BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **APRIL ARLENE SPONSEL,** **Bar No. 023009** **Respondent.**	**PDJ 2023-9018** **DECISION AND ORDER IMPOSING SANCTIONS** [State Bar Nos. 20-2562, 21-0796, 21-1824] **FILED DECEMBER 19, 2023**

At issue in these proceedings is the two-count Complaint the State Bar of Arizona filed on March 8, 2023 against Respondent April Arlene Sponsel. An evidentiary hearing was held on October 3, 2023, October 5, 2023, October 10, 2023, October 16, 2023, October 20, 2023, October 23, 2023, and October 24, 2023. The hearing panel was comprised of Presiding Disciplinary Judge Margaret H. Downie, attorney member Mark S. Sifferman, and public member Randall Clark. The State Bar was represented by Craig D. Henley and Stacy L. Shuman. Ms. Sponsel was present and was represented by Ernest Calderón and Marc Echeveste.

Exhibits consisting of more than 8100 pages of documents and numerous videos were received into evidence, and the following individuals testified at the hearing:

- Patrick J. McGroder IV
- Bruce Walker
- Jacob Faussette
- Keith Vercauteren
- Ryan Green
- James Hester
- Diane Meshkowitz
- Edward Leiter

- Vinson Goddard
- Rachel Mitchell
- Paul Ahler
- Katie Gipson-McLean
- Kenneth Vick
- Heather Livingstone
- Amy Kaper
- Ryder Collins
- Christopher Dupont
- Justice Rebecca White Berch (Ret.)
- Shannon Peters
- Sherry Leckrone
- April Arlene Sponsel
- Judge Sherry Stephens (Ret.)
- Nicholas Michaud
- Judge Laura Reckart (Ret.)
- Larry Davis
- Paul Charlton
- Benjamin Moore
- Scott Krassow
- Clint Davis
- Gina Godbehere

The parties agreed to file written closing arguments, which were fully submitted as of November 20, 2023. Having considered the record before it, the hearing panel issues the following findings of fact, conclusions of law, and sanction in the form of a two-year suspension from the practice of law based on the ethical violations found as to Count Two of the State Bar's Complaint.

FINDINGS OF FACT

1. Ms. Sponsel was admitted to the State Bar of Arizona on May 12, 2004. She worked as a Deputy County Attorney (DCA) with the Maricopa County Attorney's Office (MCAO) from the time of her admission until March 2, 2021, when she was placed on

administrative leave.[1] MCAO terminated Ms. Sponsel on June 28, 2022, citing "a disturbing pattern of excessive charging and a failure to review available evidence." Some of the conduct that prompted Ms. Sponsel's termination is at issue in Count Two of the State Bar's Complaint.

COUNT ONE

2. Count One relates to Ms. Sponsel's prosecution of two separate cases in the Maricopa County Superior Court: *State v. Allen Burns*, CR2014-120355, and *State v. Tina Martin and Donald Rourke*, CR2016-005919. Allen Burns was charged with shoplifting in 2014. Tina Martin and Donald Rourke were charged with conspiracy to commit first degree murder in 2016. Although the two cases are substantively distinct, the common denominator is the involvement of Allen Burns.

3. Mr. Burns served as a confidential informant (CI) for a joint federal/state task force comprised of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Mesa Police Department. On December 7, 2014, he signed an "Informant Agreement," agreeing to "meet [with] individuals to discuss the future murders of specific targets as detailed by Warrior Society. And possible related criminal activities, as directed by the ATF." Donald Rourke was reportedly a high-ranking member of the Warrior Society (a Native American prison gang), and Allen Burns was also a member.

[1] An earlier date appears in portions of the record, but multiple exhibits, the testimony of Rachel Mitchell, and Ms. Sponsel's own statements establish that her administrative leave began on March 2, 2021.

Mr. Burns' CI work formed the basis for the criminal charges that were filed against Ms. Martin and Mr. Rourke.[2]

Burns State Shoplifting Prosecution

4. While Mr. Burns was defending the state shoplifting charges filed on June 20, 2014, he was also being prosecuted for escape in the United States District Court for the District of Arizona (*United States v. Allen Burns*, CR-14-00064-PHX-SRB). Mr. Burns was in federal custody when the shoplifting charges were filed. Attorney Patrick J. McGroder IV represented him in the state court proceedings.

5. Convenience store clerks could not identify Mr. Burns as the person participating in the multiple "beer runs" that were at issue in the shoplifting case, and much of the store surveillance video was of poor quality. Although Mr. Burns was identifiable in one video, the pending charges required proof of multiple incidents of shoplifting. After staffing the case with her supervisor, Ms. Sponsel decided in August of 2014 that the shoplifting charges should be dismissed due to concerns about identification. She later documented this decision in the case file.

6. On August 27, 2014, a plea agreement was lodged in Mr. Burns' federal case that included the following language:

> The United States has conferred with the Maricopa County Attorney's Office who will dismiss the Maricopa County Superior Court Case # CR 2014-129355 as part of this plea agreement at the time of sentencing.

[2] Mr. Burns also participated in a "free talk" with federal authorities and signed a Proffer/Interview Agreement in April of 2014 relating to other matters.

Ms. Sponsel has consistently maintained that, although she knew Mr. Burns had ongoing federal criminal proceedings that were to be finalized before the state charges were resolved, she never agreed to dismiss the shoplifting charges as part of the federal plea agreement and was unaware of the above-quoted term until 2018, when it became an issue in the Rourke/Martin prosecution. There are no written communications between Ms. Sponsel and federal authorities about dismissing the state shoplifting charges as part of the federal plea agreement, and no witness testified at the disciplinary hearing about any such written or oral communications. The record is silent about how the language at issue came to be included in the federal plea agreement.

7. On November 24, 2014, the district court authorized Mr. Burns' release from federal custody. He remained in state custody, though, pending resolution of the shoplifting case. On the same day Mr. Burns was released to state authorities, Mr. McGroder emailed Ms. Sponsel and the superior court in an attempt to arrange a hearing to resolve the shoplifting case, stating:

> I've spoken with the prosecutor April Sponsel and she wanted me to arrange a hearing so we can get this matter resolved tomorrow. Without going into much detail, time is of the essence in this case. The matter tomorrow should not take more than 5 minutes. Please let me know ASAP if you can fit us in or if another judge can. Thank you.

Within minutes of receiving this email, Ms. Sponsel responded to Mr. McGroder as follows:

> I just spoke with [Mesa Police] Det. Krassow and they will not be ready for [Mr. Burns] to be released until Dec 8th so please set it after that. Thanks.

Ms. Sponsel explained that task force agents wanted Mr. Burns to remain in custody for his own safety. Mr. McGroder subsequently spoke with several individuals and concluded there were in fact credible threats against Mr. Burns' life. He did not object to delaying resolution of the shoplifting case or to keeping his client in custody.

8. On December 4, 2014, an MCAO coverage attorney appeared in court on behalf of Ms. Sponsel and moved to dismiss Mr. Burns' shoplifting case without prejudice. The court granted the motion.

9. Almost five years later, when Mr. Burns' federal plea agreement became an issue in the Rourke/Martin case, Ms. Sponsel telephoned Mr. McGroder to discuss the shoplifting case. Mr. McGroder thereafter sent her an email, stating:

> After our brief conversation today, I wanted to follow-up regarding our discussion of the matter involving Mr. Burns. As you explained to me, based on your memory, you believed Mr. Burns' 2014 Maricopa County criminal matter was dismissed due to lack of identification. I clarified for you that this was not the correct reason for the dismissal. Ms. Sponsel, you also indicated you spoke with Detective Caruso, I would suggest following up with United States Attorney Keith Vercauteren for more details regarding this case and to affirm the original reasons for the dismissal.

This email, as well as Mr. McGroder's hearing testimony, is consistent with a decision to wait for the federal proceedings to conclude before resolving the shoplifting case. They do not establish Ms. Sponsel's awareness in 2014 of the disputed plea agreement term or prove that she misrepresented the reasons for dismissing Mr. Burns' shoplifting charges.

10. The task force's investigation into the alleged Rourke/Martin murder plot began – at the earliest -- on November 28, 2014, when an ATF agent began reviewing Mr.

Rourke's social media posts. It was not until December 7, 2014 that law enforcement understood some of Mr. Rourke's posts to include code talk for committing a murder in Arizona.

11. There is no clear and convincing evidence Ms. Sponsel agreed to dismiss the state shoplifting case as part of the federal plea agreement or knew such a provision appeared in that agreement until it became an issue in the Rourke/Martin litigation. And as noted *supra*, the federal plea agreement was lodged months before the task force began investigating the alleged murder plot by Mr. Rourke and Ms. Martin.

12. There is no clear and convincing evidence Mr. Burns suffered harm as a result of any delay attributable to Ms. Sponsel in resolving his shoplifting case. He was in federal custody until late November, and he did not seek release during the ten days he spent in state custody. Although Ms. Sponsel acknowledges that, in hindsight, she might have advised the court sooner of her decision to dismiss the shoplifting case, the hearing panel finds no clear and convincing evidence that she intended to mislead or prejudice anyone.

Rourke/Martin Prosecution

13. Mr. Rourke and Ms. Martin were indicted for conspiracy to commit first degree murder on November 17, 2016. Ms. Martin was arrested and extradited to Arizona in January of 2017. Mr. Rourke was extradited to Arizona in June of 2017.

14. The State Bar's Complaint focuses on Ms. Sponsel's level of compliance with discovery/disclosure obligations in the Rourke/Martin litigation and with court orders issued in those proceedings – primarily those pertaining to Allen Burns.

15. Ms. Sponsel testified that, during her prosecution of Mr. Rourke and Ms. Martin, she did not realize for some time that the confidential informant who was assisting the joint task force was the same individual she had briefly prosecuted for shoplifting in 2014. The hearing panel found this testimony to be credible.

16. As the case progressed, defense counsel began working collaboratively because their clients' interests were aligned. (Ms. Martin is Mr. Rourke's mother.) Early requests and disclosures by both sides were "pro forma," with the expectation more detailed information would be forthcoming.

17. The record includes documentation of disclosures Ms. Sponsel made about Mr. Burns to defense counsel beginning in early 2017, including jail calls, video and audio recordings, and surveillance video. Discovery and disclosure did not begin in earnest, though, until months later -- in part due to the illness and death of one of Ms. Martin's original lawyers. At times, Ms. Sponsel had to provide information to successor counsel that she had already given to the defense.

18. Between September 2018 and June 2020, defense attorneys filed four motions to compel production/disclosure of information. At times, the superior court ordered Ms. Sponsel to obtain and provide information and characterized her compliance with disclosure obligations as incomplete. On other occasions, the court found she had complied or substantially complied and voiced concerns about defendants' diligence in seeking certain information. The court also denied some defense requests for information.

19. Before the court issued any orders, Ms. Sponsel took the position the State had no duty to disclose certain information about Mr. Burns because she did not intend to call him as a witness and because the State did not have "physical control over nor access to the confidential informant's file." She cited court rules and caselaw in support of her position. Ms. Sponsel also argued the State had complied with its disclosure obligations under *Brady v. Maryland*, 373 U.S. 83 (1963) (duty to disclose exculpatory information) and *Giglio v. United States,* 405 U.S. 150 (1972) (duty to disclose witness impeachment information). Although the court disagreed with some of Ms. Sponsel's arguments, such disagreement does not, standing alone, establish an ethical violation.

20. The legal and factual merit of Ms. Sponsel's arguments was for the superior court to decide. The hearing panel's focus is on the charged ethical violations, which present qualitatively different questions and considerations. As the PDJ stated in an order denying the parties' cross-motions for partial summary judgment as to Count One:

> The substantive correctness of the superior court's rulings is not before the hearing panel. Nor are the court's rulings subject to collateral attack or *de novo* review in these attorney discipline proceedings. Once the superior court issued its orders, Respondent was bound to follow them or challenge the orders through appropriate legal channels. *See, e.g.,* Rule 54(c) (knowing violation of an order of the court is grounds for discipline); *The Florida Bar v. Gersten*, 707 So. 2d 711, 713 (Fla. 1998) ("An attorney is not permitted to ignore and refuse to follow a court order based upon his personal belief in the invalidity of that order."). *Before* the court issued its orders, though, the calculus was different under ER 3.4(c), which permits a lawyer to decline to take action based on a good faith belief that rules of the tribunal impose "no valid obligation" on him or her.

21. When defense counsel sought information that was available from non-federal sources, Ms. Sponsel was generally responsive. For example, she disclosed

information about Mr. Burns that she obtained from the Salt River Pima-Maricopa Indian Community Court, even though she testified tribal records would not normally be within the State's control. After defense lawyers orally requested missing pages from law enforcement reports, Ms. Sponsel provided the documents a few weeks later, advising that she had just received them and that they were, in any event, unrelated to Mr. Rourke and Ms. Martin.

22. An issue also arose about the State's incomplete disclosure of Mr. Burns' criminal history. Ms. Sponsel, though, testified without contradiction that she reviewed his criminal record in the NCIC database, which did not include a federal conviction for assault. Upon learning of the assault conviction, she contacted AUSA Keith Vercauteren for verification and then filed an amended "Notice of Witness Priors."

23. Ms. Sponsel encountered substantial difficulty in obtaining information about Mr. Burns from federal authorities. She did not know precisely what information existed in the federal system. Hearing witnesses explained that federal authorities are reluctant to share information with state authorities or disclose information about confidential informants.[3] The hearing evidence also established that state courts lack

[3] In apparent recognition of this reality, the superior court stated the following in one of its rulings:

> In the Under Advisement Ruling dated March 15, 2019, the Court addressed at some length the issues created by the State's lack of formal authority over ATF. In that order the Court acknowledged that the Justice Department has no legal obligation to respond to a state prosecutor's request for voluntary disclosure in connection with a case to which the United States is not a party. Kwan Fai Mak v. F.B.I., 252 F.3d 1089, 1091-92 (9th Cir. 2001). The applicable Justice Department regulation requires,

authority to order federal authorities to produce information, and state prosecutors cannot obtain federal information by making a "general request for everything." They must instead specifically identify the information being sought. Articulating a specific request is challenging, of course, when a prosecutor does not know what information federal authorities possess and cannot make that determination via state agents. Ms. Sponsel attempted to obtain Burns-related information from Mesa Police Department Detective Scott Krassow, who was a member of the joint task force. Detective Krassow testified, though, that ATF kept most of the documentation about Mr. Burns, and he did not have access to ATF records and evidence. Detective Krassow gave Ms. Sponsel the information he possessed, and nothing in the record establishes that she failed to share that information with the defense.

24. Ms. Sponsel made numerous attempts to obtain information from federal authorities in an effort to comply with the court's orders, including the following:

- On December 10, 2018, at Ms. Sponsel's request, MCAO Law Enforcement Liaison Keith D. Manning wrote to the ATF, formally requesting a copy of Burns' CI file. This letter has been described as a "*Touhy*" request. *See United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). A *Touhy* request is used to obtain official federal information for litigation purposes when the

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among other things, a "demand" for information through issuance of authorized state-law process. 28 C.F.R. § 16.22(a). A request from a state prosecutor may not suffice, even if a state court has ordered the prosecutor to make the request.

At one point, Ms. Sponsel sent a subpoena to ATF, which the agency declined to honor.

federal government is not a party to the litigation. The same day Mr. Manning sent his letter, Ms. Sponsel notified ATF's counsel of the request.

- Ms. Sponsel met with ATF Special Agent David Byrd and ATF Senior Attorney Advisor Brian G. Larson on January 7, 2019. Thereafter, she received a January 9, 2019 letter from Mr. Larson detailing Mr. Burns' involvement as a CI, which she provided to the court and defense counsel on January 16, 2019.
- Ms. Sponsel contacted a federal case agent on March 19, 2019, in an attempt to obtain information the defense had requested about Mr. Burns' work as a federal CI on two unrelated cases. Limited information was received in response, which she provided to defense counsel.
- Ms. Sponsel communicated with AUSA Vercauteren in June and July of 2019 about: (1) documents Mr. Burns had signed; and (2) sealed records from the federal proceedings. Mr. Vercauteren requested follow-up information, which Ms. Sponsel promptly provided. Mr. Vercauteren then filed a motion to unseal documents. Once the federal court granted the motion, he sent the unsealed documents to Ms. Sponsel, and she forwarded them to defense counsel. Ms. Sponsel also kept defense attorneys apprised of ongoing efforts to unseal the federal court documents.
- On August 21, 2019, Ms. Sponsel wrote to ATF personnel and Detective Krassow, requesting documents and information the superior court had

ordered her to obtain. She identified nine categories of information and posed extensive questions regarding each category.

- In early September 2020, Ms. Sponsel again contacted AUSA Vercauteren in an attempt to obtain items the court had ordered her to disclose in August. She also subpoenaed Mr. Burns' tax records because the defense had requested them, notwithstanding a prior court order that the State was not responsible for obtaining tax-related information about Mr. Burns. The Internal Revenue Service and Arizona Department of Revenue refused to honor the subpoenas.

25. Just as defense counsel grew frustrated with what they characterized as a "slow trickle" of information from the State, Ms. Sponsel became frustrated by federal authorities' production of what she believed to be complete, responsive information, only to later learn there was more. During the interview of an ATF agent in April of 2020, for example, it was discovered that federal agents kept a record of contacts with Mr. Burns in so-called "N-Force" logs. The superior court had previously ordered production of "a log of contacts between Mr. Burns and his handlers that memorializes/paraphrases what Burns said." Ms. Sponsel testified that she had no prior knowledge of the N-Force logs, and Detective Krassow testified that, despite being a member of the joint task force, he did not know what an N-Force log was. Moreover, Ms. Sponsel had previously been advised by both federal and state law enforcement sources that no undisclosed logs existed, and the *Touhy* letter sent more than a year before had not elicited this information. In a similar vein, ATF's counsel appeared to disclose all benefits Mr. Burns

had received as a CI in his January 9, 2019 letter. Later, though, it was discovered Mr. Burns had received additional benefits. There is no evidence Ms. Sponsel knew the information ATF initially provided was inaccurate or incomplete. On the contrary, the record includes an August 26, 2019 email from ATF's lawyer explaining the agency's failure to initially disclose all benefits Mr. Burns received. Ms. Sponsel provided this updated information to defense counsel the day after she received it.

26. An issue also arose when the court discussed a "5K1.1" statement from Mr. Burns' 2014 federal court prosecution. Ms. Sponsel and her supervisor – both of whom were experienced state court prosecutors – had never heard of a 5K1.1 statement, which relates to downward sentencing departures in the federal system and has no counterpart in the state courts. Federal authorities had not previously identified the existence of a 5K1.1 statement. In a court filing, Ms. Sponsel explained:

> The documents provided by the [United States Attorney's] office did not include the 5k1.1 document. Up until the July 17, 2019 minute entry, undersigned counsel was not aware of that . . . document or the potential relevance of such a document. The State has now requested that document and is awaiting receipt of that document as a motion to unseal needs to be filed by the assigned [Assistant United States Attorney]. Upon receipt of that document the State will disclose it to the defendants.

After the federal court issued an order unsealing the 5K1.1 statement for limited purposes, Ms. Sponsel provided it to defense counsel.

27. At times, the defense asked to the court to order the disclosure of information Ms. Sponsel had already provided. After she sent missing police report pages and Mr. Burns' updated criminal history, for example, defendants sought to compel production of these same items. They also continued to seek Mr. Burns'

shoplifting file even after the court found that, "[t]he motion to dismiss in CR2014-129355 . . . has been disclosed along with the rest of the County Attorney's file." The hearing panel does not ascribe ill intent to any of the attorneys. But it is clear that discovery and disclosure disputes were protracted, heavily litigated, and a moving target at times.

28. The superior court ultimately granted defendants' "Motion for Dismissal as Sanction for Discovery Violations" in November of 2020. The charges against Mr. Rourke and Ms. Martin were dismissed with prejudice.

29. The superior court's role in analyzing and ruling on disclosure issues and the motion to dismiss differs materially from the hearing panel's task of adjudicating the ethical violations alleged in Count One. As expert witness Paul Charlton explained, it may be legally appropriate for a court to dismiss criminal charges, notwithstanding a prosecutor's good faith conduct. And in a different (but analogous) context, our supreme court has discussed the difference between prosecutorial error and ethical misconduct:

> When reviewing the conduct of prosecutors in the context of "prosecutorial misconduct" claims, courts should differentiate between "error," which may not necessarily imply a concurrent ethical rules violation, and "misconduct," which may suggest an ethical violation. For purposes of evaluating the merits of a "prosecutorial misconduct" claim, any finding of error or misconduct may entitle a defendant to relief, but courts should not conflate that inquiry with the collateral issue of a prosecutor's ethical culpability.

In re Martinez, 248 Ariz. 458, 470 (2020).

30. The hearing panel finds no bad faith, dishonest, contemptuous, or intentionally dilatory conduct by Ms. Sponsel in the Rourke/Martin prosecution and

finds that any delays in providing information or submitting court filings do not rise to the level of ethical misconduct.

COUNT TWO

31. MCAO created the First Responders Bureau (FRB) in early 2020 to, among other things, charge and prosecute cases in which first responders were alleged to be victims of crimes.[4] Ms. Sponsel was assigned to the FRB as one of four line-attorneys. DCA Sherry Leckrone was the FRB Bureau Chief, and DCA Vince Goddard was the Division Chief who oversaw the FRB. In addition to the attorneys, the FRB was staffed by paralegals, secretaries, and an investigator.

32. On May 25, 2020, an African-American man named George Floyd was killed by police officers in Minneapolis, Minnesota. That same day, an African-American man named Dion Johnson was fatally shot in Phoenix by an Arizona Department of Public Safety officer. Thereafter, protests occurred nationwide, and MCAO received hundreds of charge submittals from law enforcement arising out of local protests.

33. During the summer of 2020, MCAO and members of law enforcement planned how to deal with the protests and discussed whether felony charges could be filed against protesters. Ms. Sponsel was involved in some of these communications and made at least one presentation to law enforcement on the subject. Ms. Sponsel also worked with the Phoenix Police Department (PPD) to prepare a template for Form IVs and other charging documents to be used in protester cases. Form IVs are completed by

[4] The FRB was disbanded in 2021.

police officers and typically include a detailed probable cause statement outlining the alleged criminal conduct.

34. Before the FRB was created, MCAO had routinely referred protester cases to the municipal courts for consideration of misdemeanor charges.

35. Ms. Sponsel has avowed in civil litigation she filed after her termination by MCAO that she offered to take the lead on any protester cases submitted for felony prosecution, and Ms. Leckrone approved her request.

36. The PPD and other law enforcement agencies used body-worn cameras and vehicle-mounted cameras to document protests. Surveillance cameras also captured some activities. PPD uploaded videos and photographs to evidence.com, which FRB attorneys could access. Other law enforcement submissions were typically uploaded to the MCAO document management system known as "Karpel" or "PbK" (Prosecutor by Karpel).

October 17, 2020 Protest

37. On October 17, 2020, approximately 20 people gathered in the early evening at University Park in downtown Phoenix. After several speeches, the group began marching, chanting phrases such as, "Black Lives Matter," "All Cops Are Bastards," "Together We Fight. We Do This Every Night," "No Justice, No Peace," "No KKK. No Fascist USA," and "No KKK. No Racist USA." The protest was relatively short in duration.

38. The day before the protest, the PPD unit responsible for monitoring rallies, marches, and demonstrations sent out a department-wide email that provided the following information about the upcoming event:

Date	**Time**	**Location**	**Organization**	**Details**
Saturday 10/17	7:00 PM	1002 West Van Buren Street	Freedom 4 The People	No Justice No Peace Rally: Gathering at or near University Park with march to Washington Street and plans to occupy the roadway.

PPD specifically identified "Freedom 4 The People" as the organizer of the October 17 "No Justice No Peace Rally" and noted the group's "plans to occupy the roadway." Police reports prepared after the October 17 event identified a similar plan, stating, "Intelligence gathered by the Phoenix Police Department affirmed that the individuals that made up this group of protesters intended to disrupt traffic in downtown Phoenix with the intention of getting arrested and booked into jail."

39. The parties stipulate that some protesters "wore black clothing and marched in the middle of the streets because the PPD had barricaded most cross streets," and some "carried umbrellas, shined flashlights at police officers, moved traffic barricades into the protest route, and deployed at least two novelty smoke bombs like those used at gender-reveal parties."[5] Officers ordered protesters to leave the roadway

[5] The hearing panel relies on the stipulated facts set forth in the Joint Prehearing Statement. "A stipulation by the parties as to the facts . . . is conclusive between them,

and disperse. When they failed to comply, they were arrested. Police reports state that the protesters used umbrellas "to obscure their identities" and "shield their activities." Although one individual had firearms in her possession, they were not used or brandished, and she was legally entitled to possess them.

40. Eighteen individuals were arrested, including three juveniles. Some of those arrested were known to law enforcement from earlier protests, but many were not.

41. During the evening of October 17, Ms. Sponsel was kept apprised of the arrests. She reminded officers to "make sure that the arrest documents were complete, accurate, and individualized to each suspect's activity and to ensure that there were no copy and paste issues." Ms. Sponsel had previously communicated with PPD about the insufficiency of Form IVs generated after an earlier protest because of their "cut and paste" nature. On October 17, she asked a PPD officer to "just remind everybody that the facts have to be particular to each arrestee."

42. The initial police submission to MCAO from the October 17 protest included approximately 255 pages of police reports that were uploaded to Karpel on October 20, 2020. The case "was officially assigned to [Ms.] Sponsel for charging and prosecuting the arrestees."

43. Many of the Form IVs and police reports regarding the October 17 events have "cut and paste" characteristics, including carried-forward misspellings, undeleted template prompts such as "name," and substantially identical verbiage.

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and cannot be contradicted by evidence tending to show the facts otherwise." *Higgins v. Guerin*, 74 Ariz. 187, 190 (1952).

44. Ms. Sponsel began reviewing the police reports on October 20, 2020. Later that day, she filed a direct complaint in Maricopa County Superior Court that initiated the case of *State v. Llanes, et al*. The following 15 individuals were named as defendants:

- Nathaniel Benjamin Llanes
- Suvarna Ratnam
- Brenda Guadalupe Diaz
- Nathan Jon Aderholdt
- Ryder John Collins
- Riley Morgan Behrens
- Christopher Charles Roberson
- Kalixta Noemi Villasaez
- Britney Erica Austin
- Jessica Gibson
- Marysa E. Leyva
- Dominic Berlage Bonelli
- Kaleb Isaiah Martin
- Jacquelyn Alexiz Alcaraz
- Amy Beth Kaper

Ms. Sponsel charged each defendant with Riot -- a class 5 felony, Hindering Prosecution -- a class 5 felony, and Aggravated Assault -- a class 5 felony.

45. The parties stipulate that, before filing the direct complaint, "the only video viewed by Respondent was a short video compilation prepared by the PPD and an AZ Patriots video of the protest."

46. One of the individuals arrested on October 17 was Ryder Collins. The parties stipulate that Mr. Collins -- a nurse from Prescott Valley at the time -- "drove to Phoenix on his day off and met two of his friends to take photographs of downtown Phoenix at sunset. Collins wore a gray t-shirt and carried a gray backpack containing his cameras, lenses and a map of downtown Phoenix. After a few hours, the friends left

while Collins remained to take more photographs." During his testimony at the disciplinary hearing, Mr. Collins described what happened next:

> Basically, I'm walking around with my camera bag and stuff, and I see this – like maybe a couple blocks away, I see a police car, like an SUV, like parked kind of in the middle of the road, like blocking the four lanes. And it had its sirens going, and I thought, what's going on?
>
> So I started walking in that direction. And as I got closer, I see like cop cars coming up some of the side streets and they're blocking the road. And I can see a helicopter now. I hear it. And I think, oh man, something's going on.
>
> And so I see a bunch of cop cars like maybe another block down, so I start walking there. And I noticed like the closer I get, I see like people on the sidewalk watching.
>
> And so I came upon this small group of people. It was kind of unusual. They were all wearing black, and they had black umbrellas, and they were just kind of playing with a loudspeaker like marching in the street.
>
> * * * * *
>
> [T]his was after the George Floyd stuff. And so I knew that I didn't want to be on the street and get in trouble. And I didn't want to get involved in this group. And so I knew enough to just stay back. But I wanted to get close enough to get a photo.
>
> And so I'm following along on the sidewalk, and there's many other people following along with me. Some people were taking video. And some of the people had cameras on the sidewalk. And I thought, well, I'm just going to stay with them. They're not getting bothered by the police. If I stay with them, I'm going to be okay. . . . So that's what I did. I just followed this protest group on the sidewalk.

According to Mr. Collins, the protesters were chanting, "Black Lives Matter."

47. The parties stipulate that Mr. Collins' conversation with two women who were videotaping the protest from the sidewalk "was captured on video that Respondent claims to have reviewed shortly after the October 17, 2020 arrests." The two women were

members of an organization known as AZ Patriots, which the record describes as a politically conservative group whose members frequently engage in counter-protests. Mr. Collins can be heard on the video telling the women he was in Phoenix "just doing street photography" when he "saw this shit pop off." Although other people were also taking photos and video-recording the events, Mr. Collins was the only individual engaged in those activities who was arrested on October 17.

48. When Mr. Collins was arrested, he immediately advised officers he did not know about the protest until 30 minutes earlier, had not heard commands to disperse, and had photography equipment in his backpack. When he explained that he was a nurse from Prescott Valley, officers responded that he should have stayed there. When Mr. Collins asked officers to place a cap on his camera lenses (which he testified were expensive), they responded he was "awful demanding for somebody being part of a riot."

49. During the booking process, Mr. Collins was sitting with other individuals who had been arrested at the protest. He testified as follows about conversations he had with those waiting with him in the booking area:

> I don't remember any of their names. I didn't know them at that time, but she was just like, "Who are you? Who the hell are you," she said. And I'm quoting.
>
> And I said, "I don't know. I was just here taking pictures."
>
> And they just kind of laughed, you know, because they were like, "Well, that sucks for you. I'm sure it'll clear up," because they obviously knew like I wasn't with them. And they didn't know who I was.
>
> And so they kind of just laughed and chuckled and said, "Well, it's unfortunate for you, but they'll probably just cut you loose when they figure out that you were just here taking pictures."

Mr. Collins once again told officers he was a nurse from Yavapai County, was in town to engage in cityscape photography, and did not come for the protest. Another arrestee who *had* participated in the protest – Riley Behrens[6] – was in the same booking area as Mr. Collins and engaged in the following exchange with Officer Jaurigue that was captured on body-camera video:

> Behrens: You guys know Ryder had nothing to do with this, right?
>
> Jaurigue: Huh?
>
> Behrens: I said, you guys know Ryder had nothing to do with this, right? He wasn't even with us.
>
> Jaurigue: I don't know who Ryder is.
>
> Behrens: That kid in there in the back-right corner, like, was not part of the protest at all. He . . . got caught on the wrong street corner.
>
> Jaurigue: [chuckling] I have no idea.
>
> Behrens: He's from Prescott he doesn't even live here.
>
> Jaurigue: Tell him to go home.

Ms. Sponsel dismisses this clearly exculpatory information, arguing Behrens' use of Mr. Collins' first name somehow supports her position that Ryder Collins was part of the protest group. But when Behrens provided information Ms. Sponsel deemed helpful to her defense, she wholeheartedly endorsed and relied on it. At one point during the disciplinary hearing, she conceded, "Riley Behrens is not unreliable with regards to the

[6] The record describes Behrens as being born female but identifying as male. Both gender pronouns have been used when discussing Behrens.

information that Riley Behrens provided to the police. Riley Behrens is – is untrustworthy when it comes to following the directives of the police."

Video from Mr. Collins' booking also captures Officer McCombs' comment to another officer: "The thing is, I'm trying to remember 'cause [Mr. Collins] was not with the group when they hindered, so I don't think we could charge him with it."

In a prehearing interview with the State Bar, Ms. Sponsel admits she never reviewed these video recordings, even after she received Mr. Collins' motion to dismiss/remand that asserted, *inter alia*, factual innocence and mere presence, and notwithstanding the fact those recordings had been available to her since at least October 27, 2020.

50. Mr. Collins was held in custody overnight and appeared in court the next day, facing charges of Riot, Obstructing a Highway or Public Thoroughfare, and Unlawful Assembly. The presiding judicial officer found no probable cause for the riot charge and released Mr. Collins on his own recognizance.

51. Mr. Collins had never been arrested before, had never participated in a protest, and was "terrified." He considers himself "very conservative" politically and "very pro-police," but testified this episode shook his faith in law enforcement. He described the ordeal as the "hardest time of my life" and worried that a felony conviction would end his nursing career.

52. Katie Gipson-McLean is a public defender who was appointed to represent Mr. Collins. Ms. Sponsel extended a plea offer that would have required Mr. Collins to plead guilty to Riot, a class 5 felony, and Assisting a Criminal Street Gang, a class 3 felony.

Ms. Gipson-McLean testified that, based on her review of the evidence, it would be "morally and ethically" improper for her client to accept the plea because there was no factual basis for the charges.

53. In the Answer she filed in these proceedings on March 29, 2023, Ms. Sponsel alleged the following regarding Mr. Collins:

> [T]he photos and videos downloaded from Collins's camera do not corroborate his claims that he came to take photographs of downtown Phoenix at sunset, as there are only nighttime photographs of the Rioters and surrounding area. These photographs are consistent with Sgt. Groat's belief that Collins was acting as a legal observer. There was also a "For Sale" sign with "AMERIKKA" spelled out on it found in his camera case. This sign was consistent with ANTIFA paraphernalia.

Under cross-examination, Ms. Sponsel admitted Mr. Collins did not in fact possess "ANTIFA paraphernalia" or a "For Sale" sign with "AMERIKKA" spelled out on it. The correct information was clear from police reports Ms. Sponsel reviewed before filing the direct complaint on October 20, 2020. And as of February 2021, she absolutely knew the so-called "ANTIFA paraphernalia" belonged to a juvenile who was arrested on October 17, not Mr. Collins.[7]

Additionally, when Mr. Collins' camera was processed, it *did* include images corroborating his assertion he was in town to photograph downtown Phoenix at sunset and just happened upon the protest. Ms. Sponsel contends she did not learn this

[7] The actual sign the juvenile possessed read: "FOR SALE AmeriKKKa." During her prosecution of the protesters, at MCAO meetings, and throughout these disciplinary proceedings, Ms. Sponsel has repeatedly linked the October 17 defendants to ANTIFA, though she testified, "All I know is that they're a group that are anti-police. I couldn't tell you very much more about them because I really didn't focus in on Antifa."

information before being placed on administrative leave, but the record reflects she was aware of it by the time she filed her Answer in these proceedings.

It is also troubling that – as recently as March of 2023 – Ms. Sponsel continued to cite Sgt. Groat's" belief" about Mr. Collins. As we discuss *infra*, Ms. Sponsel knew no later than February 19, 2021 that Sgt. Groat had misidentified Mr. Collins on October 17 as "a legal observer from an earlier encounter" and that his accounts of Mr. Collins' role had been discredited.

54. PPD forensic photo specialist Diane Meshkowitz processed Mr. Collins' camera and found images he had taken during the afternoon of October 17 of downtown Phoenix, architecture, buildings, homeless people, and the light rail. Later in the day, there were photographs of the protest. Ms. Meshkowitz testified it appeared the photographer "was in a small group of photographers downtown, taking pictures of buildings and people and just happened to be there as things evolved later in the evening." Ms. Meshkowitz placed all of the photos in a shared drive and advised the detective who had asked her to process Mr. Collins' camera that, in her opinion, they were images taken by a photographer who just happened to end up at the "wrong place, wrong time."

At the disciplinary hearing, Ms. Sponsel cavalierly dismissed the relevance of this evidence corroborating Mr. Collins' unwavering account, as reflected in the following exchange:

> Q. Back to the scan disk cards [from Mr. Collins' camera], if there had been a – if this was a full set of his photos based on his testimony that he was

there to take photos of buildings at sunset and you had found those, would that have corroborated his story?

A. Not – no, not necessarily.

Q. Why not?

A. Because people can be out there taking pictures of the sunset and then go home and murder their spouse. Does that necessarily mean that they're innocent of murdering their spouse because they said they were taking pictures of the sunset earlier in the day? No.

55. On February 19, 2021, it was determined Mr. Collins *had* been misidentified. Pursuant to a request by DCA Ryan Green (who had taken over the October 17 cases from Ms. Sponsel), a PPD detective interviewed Sgt. Groat. The report from that interview states:

> On 21921 I talked with Sergeant Groat #6197 reference [the October 17] incident to clarify who he was contacting after watching his body worn camera. . . .
>
> As the people were on the sidewalk Sergeant Groat yelled to Officer Billingslea #7917 about a guy with a gray backpack and referred to Officer Billingslea as "Spider" in the video. In this part of the video at 30:49 Sergeant Groat mentions gray back pack and at 31:17 Sergeant Groat advised a guy in the crowd is a legal observer from an earlier encounter. Sergeant Groat did not point to Ryder Collins and the identity of the male from the earlier incident is still unknown at this time. The person who Sergeant Groat referred to from being recognized during this part of the video is from the earlier incident.
>
> Ryder Collins was wearing a gray shirt when he was arrested and the unknown male from the earlier incident was in a black shirt.

Lt. Hester testified that he called Ms. Sponsel on February 19, 2021, told her Mr. Collins had been misidentified, and advised that PPD wanted the charges against Mr. Collins dismissed. Ms. Sponsel, though, testified she did not learn of the

misidentification of Mr. Collins "until I was placed on administrative leave. It was part of the discovery." The hearing panel found Lt. Hester's testimony more credible on this point than Ms. Sponsel's.

56. Amy Kaper and Nathaniel Llanes were also arrested after participating in the October 17 protest. They learned of the event from a social media post and did not know any of the other participants. Ms. Kaper had moved to Phoenix approximately three weeks before. She works for the federal government, holds a top-secret security clearance, and had never before been arrested. Ms. Kaper spent the night in jail before being released the next day at her initial appearance hearing. She lost a previous job in the private sector due to her arrest.

57. Ms. Kaper and Mr. Llanes retained attorney Shannon Peters to represent them, though Ms. Kaper initially had a different lawyer.

58. Ms. Sponsel extended a plea offer to Ms. Kaper and Mr. Llanes that would require each of them to plead guilty to Riot – a class 5 felony and Assisting a Criminal Street Gang – a class 3 felony. If accepted, the plea agreement would prohibit Ms. Kaper and Mr. Llanes from having contact with each other.[8] Ms. Peters advised them to reject the offers. She testified there was no factual basis for the charges, which would ruin her clients' lives.

[8] Ms. Kaper and Mr. Llanes are now engaged, but in October 2020, they had a relatively new dating relationship.

59. As a result of his arrest and prosecution, Mr. Llanes' fingerprint clearance to work with elderly and disabled individuals was revoked. Because of her arrest and prosecution, Ms. Kaper suffers from "pretty severe PTSD" and has received death threats and other threats of violence from "white supremacists." When asked if the experience affected her view of the legal system, Ms. Kaper responded:

> I don't know that I had a super great feeling about the legal system before this, but after going through it personally, I mean, just coming from my background being like a pretty middle-class, privileged white person, this has really shown me that it's so much worse than I ever could have imagined. So much dirtier, and more insidious, and backwards, and evil than I could have ever, ever imagined.

60. A day after filing the direct complaint against the October 17 defendants, Ms. Sponsel attended a meeting at the PPD during which Lt. Hester raised the possibility of filing criminal gang/syndicate offenses against protesters.[9] Lt. Hester testified at the disciplinary hearing that, although some attendees agreed with that approach, no consensus was reached, pending receipt of additional information – including from the Gilbert Police Department and from a search warrant to be prepared by MCAO investigator Karl Martin.

61. Ms. Sponsel and DCA Mike Baker appeared before a grand jury on October 27, 2020, for the purpose of adding gang-related charges against all 15 adults arrested on October 17. This was the first time MCAO had brought criminal street gang charges

[9] Some portions of the record state that this meeting occurred on October 23, 2020. Lt. Hester, though, testified the correct date is October 21, 2020, and other exhibits recite this date.

against protesters. Ms. Sponsel admits that charging the October 17 defendants with gang offenses "was a novel approach" that "would likely be newsworthy."

62. The alleged gang -- "ACAB" – did not appear in the law enforcement database known as GangNet, which documents known gangs and gang members. Later requests to classify the October 17 protesters as members of a gang in GangNet were rejected by the Arizona Department of Public Safety.

63. "ACAB" is an acronym for "All Cops Are Bastards." "All Cops Are Bastards" is a protest chant used around the world that reportedly originated almost a century ago with striking workers in England, who chanted, "All Coppers Are Bastards." "All Cops Are Bastards" became a popular protest chant after George Floyd's death. A PPD report from the October 17 protest acknowledges ACAB "is a common acronym slogan used by the anti police protest groups around the country."

64. An outside investigation commissioned by the City of Phoenix "found no credible evidence to support the assertion that ACAB is a criminal street gang, that it organized the protest of October 17, or was prone to violence." The investigation further concluded law enforcement and prosecutors conflated various social justice groups and forums "to construct a singular 'ACAB group.'" The record in these proceedings supports these conclusions. Among other things, and as discussed *supra*, the day before the October 17 protest, PPD specifically identified the organization responsible for the event as "Freedom 4 The People" and documented its relatively benign intent of "occupy[ing] the roadway."

65. Although PPD reports that Ms. Sponsel reviewed include a section entitled "Gang Information" -- which calls for details such as gang name, rival gangs, colors/logos, tattoos, self-proclamation, and clothing – reports from October 17 left that section blank, and some expressly stated "NO" under the heading, "Gang Activity."

66. The PPD has a Gang Enforcement Unit (GEU), which the record describes as a "specialized team of police responsible for identifying and investigating criminal street gangs and their members." The October 17 protester cases, though, were not routed to the GEU. The outside investigation commissioned by the City of Phoenix addressed this fact, stating:

> [P]olice and prosecutors ignored expert-established criteria for identifying true criminal street gangs, and similarly ignored established protocol for processing the gang classification. Instead, police began considering anti-police protestors generally as "criminal street gangs" based upon statements by a source of highly questionable credibility. From there, police and prosecutors orchestrated the criminal street gang case against the Protestors with inconsistent and inaccurate police reports, dubious Grand Jury testimony and deeply flawed (according to the Superior Court of Maricopa County, unconstitutional) legal conclusions. As police and prosecutors built their criminal street gang case, it appears they intentionally excluded GEU in order to "keep things quiet."

67. When appearing before the grand jury, Ms. Sponsel and Sgt. McBride compared ACAB (which, in derogation of grand jurors' fact-finding role, Ms. Sponsel conclusively labeled an "organization") to notoriously violent and well-known criminal street gangs, such as the Bloods and the Crips.[10] At one point, Ms. Sponsel asked Sgt. McBride whether he would equate the October 17 protesters to "the better, well-

[10] Grand jury details that are included in this report appear in publicly available court filings, obviating the need to redact portions of this decision that discuss them.

organized criminal street gangs such as Hells Angels or Mexican Mafia rather than let's say the Bloods or the Crips." Sgt. McBride responded in the affirmative.

The record supports the following statement included in MCAO's Ethics Committee's bar charge against Ms. Sponsel:

> We do not believe there was any reason to mention these other well-known criminal street gangs in this presentation. The references were particularly concerning because the group involved in this presentation had not committed any acts that were even remotely similar to the murderous conduct that has been committed by these notorious street gangs.

68. Although the grand jury was tasked with considering serious and novel felony charges against 15 different people, only four defendants' names were mentioned in any substantive sense, and even then -- with the exception of Mr. Collins -- only in cursory fashion. The words "they" or "their" were used in place of the defendants' names more than 80 times. Ms. Sponsel does not dispute this, but argues she had insufficient time to review video footage before presenting to the grand jury, and, even if she had done so, she would not have been able to determine who was who in the videos.

69. Several witnesses stressed the necessity of individualized treatment of defendants at the grand jury stage. County Attorney Rachel Mitchell testified that when multiple defendants are involved, a prosecutor must treat each person individually and be specific about who did what. Failure to do so, she said, demonstrates that the prosecutor does not know the case well enough.

DCA Goddard specifically asked Ms. Sponsel whether "each individual defendant [was] articulated to the grand jurors" and explained his concerns about what he calls the "big case" -- meaning a criminal case with numerous defendants:

> And short and simple, the big case doesn't work . . . [W]hat ends up happening is you indict 40 people. You cheap-deal 35 of them. And then you really focus on the five that actually mattered. Well, stop doing the 35 and just focus on the 5 . . . So yes, that's my feeling on the big case. It doesn't work.

Consistent with this viewpoint, Mr. Goddard advised Ms. Sponsel to "get rid of the excess" protester cases through dismissals or pleas and focus on the most serious cases.

When asked why it is important for a prosecutor to discuss each individual defendant during a grand jury presentation, Mr. Goddard responded:

> If I were to describe, you know, a case to you, if we were just, you know, talking about a case, and I started throwing out names, we sort of instinctively want to write down names and remember them. But if I were to say to you the victims, the defendant, now we can organize it a little bit easier. And I think it's just a natural tendency for grand jurors to follow along if you just talk about the defendants. But we, as prosecutors, have obligations about individualized defendants. And if you slipped into it unintentionally and just talked about "the" defendants, the – probable cause is coming back and you've just added problems to your case . . .
>
> You lose the individualized probable cause. And so you have to be detail-oriented when you – when you give the grand jury presentation.

Ms. Sponsel told Mr. Goddard she *had* presented the case to the grand jury as to each defendant. The record establishes otherwise.

70. Out of the 100+ hours of recordings from the October 17 events, the only video Ms. Sponsel showed the grand jury was an 8-minute compilation PPD had created. Ryder Collins appears nowhere in that video. Ms. Sponsel had received access to surveillance video and 148+ body-worn camera recordings "shortly before" October 27 but had not reviewed any of that material.

71. The record supports the testimony of County Attorney Mitchell that Ms. Sponsel's grand jury presentation was "outrageous." Information presented about Mr. Collins was false. None of the police reports Ms. Sponsel had reviewed stated that Mr. Collins ran toward officers in an attempt to impede their arrest of protesters. Nevertheless, Ms. Sponsel elicited the following testimony from Officer Raymond:

> Q: And with regards to Ryder Collins, when officers were trying to get handle [sic] on the entire group, did he actually run up on officers and try to impede their ability to be able to take these individuals under arrest by running up on the officers trying to distract them?
>
> A. Yes.
>
> Q. And did officers have to give him several commands to move back?
>
> A. Yes.

Mr. Collins was nowhere near the protesters when they were arrested, and the 8-minute video compilation Ms. Sponsel contends "pretty much told the whole story" makes that fact clear. Officer Raymond also incorrectly testified that *all* of the defendants assembled at University Park and began marching as a group. The record is clear that Mr. Collins was not with the group at University Park or when they began marching.

72. Ms. Sponsel may not have intended to indict an innocent man. But the evidence establishes that she did so. As MCAO's Ethics Committee observed in its bar charge, "The result was that a factually innocent person was under indictment for months for very serious felony offenses." Particularly troubling is Ms. Sponsel's refusal, even now, to acknowledge Mr. Collins' innocence. At the disciplinary hearing, she testified Mr. Collins' role remains "undetermined" and insisted she "used measured, ethical, and

reasonable discretion" in prosecuting the October 17 defendants. The hearing panel could not disagree more strongly.

73. Ms. Mitchell characterized the "media advisement" Ms. Sponsel gave at the outset of the grand jury hearing as an inappropriate "closing argument." Under the guise of ascertaining whether grand jurors had been exposed to media accounts of the events they would be considering, Ms. Sponsel stated:

> Back on October 17, 2020, at approximately 7:00 p.m. in the evening, several individuals with an organization known as ACAB, also known as All Cops Are Bastards, met down in downtown Phoenix in order to participate in a riot. These individuals entered into the streets with umbrellas that shielded them from the police officers. They then turned around and threw smoke bombs at the police officers. They then eventually were arrested after throwing barricades and things of that nature into the streets. They disabled one of the police Tahoes when they threw the barricades out into the streets. And then they were – when they were eventually arrested, one officer in particular along with other officers were assaulted by the individuals because as one of their techniques that the individuals, this group uses, they use their hands to dig their nails into the hands and arms of the police officers to try and get them not to effectuate arrests.

Ms. Sponsel concedes that a prosecutor should not attempt to influence grand jurors' decisions or use words conveying a belief that a crime has been committed. Her "media advisement" ran afoul of both of these tenets.

74. The grand jury issued a true bill, and Ms. Sponsel filed an indictment charging each of the 15 defendants[11] with:

- Riot -- a class 5 felony.[12]

[11] One protester – Nathan Aderholdt – was also indicted for resisting arrest.

[12] The indictment alleged that each defendant, "with two or more other persons acting together, recklessly did threaten to use force or violence which threat was

- Obstructing a Highway or Other Public Thoroughfare -- a class 3 misdemeanor.[13]

- Unlawful Assembly -- a class 1 misdemeanor.[14]

- Conspiracy to Commit Aggravated Assault -- a class 2 felony.[15]

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accompanied by immediate power of execution, which disturbed the public peace, in violation of A.R.S. §§ 13-2901, 13-2903, 13-301, 13-302, 13-303, 13-304, 13-701, 13-702, and 13-801."

[13] The indictment alleged that each defendant, "alone or with other persons, recklessly did interfere with the passage of a highway or public thoroughfare, by creating an unreasonable inconvenience or hazard, in violation of A.R.S. §§ 13-2906, 13-301, 13-302, 13-303, 13-304, 13-707, and 13-802."

[14] The indictment alleged that each defendant, "was present at an assembly of two or more other persons who were did [sic] engage in or who had the readily apparent intent to engage in conduct constituting a riot and knowingly remained there and refused to obey an official order to disperse, in violation of A.R.S. §§ 13-2901, 13-2902, 13-2903, 13-301, 13-302, 13-303, 13-304, 13-707, and 13-802."

[15] The indictment alleged that each defendant:

> [D]id conspire to commit the offenses of:
>
> a. Participating in a Criminal Street Gang;
> b. Assisting a Criminal Street Gang
> c. Threatening or Intimidating in Furtherance of a Criminal Street Gang
> d. Aggravated Assault and/or
> e. Hindering Prosecution
>
> In conspiring to commit such offenses, the defendants and other conspirators . . . with the intent to promote or aid the commission of an offense, did agree with one or more other persons that at least one of them or another person would engage in conduct constituting the offense(s) of:
>
> a. Participating in a Criminal Street Gang;
> b. Assisting a Criminal Street Gang
> c. Threatening or Intimidating in Furtherance of a Criminal Street Gang
> d. Aggravated Assault and/or
> e. Hindering Prosecution

- Assisting a Criminal Street Gang -- a class 3 felony.[16]

75. Hearing witnesses agreed that Ms. Sponsel could not have reviewed all video footage from the October 17 events by October 27 – the date of her grand jury presentation. She was not, however, required to go before the grand jury on October 27, even though one defendant – Suvarna Ratnam – was in custody and on release from a felony charge arising out of an earlier protest. Nothing prevented Ms. Sponsel from presenting Ms. Ratnam to the grand jury on October 27 and waiting to charge the other defendants, if appropriate, after conducting a competent and individualized review. Alternatively, she could have waited to indict any of the October 17 defendants.[17] (The statute of limitations was one year for the misdemeanor offenses and seven years for the felony offenses.) Ken Vick, who was MCAO's Chief Deputy at the time, testified that

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> in violation of A.R.S. §§ 13-1001, 13-1003, 13-2321, 13-1204(A)(2); (A)(8), 13-1202, 13-1203 and 13-2512.
>
> In furtherance of this conspiracy and to affect the objects thereof, defendants and other Co-conspirators would commit numerous overt acts, including, but not limited to, those overt acts set forth in Counts 1 through 5 of this Indictment, in violation of A.R.S. §§ 13-1001, 13-1003, 13-2321, 13-1204, 13-13-1201 [sic], 13-1203, 13-2512, 13-301, 13-302, 13-303, 13-304, 13-704, 13-701, 13-702 and 13-801.

[16] The indictment alleged that each defendant, "did commit Aggravated Assault and/or Threatening or Intimidating and/or Aggravated Assault. [sic] a completed felony offense, for the benefit of, at the direction of or in association with a criminal street gang, in violation of A.R.S. §§ 13-2301, 13-2321, 13-301, 13-302, 13-303, 13-304, 13-701, 13-702, and 13-801."

[17] In that event, Ms. Ratnam would be released from custody, and the October 17 cases would become "basket cases." But as the parties stipulate, Ms. Ratnam was released from custody anyway at an October 30 bond hearing because "the Court found that Respondent had failed to present sufficient evidence to hold Ratnam non-bondable."

cases not involving "massive property damage" or significant injuries to law enforcement should be placed "on a lower spectrum" when prioritizing which matters to pursue. The October 17 protest did not result in massive property damage or significant injuries to law enforcement.

During a prehearing interview, the following exchange occurred between bar counsel and Ms. Sponsel:

> Q. And what was the rush to get [the October 17 defendants] to the grand jury?
>
> A. [Suvarna] Ratnam being in custody.
>
> Q. That was the only factor that you considered?
>
> A. That is correct.

Ms. Sponsel explained she was "operating under accomplice liability and I don't want to waste my time and resources to take a case to the Grand Jury whenever I'm going to talk about the exact same thing two different times." But when weighing the "waste" of time and resources inherent in two grand jury presentations against the interests and rights of 15 individuals facing serious, life-altering, novel felony charges, the choice is obvious. *See, e.g., In re Wolfram*, 171 Ariz. 49, 58 (1993) (observing that the respondent lawyer's lack of diligence was "especially egregious in light of what was at stake in his representation.").

In a different interview conducted as part of an independent investigation MCAO commissioned, the following colloquy occurred between the investigator and Ms. Sponsel about the gang charges:

> Q. Given the fact that this was a novel approach, and if I understood correctly you hadn't seen other jurisdictions charging, except for you thought maybe Utah, but that you would have waited until you reviewed the body-worn camera to determine if gang charges should be brought? I mean, you could charge on everything other than that, could you not have?
>
> A. I could have, but I didn't need to see anything else.

76. Even if the hearing panel assumes for the sake of argument that it was necessary to pursue Ms. Ratnam quickly, that "fact" did not justify a rush to indict 14 other people -- each of whom deserved individualized treatment and consideration. As Ms. Sponsel herself admonished officers on October 17, criminal charges must be "individualized to each suspect's activity," and "the facts have to be particular to each arrestee." Nothing prevented Ms. Sponsel from conducting a competent, diligent review of the evidence and, after doing so, returning to the grand jury to add any charges substantiated by actual evidence. The fact she was pursuing accomplice liability and conspiracy theories does not compel a contrary conclusion. Sherry Leckrone testified as follows regarding that point:

> Q: Is there something that mandates that both in-custody and out-of-custody defendants be prosecuted in the same case?
>
> A: Because of conspiracy, just efficiency.

The record in these proceedings amply supports the following statements included in Ms. Sponsel's letter of termination:

> For no justifiable reason, you rushed this case to the grand jury. You could have taken the time to review all the available evidence before deciding what criminal charges were appropriate and who should be charged. You acknowledged in your interview that your approach to this case was "novel." This realization should have caused you to be more cautious, more thorough, and more circumspect. If you had carefully reviewed the

> available evidence before presenting the case to the grand jury, you would have been able to prevent or correct testimony that was not accurate. Most importantly, you would have avoided indicting an innocent person.

77. DCA Ryan Green learned of the gang charges on October 29, 2020, from MCAO Communications Director Jennifer Liewer. Mr. Green has extensive experience prosecuting gang cases, and he began investigating -- in part because protester cases he had handled in the past had generally been charged as misdemeanors. That same day, Ms. Liewer received an email from a local journalist that stated, in pertinent part:

> I saw some protesters were charged with assisting a "street gang."
>
> ***Can you shed some light on how that prosecuting decision was made – and how/why they fall under that classification?***
>
> ***Did PD recommend those charges, or was that something MCAO made the call on?*** [Original emphasis]

Ms. Liewer forwarded the email to Mr. Vick, who testified, "I had absolutely no idea or reason to believe there were going to be indictments issued. . . . I was very unhappy that we had these indictments in place, and I knew nothing about them before it happened."

78. A virtual meeting was held on October 30, 2020, so that MCAO leadership could discuss the charges filed against the October 17 defendants. In attendance were Ms. Sponsel, Mr. Vick, Ms. Leckrone, Mr. Goddard, Mr. Green, Tom Van Dorn (MCAO law enforcement liaison), DCA Heather Livingstone (gang bureau chief), Karl Martin, Ms. Liewer, and William Long (head of MCAO's investigations division). During the meeting, there was a simultaneous online discussion that was preserved in a "chat log."

Mr. Green posed specific questions to Ms. Sponsel about what he called "the big issue" -- i.e., why gang charges were pursued. The chat log includes the following exchanges:

> Green: how many separate instances/dates did this group appear in Phoenix and engage in riots?
>
> Sponsel: All
>
> * * * * *
>
> Green: During their "march" in October, did any of them have signs? Shout slogans? What are the devices thrown at police? Smoke bombs vs. explosives? Any of them have prior felony convictions? If so, what for? What are the tattoos that they have gotten? Do we have photos of their tattoos? Do we have a picture of the sharpened tip on the umbrella? Do we have photos of the sharpened fingernails? Is it obvious that the umbrella has been converted into a weapon and that the nails are unnaturally sharp?
>
> Van Dorn: Short answer . . . yes to all the above.[18]
>
> Goddard: Correct. Though I don't believe they ever carry signs.[19]
>
> Sponsel: yes we have photos of [their] hands
>
> Sponsel: We have the umbrella with the sharpened tip.

Some of Ms. Sponsel's statements were untrue and/or misleading. "All" of the October 17 defendants had not participated in other Phoenix "riots." When Mr. Green asked specifically about the October defendants: "Do we have photos of the sharpened fingernails," Ms. Sponsel responded, "yes we have photos of [their] hands." In fact, although there were photos of the October 17 arrestees' hands, none depicted long

[18] This statement is contradicted by the record.

[19] This statement is contradicted by the record.

fingernails at all, let alone "sharpened fingernails." Ms. Sponsel now concedes there are no photographs of Arizona protesters with sharpened fingernails but insists this is a tactic used by "ANTIFA." Ms. Sponsel also led the October 30 meeting participants to believe that an umbrella with a sharpened tip was used by the October 17 defendants. This was not true, and no umbrella with a sharpened tip has ever been identified in connection with local protests.

79. Ms. Sponsel provided the October 30 meeting attendees with a "High Profile Case Memo" she authored that includes the following statement:

> As the officers moved in many of the group fell to the ground and interlocked their arms and legs making it difficult for them to be arrested. While trying to remove each member of the group some dug their fingernails into the hands of the officers injuring the officers.

The record available to Ms. Sponsel as of that date made clear that only one October 17 defendant – Dominic Bonelli – allegedly dug a fingernail into one officer's thumb during his arrest, though his nails were not sharpened.

80. Ms. Sponsel's meeting presentation led Mr. Green to believe that the October 17 defendants constituted "a group that has planned ahead of time to go out and then provoke an arrest, and in the process of provoking police to arrest them, the police would be harmed" – with sharpened umbrella tips and fingernails -- "with the intent of using [them] to assault the police officers." Ms. Livingstone shared Mr. Green's impressions, testifying, "we were told that [the protesters] had sharpened fingernails that they were using as weapons to assault law enforcement when law enforcement went hands on. That there were sharpened umbrellas that were being [used] as weapons." Mr.

Vick explained it was "really important" to him that Ms. Sponsel described the October 17 defendants as using sharpened fingernails, "because I felt like if people took the time to grow out their fingernails, style them into points, and to go out and as they're arrested by officers, gouge officers with their hands and their pointed fingernails, that really showed collusion of this group working together to achieve that felony end, which was the attack on the police officers." The same was true, Mr. Vick testified, about Ms. Sponsel's assertion the defendants had umbrellas with sharpened tips:

> [I]f you're going to go out and buy a metal-tipped umbrella, and then take the time to sharpen it into a weapon, and go out and use that in these activities against police officers – and we heard that one of these people had already been charged with stabbing an officer with a sharpened-tip umbrella previous to this occasion. Again, that shows that sort of working together, group mentality, that, to me, really supported the idea at least that we had an organization functioning as an organization, and kind of making plans to – to commit these felony crimes.

As discussed *supra*, no evidence suggests, let alone establishes, that any of the October 17 defendants had sharpened fingernails or umbrella tips.

81. Ryder Collins' attorney filed a motion to dismiss or, in the alternative, to remand to the grand jury for redetermination of probable cause on January 29, 2021. Ms. Sponsel assigned the motion to a law school intern to draft a response.

82. County Attorney Mitchell testified Mr. Collins' motion should have prompted Ms. Sponsel to "run, don't walk" to the nearest computer in order to review the body camera video footage discussed therein. Ms. Sponsel, though, demonstrated no sense of urgency or desire to ascertain the truth about Mr. Collins.

83. On February 4, 2021, a local television station aired the first of several news stories critical of MCAO's decision to charge the October 17 defendants with gang offenses. DCA Ryan Green saw the story -- which included an interview with Ryder Collins -- and grew "extremely concerned," believing MCAO might "have a big problem here." Mr. Green reached out to Mr. Vick and Mr. Goddard and began reviewing information, including the grand jury transcript and Mr. Collins' motion to remand. As Mr. Green considered the evidence, he testified, it "gave me that pit in my stomach, like, there may have been a big – a big problem here." Mr. Green also reviewed available photographs of "protest-related signs," which he described as "another huge red flag."

84. On February 5, 2021, Mr. Green exchanged text messages with Ms. Liewer, including the following:

> Green: Based on the information from that meeting last year, I thought these people showed up with no signage, etc. They have a lot of political stickers, signs, etc. That is huge. How the f*** was this left out in our meeting?
>
> Liewer: They had tunnel vision.
>
> Green: And where is the sharpened umbrella? None of these appear to be modified.
>
> Liewer: I know. I noticed that too. And no phots [sic] of sharpened fingernails.
>
> Green: None whatsoever. I'm very angry. Just had a long talk with Vince.

Based on the information he had reviewed, Mr. Green suggested convening another meeting, which was set for February 12, 2021.

85. In advance of the February 12 meeting, Mr. Goddard told Ms. Sponsel she needed to present "specifics and original evidence," not "summaries of what the police officers said."

86. On February 10, 2021, the following text exchange occurred between Mr. Green and Ms. Sponsel:

> Green: . . . I don't see any cell phone evidence in the evidence tab and it seems like it should have been done months ago.
>
> Sponsel: Some phones have been processed.
>
> Green: I've got a bunch of questions that I'm going to send you so you can see how I am looking at the case. But the first question that is probably most important is regarding Ryder Collins. I don't see him in the video, but may have over-looked it. Is there a specific time where he can be seen?

Only one phone belonging to the October 17 defendants had been processed at that time. And Mr. Green's specific reference to Mr. Collins not appearing anywhere in the video did not prompt Ms. Sponsel to herself review the video.

87. As promised, Mr. Green emailed Ms. Sponsel a series of questions later in the day on February 10, 2021. His inquiries were based on the statutory elements of the gang offenses and included the following:

> Is there a witness who can identify at least 2 or more of these specific defendants having previously associated with one another prior to October 17th? If so, which defendants?
>
> What is the evidence and which witnesses can testify that the charged defendants previously planned events with their fellow co-defendants?
>
> Do we have any captured electronic communications *between these specific arrestees* prior to October 17th?

> What is the evidence that the specific charged defendants refer to themselves as a group called ACAB?
>
> Do any of the charged defendants have prior felony convictions?
>
> Aside from Suvarna Ratnam, have any of the *other* 15 defendants been arrested for a felony offense in the past?
>
> Aside from Suvarna, do any other of the arrested defendants have an ACAB tattoo or 1312 tattoo?
>
> Is the evidence of self-proclamation limited to the chanting of "ACAB" or "All Cops are Bastards?" . . . If so, is there a way to distinguish between the defendant expressing the message in the slogan vs. proclaiming that they are part of a group named ACAB?
>
> Is there any video showing where Ryder Collins runs up on or distracts the police during the arrest process?. . . Is there any evidence disproving his account that he did not know the group in black bloc?
>
> Concerns: photographs do not show any sharpened nails
>
> Were any of the umbrellas seized on October 17th modified to become a weapon?

Mr. Green expected Ms. Sponsel to address these questions at the February 12 meeting but testified she did not do so in meaningful fashion at that meeting or at any other time.

88. Between the first MCAO meeting on October 30, 2020, and the second meeting on February 12, 2021, Ms. Sponsel estimates she reviewed only seven of the 140+ body-camera videos from October 17, even though all of them had been available to her since at least October 27, 2020. The record supports the following statement MCAO included in its bar charge against Ms. Sponsel:

> Despite having had months to fully review the evidence and the claims made to the grand jury, Ms. Sponsel stood by the case, including the case

> against Ryder Collins. Our concern, subject to additional investigation that is not yet complete, is that Ms. Sponsel did not critically and objectively examine the evidence in this case. Facts presented to the grand jury and to others at MCAO were not true. The result was the indictment of one person who was completely innocent and 14 others who were committing crimes but were vastly overcharged with very serious felonies. Due to the lack of any sense of urgency to verify the facts before or after the grand jury presentation, these indictments remained in place for months . . .

89. The same individuals from the October 30, 2020 meeting attended the February 12, 2021 meeting, as well as County Attorney Allister Adel and Clint Davis (a former gang detective Ms. Sponsel retained to consult on the protester cases). Ms. Sponsel gave a PowerPoint presentation and argued there was sufficient evidence to continue prosecuting the gang charges. No evidence was presented linking the vast majority of the October 17 defendants to each other. Mr. Green testified, "it did not appear that there was a link between them." On the contrary, the available information suggested the various individuals "had simply shown up" on October 17 in response to social media postings. Mr. Green testified, "I was never presented with any evidence that would satisfy that we had sufficient evidence to prove the gang charge."

According to Ms. Livingstone, as meeting attendees posed questions about the sufficiency of the evidence supporting the gang charges, "it felt a little hostile . . . like there was some animosity . . . towards the panel for asking the questions." Clint Davis, she testified, implied "we were too stupid to understand."[20] Based on the presentation by Ms. Sponsel and Mr. Davis, Ms. Livingstone "had a lot more concerns that this wasn't

[20] The hearing panel accords little weight to the hearing testimony of Clint Davis. His demeanor and patent partisanship detracted significantly from his credibility.

[a] criminal street gang so much as some people who may be engaged in criminal activity, but who were doing it as part of a political sort of ideology as opposed to criminal street gang membership."

90. Ms. Sponsel and Mr. Davis were excused from the meeting, and discussions continued about the October 17 defendants. County Attorney Adel made the decision to dismiss all of the charges.

91. Mr. Goddard thereafter directed Ms. Sponsel to dismiss the charges against the October 17 defendants without prejudice. She was upset with the decision and initially refused. Mr. Goddard advised her she could be charged with insubordination, and Ms. Sponsel ultimately agreed that Ms. Leckrone could prepare the necessary paperwork to be filed under her (Ms. Sponsel's) name.

92. The superior court dismissed all charges against the October 17 defendants without prejudice on February 18, 2021. On February 19, 2021, Mr. Green moved to dismiss the charges against Ryder Collins with prejudice and stated MCAO "would not object to a petition filed under A.R.S. 13-4051 to clear Mr. Collins' record."[21]

93. County Attorney Rachel Mitchell described Ms. Sponsel – who is married to an Arizona Department of Public Safety officer -- as "a very ardent supporter of the police," and other witnesses testified that Ms. Sponsel's "very pro-law enforcement" mentality clouded her judgment.

[21] Several other defendants moved to dismiss their charges with prejudice. Before the court could hold argument on their motions, MCAO moved to dismiss the charges with prejudice, and the court granted that motion.

94. Viewed in totality, the record clearly and convincingly establishes a rush to file gang charges against the October 17 defendants that were unsupported by adequate or competent evaluation of available facts and evidence and without reasoned consideration of each individual's conduct. Even after the indictments, Ms. Sponsel did not competently or diligently evaluate the evidence or competently and diligently reassess the existence of "a reasonable likelihood of conviction" (the applicable standard per MCAO policy) as to each individual. In this regard, the record supports the following statements included in MCAO's letter terminating Ms. Sponsel:

> Having rushed this novel case to indictment, it was crucial for you to thoroughly review all the evidence as soon as possible after the indictment was issued, but you did not do so. If you had, Mr. Collins' case would have been rapidly dismissed. Having failed to do that, I would have expected you to react with greater diligence and with a higher sense of urgency when defense counsel alerted you to the possibility that you had indicted an innocent person. But you did not do so.

95. Much of Ms. Sponsel's defense is premised on the contention her supervisors/superiors approved the gang charges. But to the extent there was initial support for those charges, that support was premised on information Ms. Sponsel provided, which was inaccurate and incomplete in material respects.[22] Once accurate information was obtained, support for the charges evaporated. This is not a situation where Ms. Sponsel was acting pursuant to directives issued by her superiors.

[22] Mr. Goddard, for example, was under the impression Ryder Collins "ran up on the police" when they were arresting protesters, which is not factually accurate. Ms. Leckrone's testimony reflected a very generalized and often vague understanding of the gang charges and evidence.

96. Ms. Sponsel mischaracterizes Mr. Vick's request that the October 27 indictments be served as somehow supporting her pursuit of the gang charges. The record clearly establishes that Mr. Vick's sole desire in having the indictments served was to enable MCAO to respond to media inquiries it was receiving about the charges.

97. Ms. Sponsel insists others could have accessed the same information available to her. But *she* was the attorney assigned to the cases. Given her level of experience, and absent cause to disbelieve her in the first instance, Ms. Sponsel's superiors could reasonably assume she was providing a truthful, accurate, unbiased recitation of the facts and evidence supporting the gang charges.

98. Ms. Sponsel also contends her workload prevented her from more diligently and competently handling the protester cases, emphasizing that she carried a heavy felony caseload during the same time period and orally requested assistance from her supervisors. Hearing evidence established that -- like many governmental entities -- MCAO's need for additional personnel and resources is chronic and office-wide.

Lawyers who cannot handle their workload in compliance with the Rules of Professional Conduct must decline to take on additional matters and/or divest themselves of pending cases. If Ms. Sponsel could not ethically handle the protester matters in addition to her other cases, she should not have asked that they be assigned to her. *See,* ER 1.3, cmt 2 ("A lawyer's work load must be controlled so that each matter can be handled competently."); *In re Wolfram*, 171 Ariz. at 56 ("Although Respondent's unwieldy workload helps us understand why he lacked diligence, it does not excuse his

conduct. A lawyer must not accept representation if the lawyer's workload prohibits handling a matter in compliance with our professional rules.").

99. Although the COVID-19 pandemic made it more difficult to hold in-person meetings and halted grand jury proceedings for a period of time, the record does not establish that any of the conduct at issue in these proceedings was materially affected by the pandemic.

100. The State Bar also alleges Ms. Sponsel failed to comply with disclosure obligations as to the October 17 defendants. The hearing panel does not find clear and convincing evidence of ethical misconduct in this respect.

101. MCAO made initial disclosures to the defense around November 3, 2020. On December 6, 2020, MCAO "disclosed 148 on-officer video recordings" to defense attorneys, and it provided supplemental reports and photos later that month. Witnesses testified without contradiction about the time-consuming task of reviewing and redacting the video footage before it could be produced. *See, e.g.,* A.R.S. § 41-1734.

102. Motions to compel disclosure were filed, but the court never found that Ms. Sponsel violated disclosure obligations. The court – not an attorney discipline hearing panel – is the more appropriate arbiter of compliance with disclosure obligations in the first instance.

Other 2020 Cases

103. After Ms. Sponsel was placed on administrative leave, MCAO began a review of her cases, including some that pre-dated the October 17, 2020 protest. The State Bar alleges ethical misconduct relating to Ms. Sponsel's prosecution of the following 13

individuals: (1) Charles Walker; (2) Kristen Byrd; (3) Jonah Ivy; (4) Ryan Tice; (5) Lee Christian; (6) Bruce Franks; (7) Richard Villa; (8) Khiry Wilson; (9) William Reed; (10) Keisha Acton; (11) Camille Tatiana Johnson; (12) Jaclyn Avallone; and (13) Suvarna Ratnam. The hearing record, though, was adequately developed only as to Mr. Walker and Mr. Villa in terms of the substantive charges that were filed. (The hearing panel will also address a limited allegation relating to Mr. Wilson.) As to the remaining defendants, the only allegations the hearing panel considers sufficiently developed relate to discovery and disclosure issues, which we address *infra*.[23]

Charles Walker

104. On June 24, 2020, a Maricopa County Sheriff's Office (MCSO) deputy responded to a call about a suspicious person carrying a large pipe. The individual matched the description of a man suspected of shoplifting sunglasses and a pen from a CVS store. When the suspect was approached by the deputy, he ran away. Charles Walker was later arrested after a struggle. A pen was found at the location of the arrest, and the deputy had a small puncture wound to his hand.

105. The parties stipulate that, when asked by a detective how he was injured, the deputy stated he did not know. MCSO video of the arrest does not show either a pen or any stabbing, though there are photographs of a minor injury to the deputy's hand.

[23] In its written closing argument, the State Bar argues body camera video does not support charges filed against other individuals, including Bruce Franks, William Reed, Jonah Ivy, Kristen Byrd, and Suvarna Ratnam. But unlike others discussed in this report, the substance of these individuals' charges was -- at best – only minimally explored at the evidentiary hearing. "Judges are not like pigs, hunting for truffles buried" in the record. *United States v. Dunkel,* 927 F.2d 955, 956 (9th Cir. 1991).

The video and photographs were uploaded to evidence.com on June 29, 2020, transferred to Karpel, and made available to Ms. Sponsel for review.

106. Law enforcement requested that Mr. Walker be charged with a violation of A.R.S. § 13-1204(A)(8)(a) (Aggravated Assault) – a class 4 or class 5 felony, depending on whether there was an injury. Ms. Sponsel instead charged Mr. Walker by direct complaint with Aggravated Assault, a class 2 felony; Resisting Arrest, a class 6 felony; and Shoplifting, a misdemeanor. As relevant here, the aggravated assault charge required proof that Mr. Walker intentionally placed officers in reasonable apprehension of imminent physical injury using a dangerous instrument. "Dangerous instrument" means "anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury." A.R.S. § 13-105. Ms. Sponsel alleged that the pen found on the ground after Mr. Walker's arrest was the requisite "dangerous instrument."

107. The parties stipulate that Ms. Sponsel did not review the MCSO video or photographs from Mr. Walker's arrest before filing the direct complaint against him.

108. Based on the class 2 felony charge, Mr. Walker – a transient with no prior felony convictions – was facing a mandatory prison term of no less than 10-½ years, with no possibility of early release, if convicted.

109. On August 21, 2020, DCA Michael Baker presented the Walker case to the grand jury, using a grand jury checklist and draft indictment Ms. Sponsel had prepared. Ms. Sponsel did not review the body camera video footage or photographs before preparing these items, though they had been available to her for almost two months. The

grand jury returned a true bill, and Ms. Sponsel filed the indictment charging Mr. Walker with the same offenses alleged in the direct complaint.

110. In a prehearing interview with the State Bar, the following exchange occurred regarding the prosecution of Mr. Walker:

> Q. In the Walker case, did you ever look at the video, the body cam footage?
>
> A. I don't know if I did or not. I could have. And I don't know if I did. I could have.
>
> You know, as the case progressed, I could have popped it up. I know I looked at the photographs because those are easy enough to pull up, but I can't say for certain if I looked at it or not.
>
> Q. And it's sort of like just a fluff question, but you would agree with me that that would be prudent, though, because that sort of shows at least in realtime what was actually happening, right?
>
> A. Yeah, it would definitely be prudent, you know, as we're going along in the process, of course I'm going to look at that. I'm not going to go to trial with my eyes closed, I'm going to take a look at that.
>
> And, in fact, when Ms. Marshall put it in her thing that it was inconclusive, still doesn't change my charging decision, because if it's inconclusive, even though I still haven't seen it to this date that I can recall, I know that we tried to get access. I think maybe we got access, but I have a [Mac] so I couldn't pull it up, but even if it's inconclusive, it's not going to change my charging decision or the way that I would present it at court.

111. The parties stipulate that, "During an internal MCAO review of the [Walker] case after MCAO placed Respondent on administrative leave, it was determined that there was no clear evidence that the pen was used to stab the deputy. Further, it was determined that Respondent did not provide defense counsel with photographs of the injury."

112. Rachel Mitchell reviewed Mr. Walker's case and quickly came to the conclusion he had been overcharged. She testified that, although the deputy sustained a "small injury" to his hand, the evidence did not support a class 2 felony charge. Ms. Mitchell explained: "[T]here was, in my estimation, inadequate evidence to show, first of all, what caused [the deputy's] injury. Secondly, that in no way justified a class 2 dangerous felony."

113. On August 5, 2021, MCAO filed a motion to dismiss the aggravated assault charge against Mr. Walker, which the court granted. By that time, Mr. Walker had been incarcerated for 412 days.

114. The record supports the following statements about Mr. Walker's case included in MCAO's letter of termination:

> What was absolutely clear from the reports you had when you made this decision was that during the struggle, [the deputy] slightly injured his hand, and he did not require any medical treatment for that injury. No one, not [the deputy] or any other officers involved in this arrest, said they saw Mr. Walker use a pen, or any other instrument to stab anyone. Whether that injury was caused by a bite, a stab with an ink pen, or as a result of the general struggle was unknown and, based on the victim's statements, it was unknowable. A pen was found near Mr. Walker and [the deputy] had a small injury on his hand that could have been caused by a pen. While it is a possible inference from the circumstantial evidence that Mr. Walker stabbed [the deputy] with the pen, that evidence did not create a reasonable likelihood of conviction for the extremely serious offense you chose to charge.
>
> Even if the circumstantial evidence had shown that Mr. Walker stabbed [the deputy] with a pen, no reasonable person, and certainly not a prosecutor with nearly two decades of experience, could conclude that the pen was a dangerous instrument in the way it was used in this case.

Richard Villa

115. Ms. Sponsel charged Richard Villa with four counts of Aggravated Assault -- class 2 felonies, alleging that he used fencing as a dangerous instrument during an August 2020 protest. As noted *supra*, the statutory definition of "dangerous instrument" is "anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury." A.R.S. § 13-105.

116. The parties stipulate that, "[t]he body camera video reflects that the fencing was not thrown. Rather, Villa pushed at the fencing while the officers tried to put it back in place. A section of the fencing then fell over but did not cause any significant injuries." The parties further stipulate that the video evidence of Mr. Villa's conduct was available for Ms. Sponsel's review "no later than early October 2020."

117. Officers requested that Mr. Villa be charged with a class 6 felony for assaulting a police officer. During her hearing testimony, Ms. Mitchell explained that they should have requested a class 5 felony charge. She opined that, although the facts might have warranted a class 4 or class 5 felony, charging Mr. Villa with a class 2 felony was not supported by the evidence. She further testified that the grand jury presentation was inaccurate and that body camera footage did not support the description of Mr. Villa's conduct given to the grand jurors.

118. Mr. Vick similarly testified that Mr. Villa was "significantly overcharged" and that no evidence suggested, let alone established, Mr. Villa's conduct risked killing or seriously injuring an officer. He explained:

> [T]he video evidence, both from the body cam and from the surveillance video of PPD, showed that what actually occurred was as officers were lifting this – this fencing, which may be knee high, maybe slightly higher than that, they were trying to lift it back in place, Mr. Villa shoves it back down toward them, and it falls and kind of hits their shins. But the way the case was charged, we were alleging that that fence was a dangerous instrument. So that we were alleging it was readily capable of causing death or serious physical injury in the way it was used. And there's no way that pushing that fence over was going to kill or seriously hurt anybody. So I felt that the case was very overcharged . . . at best it was a class 5 assault on officers.

The class 2 felony charge Ms. Sponsel filed against Mr. Villa is the same charge MCAO relies on when a person threatens an officer with a knife or a gun.

119. Based on the class 2 felony charge, Mr. Villa, if convicted, faced a mandatory prison term of no less than 10-½ years and a maximum of 21 years, with no possibility of early release. The record supports the following statements included in MCAO's letter of termination:

> Mr. Villa pushed a piece of fencing toward the officers and it hit at least one of them on the leg. The fence never left the ground; it was clearly not thrown, and there was no good faith basis with the evidence or that video to believe that anyone was in danger of being killed or seriously injured by what Mr. Villa did. Your charging decision – to significantly increase the charges requested by law enforcement – should have been carefully considered due to the magnitude of that allegation and the sentencing consequences. Having sought and obtained such significant charges it was imperative for you to review the available evidence to ensure there was a reasonable likelihood of conviction for that offense. At the very least, you had an ethical obligation to ensure that the charge was supported by probable cause. When you received the video evidence, it should have been obvious that you did not have any good faith basis to pursue a charge for Aggravated Assault, a Class 2 Dangerous Felony, and you should have immediately dismissed the charge because Mr. Villa was innocent of that offense. Alternatively, you could have moved to amend the indictment to lesser offenses supported by the evidence. You did neither. Although you had the video evidence since at least October 2020, at the time this case was

reviewed by additional attorneys in February 2021, you had either failed to review the evidence in your possession or failed to take action on it.

Khiry Wilson

120. On September 9, 2020, Khiry Wilson entered a guilty plea to Riot and Hindering Prosecution, both class 5 felonies. He contemporaneously entered a guilty plea in two unrelated cases for Possession of Drug Paraphernalia, a class 6 felony (*State v. Wilson*, CR2019-151113) and a probation violation (*State v. Wilson*, CR2016-138612).

121. Ms. Sponsel sent Ms. Leckrone, Mr. Goddard, and Mr. Vick an email regarding "CR2020-130075-006 for Defendant Wilson, Khiry Jaquan" stating, in pertinent part: "[j]ust wanted to let you know that this defendant just pled guilty to Riot, class 5 and Hindering, class 5 –No agreements – for the crimes that occurred on August 9th in front of 620 when the barriers were torn down and the rioters tried to storm [the PPD]."

122. The State Bar alleges Ms. Sponsel's email was misleading because it did not explain that Mr. Wilson had prior unrelated cases that were included in the plea agreement. Ms. Leckrone, though, testified she did not find the email to be misleading.

123. The State Bar did not prove any ethical violations relating to Ms. Sponsel's September 9, 2020 email by clear and convincing evidence.

Disclosure/Discovery Issues

124. The State Bar alleges Ms. Sponsel failed to comply with disclosure obligations and discovery requests in the cases discussed herein that are unrelated to the October 17 prosecutions. The hearing panel finds no clear and convincing evidence of ethical violations in this regard.

125. The record reflects that Ms. Sponsel was no longer the assigned prosecutor when some of the discovery/disclosure issues arose. The record also includes numerous disclosures Ms. Sponsel and her paralegal *did* make to defense counsel. Ms. Sponsel testified without contradiction that some delays occurred because documents and videos had to be reviewed in compliance with victims' rights requirements before they could be produced. *See, e.g.,* A.R.S. § 13-4434.

CONCLUSIONS OF LAW

The State Bar must prove ethical violations by clear and convincing evidence. "The State Bar has met its burden if it shows that it is 'highly probable' that the allegations in the complaint are true." *Wolfram*, 174 Ariz. at 52; *see also In re Neville,* 147 Ariz. 106, 111 (1985) ("Clear and convincing evidence is that which may persuade that 'the truth of the contention is highly probable.'").

Count One

1. The State Bar did not prove by clear and convincing evidence that Ms. Sponsel violated ER 1.3, which requires lawyers to "act with reasonable diligence and promptness in representing a client."

2. The State Bar did not prove by clear and convincing evidence that Ms. Sponsel violated ER 3.2, which requires lawyers to "make reasonable efforts to expedite litigation consistent with the interests of the client."

3. The State Bar did not prove by clear and convincing evidence that Ms. Sponsel violated ER 3.3(a), which states that a lawyer shall not knowingly "make a false

statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

4. The State Bar did not prove by clear and convincing evidence that Ms. Sponsel violated ER 3.4(a), which states that a lawyer shall not "unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value . . ."

5. The State Bar did not prove by clear and convincing evidence that Ms. Sponsel violated ER 3.4(c), which states that a lawyer shall not "knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists[.]"

6. The State Bar did not prove by clear and convincing evidence that Ms. Sponsel violated ER 3.8(d), which requires the prosecutor in a criminal case to "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . ."

7. The State Bar did not prove by clear and convincing evidence that Ms. Sponsel violated ER 8.4(c), which states it is professional misconduct to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

8. The State Bar did not prove by clear and convincing evidence that Ms. Sponsel violated ER 8.4(d), which prohibits "engag[ing] in conduct that is prejudicial to the administration of justice."

9. The State Bar did not prove by clear and convincing evidence that Ms. Sponsel ran afoul of Rule 54(c) by knowingly violating "any rule or any order of the court."

Count Two

10. The State Bar proved by clear and convincing evidence that, as to the October 17, 2020 defendants, Charles Walker, and Richard Villa, Ms. Sponsel violated ER 1.1, which states:

> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Competent handling of a legal matter "includes inquiry into and analysis of the factual and legal elements of the problem and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation." ER 1.1, cmt 5. A novel, complex criminal prosecution demands a heightened level of knowledge, skill, thoroughness, and preparation. *See Wolfram*, 174 Ariz. at 57 ("We note and consider that these violations occurred in the course of representation in a very serious criminal matter. What might be excusable in handling a traffic violation is not to be tolerated in a charge such as this.").

These ethical precepts are consistent with Justice Berch's hearing testimony about the "weighty power" prosecutors wield and the concomitant duty to competently evaluate the propriety of all charges, but particularly those that are new or novel or that, as here, take "what otherwise might have been a relatively small charge like a misdemeanor charge and bump[ ] it up into the felony range."

Ms. Sponsel's knowledge, skill, thoroughness, and preparation were clearly deficient in light of what was at stake, in violation of ER 1.1.

11. The State Bar proved by clear and convincing evidence that Ms. Sponsel violated ER 1.3, which requires a lawyer to "act with reasonable diligence and promptness in representing a client." The hearing panel assumes, without deciding, that Ms. Sponsel had a good faith basis for filing the direct complaint against the October 17 defendants. However, she failed to promptly or diligently assess the propriety of adding gang-related charges, and she failed to promptly or diligently review information and evidence after the defendants were indicted. As to Mr. Villa and Mr. Walker, Ms. Sponsel failed to act with reasonable diligence and promptness in reviewing information available to her -- both before and after she filed the class 2 felony charges.

12. The State Bar proved by clear and convincing evidence that Ms. Sponsel violated ER 3.1, which states, in pertinent part, 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 nonfrivolous argument for an extension, modification or reversal of existing law." Pursuant to ER 3.1, an attorney must inform him or herself about the specific facts of a case, as well as the applicable law. ER 3.1, cmt 2. As to the October 17 defendants, the record establishes that Ms. Sponsel's ER 3.1 violations began at the grand jury stage. As to Mr. Villa and Mr. Walker, Ms. Sponsel lacked a good faith basis for charging them with class 2 felony offenses.

13. The State Bar did not prove by clear and convincing evidence that Ms. Sponsel violated ER 3.2, which states that a lawyer "shall make reasonable efforts to expedite litigation consistent with the interests of the client."

14. The State Bar did not prove by clear and convincing evidence that Ms. Sponsel violated ER 3.4(a), which states that a lawyer shall not "unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value."

15. The State Bar did not prove by clear and convincing evidence that Ms. Sponsel violated ER 3.4(c), which states that a lawyer shall not "knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists[.]"

16. The State Bar did not prove by clear and convincing evidence that Ms. Sponsel violated ER 3.8(a), which requires a prosecutor to "refrain from prosecuting a charge that the prosecutor *knows* is not supported by probable cause." (Emphasis added). The word "knows" is a term of art with a specific meaning under the Rules of the Supreme Court of Arizona.

"Knows" is defined as "actual knowledge of the fact in question." ER 1.0(f). "[M]erely knowing one performs particular actions is not the same as consciously intending by those actions to engage in unethical conduct. The actor must also know the nature and circumstances of those actions[.]" *In re Van Dox*, 214 Ariz. 300, 305 (2007); *see also In re White-Steiner*, 219 Ariz. 323, 325 (2009) ("Knowledge" requires "the conscious awareness of the nature or attendant circumstances of the conduct.").

In *White-Steiner*, the court distinguished between a lawyer who "knows" conduct is unethical and a lawyer who "should know that her conduct is improper." 219 Ariz. at 325-26. If the applicable standard here were "should have known," the hearing panel would have no difficulty concluding that Ms. Sponsel violated ER 3.8(a). And if the evidence clearly and convincingly established that Ms. Sponsel prosecuted charges she *knew* were unsupported by probable cause, disbarment would be the presumptive sanction. *See, e.g., In re Peasley*, 208 Ariz. 27 (2004) (prosecutor disbarred for knowingly introducing perjured testimony); *In re Aubuchon*, 233 Ariz. 62, 72 (2013) (prosecutor disbarred for, *inter alia*, filing a criminal complaint she knew lacked probable cause).

17. The State Bar did not prove by clear and convincing evidence that Ms. Sponsel violated ER 3.8(d), which states that the prosecutor in a criminal case shall "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . ."

18. The State Bar proved by clear and convincing evidence that Ms. Sponsel violated ER 8.4(d), which states that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice." ER 8.4(d) "does not require a mental state other than negligence." *Alexander*, 232 Ariz. at 11. "A lawyer's conduct violates ER 8.4(d) if it causes injury or potential injury." *Martinez*, 248 Ariz. at 471 (prosecutor's improper comments to juries "at least potentially caused harm to the public and the legal system" and "jeopardized the integrity of the legal system," in violation of ER 8.4(d)).

Ms. Sponsel's conduct as to the October 17 defendants and as to Richard Villa and Charles Walker violated ER 8.4(d).

SANCTION DISCUSSION

The State Bar asks that Ms. Sponsel be suspended from the practice of law in Arizona for at least two years. Ms. Sponsel contends she engaged in no ethical misconduct.

Recognized goals of lawyer discipline include: (1) protection of the public and the courts; (2) deterring the respondent attorney and other lawyers from engaging in the same or similar misconduct; and (3) instilling public confidence in the Bar's integrity. *See In re Zawada*, 208 Ariz. 232, 236 (2004); *In re Phillips*, 226 Ariz. 112, 117 (2010); *In re Alcorn & Feola*, 202 Ariz. 62, 75 (2002). "[I]n determining the appropriate sanction to be imposed, we should focus on such considerations as the maintenance of the integrity of the profession in the eyes of the public, the protection of the public from unethical or incompetent lawyers, and the deterrence of other lawyers from engaging in unprofessional conduct." *In re Murray*, 159 Ariz. 280, 282 (1988). The objective of the attorney discipline system is not to punish the offender. *In re Scholl*, 200 Ariz. 222, 224 (2004).

"Sanctions imposed against lawyers . . . shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* and, if appropriate, a proportionality analysis." Rule 58(k). In fashioning an appropriate sanction, the hearing panel considers the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating and

mitigating factors. *See Scholl*, 200 Ariz. at 224. Aggravating and mitigating factors need only be supported by reasonable evidence. *In re Abrams*, 227 Ariz. 248, 252 (2011).

Ms. Sponsel violated duties owed to her client, to members of the public, to the legal system, and to the profession. "The role of a prosecutor is not to seek convictions and sentences but rather to seek justice." *Martinez*, 248 Ariz. at 463. "A prosecutor is not simply another lawyer who happens to represent the state. Because of the overwhelming power vested in his office, his obligation to play fair is every bit as compelling as his responsibility to protect the public." *Zawada*, 208 Ariz. at 239, *quoting New Jersey v. Torres,* 744 A.2d 699, 708 (N.J. App. 2000); *see also State v. Hulsey*, 243 Ariz. 367, 394 (2018) (prosecutors act as "ministers of justice.").

As the United States Supreme Court has observed in describing the unique role of prosecutors in our system of justice:

> [The prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor – indeed, he should do that. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Berger v. United States, 295 U.S. 78, 88 (1935).

Ms. Sponsel's misconduct had far-reaching, deleterious consequences. Ryder Collins and Amy Kaper described the harm they suffered, as well as their diminished faith in the justice system. County Attorney Mitchell discussed how Ms. Sponsel's actions

damaged office morale and painted MCAO "with a broad brush" as lacking integrity. Gang Bureau Chief Livingstone testified about how Ms. Sponsel's conduct sowed mistrust about the gang bureau, despite the fact it had nothing to do with the protester prosecutions. Finally, the record supports MCAO's Ethics Committee's assertion that, "the administration of justice was hampered in these cases by a failure to thoroughly review the available evidence and/or to make sound decisions after reviewing such evidence."[24] *Cf. Zawada*, 208 Ariz. at 238 (observing that, due to the respondent prosecutor's misconduct, the "criminal justice system suffered, as did society as a whole.").

The following ABA Standards are relevant to the misconduct in Count Two:

> 4.42: Suspension is generally appropriate when:
>
> (a) A lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
>
> (b) A lawyer engages in a pattern of neglect and causes injury or potential injury to a client.
>
> 7.2: Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.
>
> 7.3: Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

[24] Additionally, more than a dozen individuals arrested during the 2020 protests have filed civil lawsuits against Ms. Sponsel, Maricopa County, the City of Phoenix, and others. Ms. Sponsel herself served MCAO with a Notice of Claim demanding $10 million and later filed a lawsuit against Maricopa County and the County Attorney that is still pending.

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

- Multiple offenses
- Refusal to acknowledge wrongful nature of conduct
- Vulnerability of victim
- Substantial experience in the practice of law

The hearing panel does not find reasonable evidence supporting the proposed aggravators of "dishonest or selfish motive" or "pattern of misconduct." The aggravating factor of "dishonest or selfish motive" speaks in terms of "motive," not conduct. *In re Shannon*, 179 Ariz. 52, 69 (1994). And the commission of multiple offenses is not synonymous with a "pattern of misconduct." The Arizona Supreme Court "has found patterns when a lawyer had a prior disciplinary record concerning similar misconduct, and a lawyer engaged in misconduct involving multiple parties in different matters that often occurred over an extended period of time." *Alexander*, 232 Ariz. at 5. The "pattern of misconduct" aggravator "applies to lawyers who repeatedly engage in ethical misconduct in different contexts." *Id*.

Ms. Sponsel established the following three mitigating factors by reasonable evidence:

- Absence of prior disciplinary record.
- Character or reputation
- Imposition of other penalties or sanction

Conflicting evidence was presented about Ms. Sponsel's "character or reputation." Lawyers who have litigated against her described her as unreasonable, untrustworthy, too closely aligned with law enforcement, and "very inflammatory, very over the top." On the other hand, attorneys who have worked with Ms. Sponsel as colleagues testified she is hard-working, honest, and diligent. Perhaps the most objective testimony came from retired Judge Sherry Stephens, who had the opportunity to observe Ms. Sponsel over a period of years in the context of hearings, trials, and settlement conferences. Judge Stephens praised Ms. Sponsel's professionalism, diligence, and integrity. Considering the totality of the evidence, the hearing panel gives some mitigating weight to Ms. Sponsel's character or reputation.

Although lack of a disciplinary history is often accorded substantial mitigating weight, that is not necessarily so when a lawyer refuses to recognize the wrongfulness of his or her conduct. *See In re Bemis*, 189 Ariz. 119, 122-23 (1997) ("Although respondent has no prior disciplinary record in ten years of practice, he apparently still fails to recognize the wrongful nature of his conduct. . . . The court is most concerned with respondent's refusal to accept that his conduct cannot be justified by any perceived unfairness in the judges' rulings."); *Shannon*, 179 Ariz. at 74 ("Respondent's failure to comprehend what was apparent to 14 people disturbs this court because Respondent is likely to repeat that which he fails to understand."). Ms. Sponsel steadfastly refuses to acknowledge any misconduct or even unintentional missteps.

The aggravating factors outweigh the mitigating factors.

Rule 58(k) contemplates a proportionality analysis, if appropriate. Reported Arizona discipline cases involving prosecutors offer some, albeit limited, guidance.

In *Peasley*, a prosecutor was disbarred for knowingly introducing perjured testimony in two capital trials. 208 Ariz. at 41-42. In *Zawada*, a prosecutor was suspended for six months and a day based on his appeals to jurors' fears, "disrespect for and prejudice against mental health experts that led to harassment and insults during cross-examination," and improper arguments to the jury. 208 Ariz. at 234. In *Aubuchon*, a prosecutor was disbarred for, among other things, obtaining an indictment for offenses she knew were beyond the statute of limitations, filing a RICO lawsuit against judges and other officials for purposes of retaliation and intimidation, and filing a criminal complaint for which no probable cause existed. 233 Ariz. at 72. In *Martinez*, a prosecutor was reprimanded based on several incidents of trial-related misconduct that did not rise to the level of requiring reversal of the underlying criminal convictions. 248 Ariz. at 462.

Ms. Sponsel's ethical misconduct is not as egregious as the knowing misconduct at issue in *Peasley* and *Aubuchon*. It is substantially more serious than the conduct addressed in *Zawada* and *Martinez*.

Ultimately, the sanction imposed must be "tailored to the unique circumstances" of each case. *Alexander*, 232 Ariz. at 13. Based on the ABA *Standards*, the fact that the aggravating factors somewhat outweigh the mitigating factors, and the immense harm caused by Ms. Sponsel's actions, the hearing panel concludes that a two-year suspension is necessary to achieve the purposes of the attorney disciplinary system – particularly the goals of instilling public confidence in the integrity of the legal profession and deterring

similar misconduct. *See Zawada*, 208 Ariz. at 238 ("The more serious the injury, the more severe should be the sanction.").

CONCLUSION

Based on the foregoing, the hearing panel orders as follows:

1. Respondent April Arlene Sponsel is suspended from the practice of law in Arizona for two years, effective 60 days from the date of this decision.

2. Ms. Sponsel shall pay the State Bar's costs incurred in these proceedings.

A final judgment and order will follow.

DATED this 19th day of December, 2023.

/s/signature on file
Margaret H. Downie, Presiding Disciplinary Judge

/s/ signature on file
Mark S. Sifferman, Attorney Member

/s/ signature on file
Randall Clark, Public Member

Copy of the foregoing e-mailed
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