Clerk of the Superior Court
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06/10/2025 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005545 06/09/2025

HONORABLE FRANK W. MOSKOWITZ

CLERK OF THE COURT
S. Motzer
Deputy

SHEILA JANISCH

FRANK M FOX

v.

SCOTTSDALE MOUNTAIN COMMUNITY ASSOCIATION

NICHOLAS C NOGAMI

D&C MATERIALS-CSC
JUDGE MOSKOWITZ
STATE BAR OF ARIZONA

MINUTE ENTRY

Pending before the Court is Defendants' Expedited Motion to Disqualify Counsel and Preclude Evidence and Strike Complaint ("the Motion"). The Motion was filed on May 14, 2025. It is fully briefed. Although oral argument was requested, the Court does not need oral argument at this time.

Defendants argue that Plaintiff's counsel violated ER 4.2. Plaintiff's counsel defends his actions as inadvertent and based on "[his] newness to the process and the impact of short-term memory loss due to a stroke." The Court is therefore concerned about whether counsel for Plaintiff's physical or mental condition is adversely affecting his ability to practice law under Rule 63 of the Rules of the Supreme Court of Arizona and/or whether he is competent to do so under ER 1.1. *See* 1.1 Competence, Ann. Mod. Rules Prof. Cond. § 1.1, which provides, *inter alia*:

MENTAL HEALTH AND WELLNESS

> Recent years have seen proposals to treat lawyer well-being as an element of competence. See The Path to Lawyer Well-Being: Practical Recommendations

for Positive Change (National Task Force on Lawyer Well-Being, 2017) at 20.2, available at https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/lawyer_well_being_report_final.pdf (rule or comments should be revised "to more clearly include lawyers' well-being in the definition of 'competence."D'). Some jurisdictions have added wellness provisions to Rule 1.1 or its comments. See, e.g., Cal. Rule 1.1(b)("'competence' in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably necessary for the performance of such service"); Vt. Rule 1.1, Cmt. [9] ("[a] lawyer's mental, emotional, and physical well-being may impact the lawyer's ability to represent clients and to make responsible choices in the practice of law. Maintaining the mental, emotional, and physical well-being necessary for the representation of a client is an important aspect of maintaining competence to practice law"); Va. Rule 1.1, Cmt [7] ("[a] lawyer's mental, emotional, and physical well-being impacts the lawyer's ability to represent clients and to make responsible choices in the practice of law. Maintaining the mental, emotional, and physical ability necessary for the representation of a client is an important aspect of maintaining competence to practice law"); see also D.C. Ethics Op. 377 (2019) (law firm's duties with respect to mentally impaired lawyer); Md. Ethics Op. 2021-04 (2021) (lawyer may use cannabis in compliance with Medical Cannabis Statute if no adverse effect on lawyer's compliance with Rules); Pa. Ethics Op. 2021-200 (2021) (lawyer using medical marijuana must withdraw if underlying medical condition or treatment impairs ability to represent client competently and diligently; if treatment may result in temporary impairment, lawyer must refrain from acting for client until effects have subsided). See generally Nicholas D. Lawson, "%7FTo Be a Good Lawyer, One Has to Be a Healthy Lawyer": Lawyer Well-Being, Discrimination, and Discretionary Systems of Discipline, 34 Geo. J. Legal Ethics 65 (2021).

IT IS THEREFORE ORDERED referring this matter to the State Bar of Arizona to investigate the Court's concerns.

IT IS FURTHER ORDERED directing the Clerk of Court to seal the records that Plaintiff's counsel filed on May 21, 2025 in his filing entitled Records Received in Response to Subpoenas and the Subject of the Motion to Disqualify, not to be opened without further order of the Court.

IT IS FURTHER ORDERED staying this case in its entirety until further order of the Court.