to obtain the investigation file for the matter so that she could determine what the facts were.

321. Unknown to Mr. Spaw at that time, there was no such file.

322. Alexander's efforts to maintain the RICO case were meritless and frivolous.

323. Alexander also filed a First Amended Complaint in the RICO action.

324. This First Amended Complaint attempted to define the enterprise as the Board. After the defendants objected the court did not allow the First Amended Complaint.

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[15] Baker, Report of Personnel Investigation Re: Deputy County Attorney Lisa Aubuchon, p. 64. (Hereinafter referred to as "Baker Report.")

325. Other lawyers in the MCAO did not think that the RICO case had any factual basis or merit.

326. Thomas, Aubuchon and Alexander were all aware of at least one other lawyer's views that the RICO case lacked merit.

327. Deputy County Attorney Spaw was asked to work on the RICO case both before and after it was filed. Most of his involvement was after the case was filed. He advised both Thomas and Aubuchon that the case lacked merit.

328. The RICO action was voluntarily dismissed in March 2010.

329. In the RICO action Thomas, Aubuchon and Alexander abused their power and authority as county officers.

330. They filed the RICO case in retaliation against the defendants not based upon any alleged criminal activity but rather based upon the defendants' exercise of lawful authority that frustrated and infuriated Thomas, Aubuchon and Sheriff Arpaio.

331. ER 4.4(a) states that in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden any other person.

332. The purpose of the RICO case was to burden and/or embarrass the defendants.

333. No factual or legal basis supported the filing of the RICO case.

334. The motive for filing the RICO action was retaliation against those who had acted against Thomas and MCAO.

335. In filing and pursuing the RICO case, Thomas, Aubuchon and Alexander each violated ER 4.4(a).

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM SIXTEEN
ER 3.1
Filing and Asserting a Frivolous Proceeding
(Thomas, Aubuchon and Alexander)

336. All prior factual allegations are incorporated herein.

337. The RICO case was meritless and frivolous.

338. There were no facts and no law that supported the case for the following reasons:

a. Neither of the plaintiffs had standing to bring the action;

b. There was no good faith basis in fact for the action;

c. There was no good faith basis in law for the action;

d. There was no statutory authority for Thomas to sue under the RICO statute for himself or for Sheriff Arpaio; and

e. Most of the defendants including the named judges and county officials were immune from such an action.

339. ER 3.1 states that 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 non-frivolous argument for an extension, modification of reversal of existing law.

340. Thomas and Aubuchon brought the RICO case, and Alexander continued this effort.

341. In doing so each of them violated ER 3.1.

342. Arizona statutes do not empower a county attorney to bring an action such as the RICO case.

343. The complaint states that it is brought in the name of Thomas and Arpaio in their official capacities as County Attorney and as County Sheriff respectively. Among the defendants is the county Board "as a body politic."

344. One of the requests for relief asks the federal court to award treble damages against all defendants, and specifically damages to make Arpaio whole from the harm he had he had allegedly suffered.

345. A.R.S. §11-535 prohibits a county attorney from presenting a demand for allowance against the county or advocating the demand for an allocation of another.

346. Therefore, Thomas, Aubuchon and Alexander could not bring this action against the Board. The suit was meritless on these grounds as well as those stated above.

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM SEVENTEEN
ER 1.1
Competence
(Thomas, Aubuchon and Alexander)

347. All prior factual allegations are incorporated herein.

348. ER 1.1 states that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

349. Thomas, Aubuchon and Alexander each failed to provide competent representation in the RICO action.

350. The complaint that Thomas and Aubuchon filed was legally deficient.

351. Further, there were no facts that supported the RICO complaint.

352. Alexander's attempts to prolong and continue the case were based upon incompetent reasoning.

353. She accepted the conclusions based upon "facts" alleged in the complaint filed by Thomas and Aubuchon without question.

354. At the end of the response to the motions to dismiss Alexander wrote the following:

> As a final alternative, and in the event plaintiffs cannot proceed at all with this Complaint, plaintiffs seek guidance from this Court as to how federal law may be changed to permit local law-enforcement officials to challenge the complained-of conduct in federal court, so that plaintiffs may petition Congress to amend federal law accordingly.[16]

355. Alexander's continued efforts to argue that Thomas could sue the RICO defendants because they had allegedly filed Bar complaints against him were incompetent.[17]

356. She also argued that judicial immunity did not apply to the judges being sued because they had committed acts outside the scope of their judicial duties.[18]

357. Alexander's argument was that the judges had issued rulings that ignored the law.[19]

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[16] *Id.* at p. 45.
[17] Plaintiffs' Response to Motions to Dismiss, p. 29 *et seq.*, filed 2/01/10 in RICO case.
[18] *Id.*, at p.43 *et seq.*

358. Alexander's arguments in response to the motions to dismiss were incompetent as was the original complaint.

CLAIM EIGHTEEN
ER 1.7(a)(1) and
ER 1.7(a)(2)
Conflicts of Interest
(Thomas, Aubuchon and Alexander)

359. All prior factual allegations are incorporated herein.

360. Thomas, Aubuchon and Alexander represented the State of Arizona in bringing the RICO action against the Board of Supervisors, as a body, each of the individual supervisors, the county manager and his deputy.[20]

361. However, they were all also purportedly representing Thomas and Arpaio.[21]

362. In so doing, Thomas, Aubuchon and Alexander were suing various clients on behalf of at least one other purported client, Sheriff Arpaio.

363. In doing so, Thomas, Aubuchon and Alexander violated ER 1.7(a)(1); they represented clients who were directly adverse to other clients.

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[19] *Id.*

[20] Aubuchon stated in a Response to Petition for Special Action, CV 09-00372 SA that the County Attorney, in his official capacity as a county law-enforcement officer, filed the RlCO suit against the defendants based in part on criminal conduct. She also stated that the County Attorney requested no personal damages in the RICO case and sought relief only so he could effectively combat the corruption that is being shielded from proper prosecution in the county court system. Response, pp. 11, 14.

[21] On February 16, 2010, attorneys Elizabeth Fierman and Robert Driscoll substituted in to represent Sheriff Arpaio in the RICO action.

364. In bringing and pursuing the RICO action against supervisors, judges and attorneys, Thomas's, Aubuchon's and Alexander's representation of their client or clients was limited by their own personal interests in violation of ER 1.7(a)(2).

365. By the time the RICO complaint was filed in early December 2009, Thomas and Aubuchon had been involved in many disputes with the defendants they sued in the RICO action.

366. Judges who were defendants in the RICO action had ruled against Thomas and his office.

367. Supervisors had exercised their lawful authority contrary to the personal and professional wishes of Thomas and his office.

368. Each of these disputes was resolved unfavorably to Thomas. Among the disputes and rulings were:

a) Thomas' and Aubuchon's unsuccessful attempts to depose or interview Judge Mundell and Judge Baca about the appointment of Judge Fields to the *Stapley I* case.

b) Thomas' and Aubuchon's unsuccessful attempts to remove Judge Fields from the *Stapley I* case.

c) MCBOS (less Stapley) hired attorney Irvine to determine if Thomas had conflicts of interest.

d) MCBOS determined to manage all the county's civil litigation through county manager Smith.

e) Thomas sued MCBOS in the Dec Action.

f) Judge Donahoe quashed the court tower grand jury subpoena, and disqualified MCAO from that investigation.

g) Judge Daughton made various rulings against Thomas in the Dec Action.

h) Thomas sued attorney Tom Irvine, his firm and Rick Romley in the Quo Warranto action.

i) Thomas sued MCBOS in the Sweeps action.

j) Thomas fought with MCBOS over the appointment of special prosecutors.

369. Each of the above disputes and rulings limited the representation that Thomas, Aubuchon and Alexander could give to their clients in the RICO case.[22] Their judgment was limited by their own self interest and personal animosity.

CLAIM NINETEEN
ER 3.4(c)
Disobeying an Obligation Under the Rules of a Tribunal
(Thomas, Aubuchon and Alexander)

370. All prior factual allegations are incorporated herein.

371. Arizona Supreme Court Rule 48(l) provides:

> **Immunity from Civil Suit.** Communications to the court, state bar, commission, hearing committees or hearing officers, mediators, the client protection fund, the peer review committee, the fee arbitration program, the committee on the Rules of Professional Conduct, monitors of the Member Assistance or Law Office Management Assistance Programs, probable cause panelists or state bar staff relating to lawyer misconduct, lack of professionalism or disability, and testimony given in the proceedings shall be absolutely privileged conduct, **and no civil action predicated thereon may be instituted against any complainant or witness**. Members of the board, commission, hearing committees or hearing officers, mediators, the peer review committee, client protection fund trustees and staff, fee arbitration committee arbitrators and staff, the ethics committee, monitors of the Member Assistance or Law Office Management Assistance Programs, probable cause panelists, state bar staff shall be

[22] As noted above, it is difficult to determine who was the client in the RICO action. It is clear that at least for a period of time, Thomas, Aubuchon and Alexander sought to represent Sheriff Arpaio. Such representation of Sheriff Arpaio was not authorized by law.

> immune from suit for any conduct in the course of their official duties. (emphasis added)

372. Thomas, Aubuchon and Alexander violated Rule 48(l) by predicating the RICO action in part on alleged Bar complaints or statements to the Bar about Thomas and other MCAO lawyers.

373. By violating that rule they violated ER 3.4(c), which states that a lawyer shall not knowingly violate an obligation under the rules of a tribunal.

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM TWENTY
ER 8.4(d)
Conduct Prejudicial to the Administration of Justice
(Thomas, Aubuchon and Alexander)

374. All prior factual allegations are incorporated herein.

375. Thomas, Aubuchon and Alexander sued four judges of the Maricopa Superior Court concerning their decisions in various matters.

376. By doing so they sought damages against members of the judicial branch of government for carrying out their obligations and duties.

377. Even if those judges had made decisions in error they were immune from civil liability. *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986).

378. The RICO suit was an unlawful effort to intrude upon the decision making of judges and to intimidate them and retaliate against them.

379. Furthermore, the RICO suit was an improper attempt by Thomas, Aubuchon and Alexander to silence the judges.

380. In doing so Thomas, Aubuchon and Alexander violated ER 8.4(d).

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM TWENTY-ONE
ER 1.7(a)(1)
ER 1.7(a)(2)
Conflicts of Interest
(Thomas and Aubuchon)

381. All prior factual allegations are incorporated herein.

382. In January 2010, a grand jury returned an indictment charging Supervisor Wilcox with numerous crimes.

383. MCAO initiated this matter, but it was transferred to Sheila Polk (Yavapai County Attorney) along with the *Stapley I* matter and other investigations.

384. Despite having transferred this matter to Ms. Polk, Thomas took the Wilcox matter back from her, as described above, in September 2009.

385. It is unknown why or who actually initiated the investigation of Wilcox.

386. At the time the indictment was returned against Wilcox, Thomas and Aubuchon had sued Wilcox in the RICO case along with other defendants for damages caused by their alleged violations of the RICO statute.

387. Thomas alleged in the RICO Complaint that the defendants, including Supervisor Wilcox had threatened his livelihood by bringing Bar complaints against him, had threatened to sue him and his wife to recover legal fees, and had conspired to cut the funding of MCAO by $6,000,000.

388. Filing criminal charges against someone a prosecutor is suing civilly is prejudicial to the administration of justice in part because the prosecutor can use the criminal case to leverage a favorable settlement of the civil case for the prosecutor's benefit.

389. Thomas and Aubuchon violated ER 1.7(a)(2) in bringing criminal charges against Supervisor Wilcox.

390. Thomas and Aubuchon had a concurrent conflict of interest because they had filed and were pursuing a civil case against Wilcox seeking damages she allegedly caused to Thomas.

391. At the same time they filed criminal charges against her.

392. Furthermore, in February 2010, Judge Leonardo of the Pinal County Superior Court ruled that Thomas and his office could not serve as prosecutors in the Wilcox case.

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM TWENTY-TWO
ER 4.4(A)
Filing Charges Against Stapley and Wilcox to Embarrass or Burden
(Thomas and Aubuchon)

393. All prior factual allegations are incorporated herein.

394. On December 7, 2009, Thomas and Aubuchon obtained a second grand jury indictment against Stapley (*Stapley II*).[23]

[23] *State v. Stapley*, No. CR 2009-007891 Maricopa County Superior Court.

395. Thomas had earlier handed off the investigation of this matter to Yavapai County Attorney Sheila Polk, but Thomas took it back from her in September 2009.

396. The *Stapley II* indictment alleges three areas of conduct upon which the charges were filed: Stapley's use of contributions in his campaign to be elected to an office in the National Association of Counties; obtaining a loan by fraud; and financial disclosure violations.

397. The court dismissed this case on March 15, 2010, on motion of Thomas.

398. Thomas made this motion to dismiss, through deputy county attorney Kittredge, because Judge Leonardo had ruled in the case against Wilcox that Thomas and his office had a conflict of interest in that matter.

399. The motion stated that the State intended to have a special prosecutor review and decide about the prosecution.

400. Before the dismissal, the indictment in *Stapley II* was brought by Thomas as County Attorney and signed by Aubuchon.

401. When the *Stapley II* and *Wilcox* indictments were filed Thomas and Aubuchon had sued Stapley and Wilcox among others in the federal RICO action above. Thomas and Aubuchon brought a criminal case against persons they had sued seeking civil damages.

402. ER 4.4(a) states that in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden any other person.

403. Thomas and Aubuchon violated this rule again in charging Wilcox and Stapley in the second case.

404. There was no substantial purpose to file the charges against each supervisor other than to burden and embarrass each of them.

405. These prosecutions were not done to seek justice but rather to intimidate the supervisors and to pursue the political and personal interests of Thomas.

406. When Thomas filed charges against Supervisor Stapley and against Supervisor Wilcox in December, 2009, Thomas and the Board were involved in three civil lawsuits against each other: 1) the Dec Action; 2) the Sweeps case; and 3) the RICO case.

407. Additionally, Thomas had fought with the Board over the appointment of special prosecutors, and the hiring of Thomas Irvine.

408. Thomas and Aubuchon charged Stapley and Wilcox for no substantial purpose other than to embarrass and burden these two political officials.

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM TWENTY-THREE
ER 1.7(a)(2)
Conflicts of Interest
(Thomas and Aubuchon)

409. All prior factual allegations are incorporated herein.

410. Thomas and Aubuchon violated ER 1.7(a)(2) in bringing charges against Stapley in December 2009.

411. First, they had a concurrent conflict of interest under ER 1.7(a)(2) because they had a pending civil case seeking damages Stapley and others caused Thomas, when they filed criminal charges against Stapley.

412. Second, they had a conflict under ER 1.7(a)(2) for all the above reasons that limited their representation in the RICO action.

413. Thomas and Aubuchon also had a conflict of interest in pursuing criminal charges against Stapley in this second indictment for all the same reasons their bringing the first criminal case against Stapley, and the RICO action naming Stapley was a conflict of interest in violation of ER 1.7(a)(2).

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM TWENTY-FOUR
ER 3.8(a)
Prosecuting a Criminal Charge without Probable Cause
(Thomas and Aubuchon)

414. All prior factual allegations are incorporated herein.

415. Aubuchon and an MCSO investigator filed a criminal case against Judge Donahoe on December 9, 2009.

416. The complaint was signed by Aubuchon and a purported investigator, Gabe Almanza.

417. It charged the judge with hindering, obstruction and bribery.

418. Attached to the complaint was a probable cause statement.

419. The probable cause statement was drafted by Sgt. Brandon Luth directly from a complaint that Chief Hendershott had written to the Judicial Qualifications Committee about Judge Donahoe.

420. There was no investigation in this matter.

421. Aubuchon attempted to file the charges against Judge Donahoe a day earlier on December 8, 2009.

422. Thomas and Aubuchon wanted to file the charges against Judge Donahoe because he had scheduled a hearing for the afternoon of December 9, 2009 regarding a Notice and Motion filed by Thomas Irvine and Edward Novak on behalf of the County. The motion sought an order prohibiting any special deputy county attorneys not approved by MCBOS from appearing before a grand jury.

423. Thomas, Aubuchon, and others, believed that Judge Donahoe would recuse himself from hearing that motion if they filed criminal charges against him.

424. Chief Hendershott of MCSO called Sgt. Rich Johnson about filing a case against Donahoe on the afternoon of December 8, 2009.

425. MCSO Sgt. Brandon Luth and Sgt. Johnson met with MCSO personnel and they called Aubuchon on the afternoon of December 8, 2009, to ask her what was going on and what they needed to charge.

426. Aubuchon stated they needed a Form 4, a DR (departmental report) and a probable cause statement. Aubuchon told Sgt. Luth that they (MCSO personnel) would have to figure out what they were going to charge Judge Donahoe with, "probably hindering, bribery and theft by extortion."

427. Sgt. Luth told Aubuchon they did not have a case put together.

428. Aubuchon knew no investigation had been done to support the criminal charges against Judge Donahoe.

429. Sgt. Luth's orders were to put the case together and get it filed with an Initial Advisement judge that evening.

430. Sgt. Luth said that later in the afternoon of December 8, 2009, he, Aubuchon, and sheriff's deputies Terry Young, Rich Johnson and Chief Hendershott met.

431. Chief Hendershott told them about the racketeering lawsuit, and that they thought Judge Donahoe was going to throw MCAO off all county investigations.

432. Chief Hendershott said that he had met with Thomas, Aubuchon, and Sheriff Arpaio, and that Sheriff Arpaio came up with the idea of charging the judge.

433. Chief Hendershott told Sgt. Luth to use the Chief Hendershott's judicial complaint letter for the Form 4. Chief Hendershott printed off his complaint and wrote the charges on it.

434. Chief Hendershott told them to describe the "benefit" that Judge Donahoe received for his illegal conduct as the Court Tower. In other words, the bribe Judge Donahoe was receiving was a new court building.

435. At about 5:00 p.m. Sgt. Luth took the documents to Aubuchon. She read them. She said that "it worked for her."

436. Aubuchon signed the complaint as Deputy County Attorney.

437. Aubuchon and Thomas knew that no criminal investigation of the charges against Judge Donahoe had occurred.

438. Aubuchon and Thomas knew that there was no factual basis for the charges against Judge Donahoe.

439. Aubuchon attempted to have an investigator from MCAO file the complaint in Superior Court in the late afternoon or early evening of December 8, 2009.

440. No MCAO investigator involved would file the complaint because they had not been involved in the matter.

441. When no MCAO investigator would sign the complaint and "walk it through," Aubuchon turned to the sheriff's office to assist her in filing it.

442. Sgt. Luth refused to file the complaint against Judge Donahoe because he did not want to answer questions by the court about the case when it was filed.

443. The complaint was filed in the morning of December 9, 2009. Detective Gabriel Almanza signed it under oath.

444. Detective Sgt. Luth stated that he told Det. Almanza to sign it, but Det. Almanza had not been involved in drafting the complaint and he had no knowledge as to the truth or falsity of the complaint.

445. The only attorneys in MCAO involved in the drafting of the complaint against Judge Donahoe were Andrew Thomas and Lisa Aubuchon.

446. ER 3.8(a) states that a prosecutor in a criminal case shall refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.

447. Thomas and Aubuchon knew that not one of the charges against Judge Donahoe was supported by probable cause.

448. There was no police or sheriff's investigation into the matter.

449. The basis for the criminal charges was an unsupported judicial complaint written by Chief Hendershott that itself failed to allege any criminal activity and failed to identify any criminal statute.

450. Specifically, there was and is no evidence that Judge Donahoe engaged in bribery, hindrance or obstruction.

451. Aubuchon and Thomas alleged in the criminal complaint that Judge Donahoe violated the bribery statute A.R.S. § 13-2602 which provides:

> Bribery of a public servant or party officer;
>
> A. A person commits bribery of a public servant or party officer if with corrupt intent:
>
> 1. Such person offers, confers or agrees to confer any benefit upon a public servant or party officer with the intent to influence the public servant's or party officer's vote, opinion, judgment, exercise of discretion or other action in his official capacity as a public servant or party officer; or
>
> 2. While a public servant or party officer, such person solicits, accepts or agrees to accept any benefit upon an agreement or understanding that his vote, opinion, judgment, exercise of discretion or other action as a public servant or party officer may thereby be influenced.
>
> B. It is no defense to a prosecution under this section that a person sought to be influenced was not qualified to act in the desired way because such person had not yet assumed office, lacked jurisdiction or for any other reason.
>
> C. Bribery of a public servant or party officer is a class 4 felony.

452. There was no evidence that Judge Donahoe acted with corrupt intent.

453. The probable cause ("PC") statement attached to the complaint does not describe any corrupt intent by Judge Donahoe.

454. At the very worst, the PC statement alleges that Judge Donahoe was "biased" against Sheriff Arpaio; but bias is not evidence of corrupt intent.

455. Further, there is and was no evidence supporting the conclusion that Judge Donahoe was actually biased against the county attorney or the county sheriff.

456. There was no evidence described in the PC statement nor was there any evidence that Judge Donahoe solicited, accepted or agreed to accept any benefit.

457. There is no evidence that Judge Donahoe's position as Presiding Criminal Court Judge was in any jeopardy if he decided issues in a certain manner.

458. There is no evidence that Judge Donahoe desired or sought to maintain a beneficial relationship with Judge Mundell.

459. There is no evidence that Judge Mundell ever communicated with Judge Donahoe about her desires regarding the court tower.

460. Further, there is no evidence that Judge Donahoe had any significant concern about whether the court tower was built.

461. There was no evidence described in the PC Statement nor was there any evidence that Judge Donahoe made a decision or issued a ruling because of a benefit he solicited, accepted or agreed to accept.

462. There was and is no evidence at all, much less probable cause to believe that Judge Donahoe engaged in bribery.

463. Thomas and Aubuchon also charged Judge Donahoe under the hindering statute, A.R.S. § 13-2512, which provides:

> Hindering prosecution in the first degree; classification
>
> A. A person commits hindering prosecution in the first degree if, with the intent to hinder the apprehension, prosecution, conviction or punishment of another for any felony, the person renders assistance to the other person.
>
> B. Hindering prosecution in the first degree is a class 5 felony [except in situations inapplicable here].

464. There was no evidence described in the PC Statement nor was there any evidence that Judge Donahoe hindered the apprehension, prosecution, conviction or punishment of anyone for any felony.

465. The charges against Judge Donahoe do not specify whom he intended to help avoid prosecution, or conviction and for what crime.

466. There was no evidence at all, much less probable cause to believe that Judge Donahoe engaged in hindering.

467. Thomas and Aubuchon charged Judge Donahoe under the obstruction statute, A.R.S. § 13-2409 which provides:

> A person who knowingly attempts by means of bribery, misrepresentation, intimidation or force or threats of force to obstruct, delay or prevent the communication of information or testimony relating to a violation of any criminal statute to a peace officer, magistrate, prosecutor or grand jury or who knowingly injures another in his person or property on account of the giving by the latter or by any other person of any such information or testimony to a peace officer, magistrate, prosecutor or grand jury is guilty of a class 5 felony.

468. There was no evidence described in the PC Statement, nor was there any evidence, that Judge Donahoe attempted to use bribery, misrepresentation, intimidation, force or threats of force to delay or prevent the communication of information about a crime to any peace officer, prosecutor or grand jury.

469. Obstruction requires three people: a defendant [Donahoe]; a law enforcement officer, or other specified official; and another, prospective informant or witness. *Walker v. Superior Court In and For County of Navajo,* 956 P.2d 1246 (Ariz. App. 1998).

470. In order to support probable cause to believe that Judge Donahoe engaged in obstruction, there must have been evidence that Judge Donahoe attempted to prevent some person from communicating with a law enforcement officer or grand jury.

471. There never was any such evidence.

472. There was no prospective informant or witness whom he was preventing from communicating to anyone.

473. Furthermore, Judge Donahoe's quashing of the grand jury subpoena did not prevent the communication of any information to law enforcement.

474. Thomas and Aubuchon knew that the charges against Judge Donahoe were not supported by probable cause.

475. The charges were filed for improper and unlawful reasons.

476. Thomas and Aubuchon violated ER 3.8(a).

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM TWENTY-FIVE
ER 4.4(a)
Filing Charges against Judge Donahoe to Burden, Delay and Embarrass
(Thomas and Aubuchon)

477. All prior factual allegations are incorporated herein.

478. ER 4.4(a) states that in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden any other person.

479. Thomas's and Aubuchon's purpose in charging Judge Donahoe was to burden or embarrass him in an effort to force him to remove himself from the matter he was handling the afternoon of December 9, 2010.

480. Thomas's and Aubuchon's purpose was also to burden and embarrass Judge Donahoe in retaliation for judicial decisions that Thomas and Aubuchon did not like and did not agree with.

481. Thomas and Aubuchon violated ER 4.4(a).

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM TWENTY-SIX
ER 8.4(c)
Conduct Involving Dishonesty and Fraud
(Thomas and Aubuchon)

482. All prior factual allegations are incorporated herein.

483. Aubuchon signed the complaint unlawfully charging Judge Donahoe with three felonies.

484. Aubuchon and Thomas knew that the charges against Judge Donahoe were false and that they were brought without the benefit of any investigation or evidence. Aubuchon arranged for a Deputy Sheriff, Gabe Almanza, to sign the criminal complaint under oath.

485. By doing so Aubuchon engaged in dishonesty, misrepresentation, deceit and fraud in violation of ER 8.4(c).

486. Thomas had direct knowledge of what Aubuchon was doing evidenced at least by his press release announcing that Judge Donahoe had been charged.

487. Thomas also knew because MCAO Chief of Investigators Stribling talked to Thomas about the filing of the charges the night before they were filed.

488. Thomas also engaged in dishonesty by approving and ratifying Aubuchon's filing of false charges, and he thereby violated ER 8.4(c).

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM TWENTY-SEVEN
ER 8.4(b)
Engaging in Criminal Conduct
(Thomas and Aubuchon)

489. All prior factual allegations are incorporated herein.

490. ER 8.4(b) states that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

491. Thomas and Aubuchon engaged in perjury, a criminal act that reflects adversely on their honesty, trustworthiness or fitness as a lawyer.

492. Perjury is defined by A.R.S. § 13-2702:

> A. A person commits perjury by making either:
>
> > 1. A false sworn statement in regard to a material issue, believing it to be false.
> >
> > 2. A false unsworn declaration, certificate, verification or statement in regard to a material issue that the person subscribes as true under penalty of perjury, believing it to be false.
>
> B. Perjury is a class 4 felony.

493. On December 9, 2009, Thomas and Aubuchon knew that the criminal complaint against Judge Donahoe was to be filed in Superior Court.

494. Thomas and Aubuchon knew that the complaint was to be signed by Detective Gabriel Almanza under oath.

495. Thomas and Aubuchon knew that Detective Almanza would be swearing to facts and allegations against Judge Donahoe that were false.

496. Thomas and Aubuchon knew that Detective Almanza signed the complaint against Judge Donahoe that was false and they knew that it was filed in Superior Court.

497. Such complaint was a "sworn statement" as defined by A.R.S. § 13-1701.

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

499. Thomas and Aubuchon violated ER 8.4(b).

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM TWENTY-EIGHT
ER 8.4(B)
Engaging in Criminal Conduct
(Thomas and Aubuchon)

500. All prior factual allegations are incorporated herein.

501. Thomas and Aubuchon also violated ER 8.4(b) by engaging in conduct that violated a federal criminal statute, 18 U.S.C. § 241.

502. That statute provides in pertinent part:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; . . .
>
> They shall be fined under this title or imprisoned not more than ten years, or both.

503. Thomas and Aubuchon conspired with each other and with others to injure, oppress, threaten or intimidate Judge Donahoe in the free exercise of his First Amendment rights to freedom of speech, a right or privilege secured to him by the U.S. Constitution and laws of the U.S., or they did so injure, oppress, threaten or intimidate Judge Donahoe because he had exercised his right to freedom of speech.

504. Thomas and Aubuchon also conspired with each other and with others to injure oppress, threaten or intimidate Judge Donahoe in the free exercise of his constitutional right to engage in his profession and do his job as a judge.

505. The intent of Thomas, Aubuchon and others was to muzzle Judge Donahoe so that he would not rule on the motion scheduled for hearing on the afternoon of December 9, 2009.

506. By conspiring with each other and with others to charge Judge Donahoe with a crime unsupported by any evidence, Thomas and Aubuchon violated 18 U.S.C. § 241, and therefore they each violated ER 8.4(b).

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM TWENTY-NINE
ER 1.7(a)(2)
Conflicts of Interest
(Thomas and Aubuchon)

507. All prior factual allegations are incorporated herein.

508. Thomas and Aubuchon violated ER 1.7(a)(2) in bringing charges against Judge Donahoe.

509. First, they had a concurrent conflict of interest because they had a pending civil case against Judge Donahoe, among others, seeking damages caused to Thomas at the time they then filed charges against Judge Donahoe.

510. Second, they had a concurrent conflict of interest because Judge Donahoe had ruled against them in disqualifying MCAO from the Court Tower grand jury matter and quashing the subpoena.

511. Their personal animosity toward Judge Donahoe based upon his judicial decisions limited their representation and judgment as attorneys for the State.

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM THIRTY
ER 8.4(d)
Conduct Prejudicial to the Administration of Justice
(Thomas and Aubuchon)

512. All prior factual allegations are incorporated herein.

513. Thomas and Aubuchon engaged in conduct prejudicial to the administration of justice in violation of ER 8.4(d) by charging Judge Donahoe with

crimes in order to compel him to recuse himself from the pending motion scheduled to be heard December 9, 2009.

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM THIRTY-ONE
ER 1.7(a)(2)
Conflicts of Interest
(Thomas and Aubuchon)

514. All prior factual allegations are incorporated herein.

515. On January 4, 2010, Aubuchon began a presentation to the Grand Jury about two areas: 1) allegations that Stephen Wetzel, Andrew Kunasek and Sandi Wilson had illegally used public monies on two separate occasions to conduct sweeps for electronic listening devices at county offices; and 2) allegations that Judge Donahoe, Thomas Irvine and County Manager David Smith had illegally conspired to hinder prosecution and obstruct a criminal investigation involving the court tower.

516. Testimony was taken on January 4, 2010.

517. There were only two witnesses, Detective Halverson and Chief Hendershott.

518. After the testimony, the Grand Jury asked Aubuchon for a draft indictment. Aubuchon provided a draft indictment, but the Grand Jury did not reach any conclusion.

519. In the meantime, Judge Donahoe requested and received a stay on the prosecution against him.

520. On February 26, 2010, Judge Leonardo disqualified MCAO from prosecuting the case against Mary Rose Wilcox.

521. On March 3, 2010, Aubuchon appeared in front of the Grand Jury.

522. She advised them of the stay in the Donahoe matter and of the disqualification in the Wilcox case.

523. She asked that the Grand Jury return the bug sweep and court tower matters to MCAO so that when a special prosecutor was found, that prosecutor could make a determination how to proceed.

524. The Grand Jury asked for advice as to how it could proceed. The Grand Jury was advised that they could ask for a draft indictment, end the inquiry, or call for more witnesses or evidence.

525. The Grand Jury voted to end the inquiry.

526. The term "end the inquiry" was defined to the Grand Jury in instructions given to it earlier.

527. In March 2010, Gila County Attorney Daisy Flores agreed to review the *Wilcox* and *Stapley II* matters which had been dismissed by MCAO.

528. On April 1, 2010, Thomas announced his resignation as County Attorney which he stated was effective April 6, 2010.

529. On April 2, 2010, Aubuchon sent Ms. Flores a letter, memorandum and departmental report about the bug sweep investigation.

530. Aubuchon wrote in her memo that the matter was presented to the county grand jury as part of an overall investigation into local corruption.

531. Aubuchon wrote that the grand jurors had not finished deliberating on an indictment when a judge entered a stay as to one of the suspects, Judge Donahoe.

532. Aubuchon stated that she asked the grand jurors to stop considering the matter until that issue was resolved.

533. She wrote further that her office was found to have a conflict in the Mary Rose Wilcox case and that the office decided to dismiss the matters relating to the other county officials.

534. She said that if Ms. Flores decided to go forward with the charges, parts of the grand jury presentation may need to be accessed or disclosed after court order as it was all in a sealed grand jury proceeding under number 494 GJ 156, January 4, 2010.

535. Aubuchon failed to tell Ms. Flores that, in fact, the grand jury had voted to end the inquiry.

536. Thomas and Aubuchon violated ER 1.7(a)(2) in pursuing this grand jury investigation of Judge Donahoe, Thomas Irvine, Andrew Kunasek, David Smith and Sandi Wilson.

537. Thomas and Aubuchon had a concurrent conflict of interest because they had filed a pending civil RICO case against the individuals named in the paragraph above seeking damages caused to Thomas, and then they pursued a criminal investigation of them.

538. Thomas and Aubuchon had a conflict of interest for all the same reasons noted above that limited her representation in the RICO action. *See* Claim Fourteen above.

539. Additionally, Thomas's and Aubuchon's representation of the State was limited by their personal animosity toward these individuals, in violation of ER 1.7(a)(2).

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

CLAIM THIRTY-TWO
ER 8.4(c)
Engaging in Conduct Involving Dishonesty, Misrepresentation, Fraud or Deceit
(Thomas and Aubuchon)

540. All prior factual allegations are incorporated herein.

541. Aubuchon should never have disclosed to Ms. Flores any matters attendant the grand jury.[24]

542. However, once she did so, she had to be honest about what she revealed. Aubuchon engaged in dishonesty and misrepresentation in violation of ER 8.4(c) because she knowingly failed to tell Ms. Flores that the grand jury had voted to end the inquiry.

543. Given that Aubuchon had told Ms. Flores that she had presented matters to the grand jury concerning local corruption, her failing to inform Ms. Flores that the grand jury had ended the inquiry was misleading and dishonest.

544. By such conduct Aubuchon violated ER 8.4(c).

WHEREFORE, Independent Bar Counsel requests relief at the conclusion hereof.

[24] A.R.S. § 13-2812 criminalizes disclosure of matters attendant a grand jury proceeding unless a court order permits one to do so.

CLAIM THIRTY-THREE
Rules 53(d) and 53(f)
Failure to Cooperate
(Thomas, Aubuchon and Alexander)

545. All prior factual allegations are incorporated herein

546. The screening investigations in the matters leading to this complaint were begun on about April 12, 2010.

547. Notice of these investigations was given to each respondent pursuant to Rule 54(b)(2) then in effect.

548. As more specifically described below, each of the respondents did not cooperate with these investigations as required pursuant to Rules 53(d) and 53(f).

549. Rule 53(d) (now Rule 54(d)) provides that it is grounds for discipline for a lawyer to refuse cooperate with officials and staff of the state bar. As more specifically described below the respondents refused to cooperate with Independent Bar Counsel by filing meritless, frivolous and dilatory motions and special actions.

550. Each of the respondents filed frivolous and meritless motions intended to delay, obstruct and burden the process of the screening investigations.

551. The respondents filed the following motions with the Probable Cause Panelist, all of which were denied:

a.) May, 5, 2010, Joint Motion for Temporary Restraining Order, filed by all respondents

b.) May 20, 2010, Joint Motion to Dismiss Charges, filed by all respondents;

c.) May 20, 2010, Joint Motion for Repudiation of State Bar of Arizona's Pending Threat Against Lawyers Acting on Behalf of the Investigative Subjects and Motion for Immunity from Bar Complaints for Lawyers Acting on behalf of Investigative Subjects, filed by all respondents;

d.) May 20, 2010, Joint Motion to Dismiss or Stay Pending Proceedings Based upon Illegal Initiation of Bar Investigation; filed by all respondents;

e.) May 21, 2010, Motion for Protective Order, filed by Aubuchon;

f.) May 27, 2010, Motion for Protective Order, filed by all respondents;

g.) June 9, 2010, Motion for Reconsideration of Panelist's Order Denying Respondent's Motion for Probable Cause [sic] and Reply in support of Motion for Probable Cause [sic]; filed by Thomas and Alexander;

h.) July 8, 2010, Motion for Protective Order and Request to Seal Pursuant to Rule 70(g) Arizona Supreme Court Rules; filed by Aubuchon;

i.) July 23, 2010, Response to Panelist's Order (asking for clarification), Thomas only;

j.) August 5, 2010, Joint Motion in Support of Maricopa County Sheriff's Motion to Intervene, filed by all respondents.

552. The respondents filed the following motions and actions in the Supreme Court all of which the Court denied or declined to take jurisdiction:

a.) June 25, 2010, Motion to Reverse Panelist's Ruling Regarding Dismissal, filed by Thomas and Alexander;

b.) June 25, 2010, Motion to Reverse Panelist's Ruling Regarding Illegal Initiation of Bar Complaint, filed by Thomas and Alexander;

c.) June 25, 2010, Motion to Reverse Panelist's Ruling Regarding Repudiation of Threat, filed by Thomas and Alexander;

d.) July 1, 2010, Petition for Special Action to Reverse Panelist's Ruling Regarding Motion to Dismiss for Illegal Initiation, filed by all respondents;

e.) July 1, 2010, Petition for Special Action to Reverse Panelist's Ruling Regarding Repudiation of Threat, filed by all respondents;

f.) July 1, 2010, Petition for Special Action to Reverse Panelist's Ruling Regarding Motion to Dismiss for lack of a Complaint, filed by all respondents;

g.) July 12, 2010, Petition for Special Action to Reverse Panelist's Ruling Regarding Extension of time to Respond to Charges, filed by all respondents (Alexander withdrew her Petition on July 27, 2010);

h.) August 21, 2010, Petition for Special Action to Reverse Panelist's Ruling Regarding Motion for Protective Order, filed by Aubuchon.

553. By filing the above motions and special actions each of the respondents failed to cooperate with the screening investigations as required by Rule 53(d).

554. Rule 53(f) provides that it is grounds for discipline for a lawyer to fail to furnish information or fail to respond promptly to any inquiry or request from Bar Counsel (in this case Independent Bar Counsel). By their conduct each respondent violated Rule 53(f) by failing to promptly respond to an inquiry from Independent Bar Counsel.

555. At some point each respondent did send to Independent Bar Counsel a letter which was in response to Independent Bar Counsel's screening investigation letters; however, not one of the respondents has fully and forthrightly answered the allegations against him or her in these matters. Instead, each of them has asserted broad privileges which prevent them from fully answering the allegations. None of the assert privileges has been upheld when made in front of the probable cause panelist or the Supreme Court.

556. Each of the respondents has violated Rule 53(d) and 53(f).

WHEREFORE, Independent Bar Counsel prays that the respondents be found to have engaged in misconduct under the Rules of the Arizona Supreme Court and the Arizona Rules of Professional Conduct as specified above; that respondents be appropriately disciplined for such misconduct; that respondents be required to take

any other remedial action appropriate under the circumstances; and that respondents be assessed the full costs of this proceeding.

RESPECTFULLY SUBMITTED this ___ day of February 2011.

STATE BAR OF ARIZONA

/s/ John S. Gleason

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Chief Justice Order No. 2010-14
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