Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005545 03/09/2026

HONORABLE DAVID MCDOWELL

CLERK OF THE COURT
A. Patel
Deputy

SHEILA JANISCH

FRANK M FOX

v.

SCOTTSDALE MOUNTAIN COMMUNITY ASSOCIATION, et al.

CHARLES H OLDHAM

BILL DUBE
NO ADDRESS ON RECORD
YURI ELLIS
NO ADDRESS ON RECORD
TOM MCVAY
NO ADDRESS ON RECORD
LONNIE MUTO
NO ADDRESS ON RECORD
JUDGE MCDOWELL

RULING ON RENEWED MOTION TO DISQUALIFY

Pending before the Court is *Plaintiff's Renewed Motion to Disqualify Defense Counsel and for Sanctions* filed January 24, 2026; Defendant's February 11, 2026 *Scottsdale Mountain Community Association's Motion in Opposition to Plaintiff's Renewed Motion to Disqualify and for Sanctions;* and the February 15, 2026 *Plaintiff's Reply in Support of Plaintiff's Renewed Motion to Disqualify and for Sanctions.*

In this renewed Motion, Ms. Janisch claims she formed an attorney/client relationship with Josh Bolen when he inquired about her litigation during his medical appointment.

"An attorney-client relationship is said to exist when the party divulging confidences and secrets to an attorney believes that he is approaching the attorney in a professional capacity with the intent to secure legal advice." *Alexander v. Superior Court*, 141 Ariz. 157, 162 (1984). Ms. Janisch

asserted for the first time in the Reply that she divulged confidential information – but no declaration, affidavit, or disclosure of any information (even *in camera*) supports that assertion. The Affidavit submitted by Ms. Janisch does not refer to any confidential information she provided to Mr. Bolen or even that confidential information was provided. Nothing indicates that Ms. Janisch approached Mr. Bolen in his professional capacity with the intent to secure legal advice or that she obtained any legal advice.[1]

Plaintiff's renewed Motion does not mention any new information or evidence about the purported conflict that was not or could not have been raised in the May 2024 original motion. The only thing appearing in the renewed Motion occurring after May 2024 is the reference to the January 2026 letter sent to the homeowners in the Association. The renewed Motion draws no evidentiary correlation between the January 2026 letter and Mr. Bolen or defense counsel. Without stating how, Plaintiff asserts that defense counsel played some role in that communication. But Plaintiff produces absolutely nothing to substantiate her speculation. Much of the over-length Reply discusses that communication but fails to reference any evidence to support Ms. Janisch's belief that defense counsel played any role in the drafting or circulation of that communication. Speculation, innuendo, supposition, and accusation are not evidence. The Court is required to base its decisions on the evidence produced by the parties; thus, the parties **must** produce evidence.

Plaintiff includes exhibits with the Reply which do not appear to have been submitted with her 2024 motion or with the renewed motion. She fails to explain why that information, which was or should have been in her possession in 2024, was not submitted in 2024 or why it should be considered now. All of the information she submitted was in existence in 2023 – well before the original motion was filed.

The Reply exceeds the scope of the renewed Motion and the Response, by raising a host of issues not raised in the motion or response. Arizona courts have consistently held that arguments or legal theories raised for the first time in a reply memorandum are procedurally improper. See *United Bank v. Mesa N.O. Nelson Co.*, 121 Ariz. 438, 443 (1979). Nonetheless, the Court will address some of these newly raised issues, to prevent them from being raised in a subsequent motion.

In the Reply, Plaintiff raises the issue of disqualification again because the Declaration of Josh Bolen is,

> … directly contradicted by certified medical records, electronic evidence, and internal firm communications. Specifically, while Mr. Bolen swore he had a "clean break" and "did not provide legal advice," newly discovered evidence proves he

[1] The Court disagrees with Plaintiff's assertion that "look into your case and try to get it dismissed" is either legal advice or a "specific legal promise".

> returned for multiple medical examinations and explicitly promised to "look into our case and try and get it dismissed."

Reply, page 2 lines 4 through 9. Even though none of this was raised in the renewed Motion, none of these allegations demonstrate that Plaintiff divulged confidences to Mr. Bolen or that she approached him in his professional capacity with the intent to secure legal advice. The evidence which Plaintiff included in the Reply existed since 2023, if it was truly newly discovered, it was only newly discovered due to a lack of diligence because the information was within Plaintiff's possession or control since 2023.

Plaintiff also asserts that disqualification is required based upon,

> … documented perjury, the misuse of Association data and the spread of confidential information, and the public defamation of a medical professional, and a "circular firing squad" between co-clients

Reply, page 2, lines 21 through 24. But again, Plaintiff submitted nothing to support that defense counsel played any role in the alleged misuse of Association data, the alleged spread of confidential information, in the alleged defamation of a medical professional, or the purported circular firing squad between co-clients. At best, the only allegation made which has a connection with defense counsel is the allegation of perjury. Based on the information provided, the Court does not find perjury occurred. The Court cautions the parties against reading into written documents words that are not there or selectively reading portions and ignoring others. For instance, Ms. Janisch contends on page 3, line 25 of the Reply that Mr. Bolen said he 'did not return" [to Ms. Janisch's clinic] but Mr. Bolen's declaration, paragraph 5 clearly states he continued visiting the medical office for appointments. In paragraph 7 he states he stopped after he received the medical procedure – it does not state nor is it reasonable to infer that Mr. Bolen stopped going to that clinic after his February 9, 2023 conversation with Ms. Janisch. Reading the declaration as a whole it is clear he continued going to that clinic after February 9, 2023 and stopped when the medical procedure was completed.

If the Court strips away the unsupported allegations that defense counsel played a role in the circulation of the January 2026 letter, the Court is left with the same arguments asserted in the May 2024 motion. That argument was unpersuasive then and remain so.

IT IS ORDERED denying Plaintiff's *Renewed Motion to Disqualify Defense Counsel and for Sanctions.*

Defendant seeks sanctions against Plaintiff based upon this renewed motion. The Court will not impose sanctions at this time, but the point at which sanctions will be imposed has arrived. The

Court has issued plenty of warnings about the need to submit evidence to support allegations made, the necessity of citing cases that actually exist and support the position for which they are cited, adhering to the Civil Rules, and avoiding hyperbole, accusation, and innuendo. Future motions or filings which fail to heed the Court's warnings will result in sanctions.

Plaintiff refers to the case of *State v. Bolding* in her amended Motion. No citation was provided. The Court found one reported case entitled *State v. Bolding* and one unreported case. Neither case addressed formation of the attorney-client relationship. In the future, the Court will not accept any filings from either party unless each reference to a case contains a proper and complete citation.

Again, Rule 7.1 provides that reply briefs are limited to eleven pages. Plaintiff's Reply was thirteen pages of text. No order of this Court permitted Plaintiff to exceed the page limitation. In the event future filings exceed the page limitation, the Court will stop reading when the number fo pages specified in Rule 7.1 has been reached.

Plaintiff filed (as an attachment to the Reply (Docket ID# 187917288)) a *Notice of Lodging Non-Public Exhibit* in which Plaintiff requested the exhibits be protected from public disclosure. This filing does not comply with Rule 5.4. If Plaintiff wants those exhibits protected from access, she needs to file a proper motion pursuant to Civil Rule 5.4.

Finally, the Court is concerned that Plaintiff attached medical information about Mr. Bolen to her Reply. Mr. Bolen is not a party to this case, his medical treatment is not an issue in this case. The Court cautions the parties about proceeding further down this path lest state and federal medical confidentiality laws are violated.