

IN THE
SUPREME COURT OF THE STATE OF ARIZONA

JOHN ACCURSIO,
Plaintiff/Appellant,

v.

TREE HOUSE LABS, LLC, ET AL.,
Defendants/Appellees.

No. CV-25-0028-PR
Filed September 10, 2026

Appeal from the Superior Court in Maricopa County
The Honorable Dewain D. Fox, Judge
No. CV2023-091725
REVERSED AND REMANDED

Memorandum Decision of the Court of Appeals
Division One
No. 1 CA-CV 24-0298
Filed Jan. 9, 2025
VACATED

COUNSEL:

Jill Ormond (argued), Gordon Rees Scully Mansukhani, LLP, Phoenix,
Attorneys for BB Group LLC, Justin Brandt, Clark Wu, and Mukunda
Shanbhag

Kyle O'Dwyer (argued), Fortify Legal Services, Mesa, Attorneys for John
Accursio

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

JUSTICE KING authored the Opinion of the Court, in which CHIEF JUSTICE TIMMER, VICE CHIEF JUSTICE LOPEZ, and JUSTICES BOLICK and BEENE joined. JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, dissented.

JUSTICE KING, Opinion of the Court:

¶1 The rules of professional conduct governing lawyers are in Rule 42 of the Rules of the Supreme Court of Arizona.¹ *See* Ariz. R. Sup. Ct. 42 (setting forth the Ethical Rules). An individual or entity may file a charge with the State Bar of Arizona (“State Bar”) alleging unprofessional conduct by a lawyer or the unauthorized practice of law. *See* Ariz. R. Sup. Ct. 53, 55(a), 77(a), 78(a). “Communications to the . . . state bar . . . relating to lawyer misconduct, lack of professionalism or disability, and testimony given in the proceedings shall be absolutely privileged conduct, and no civil action predicated thereon may be instituted against any complainant or witness.” Ariz. R. Sup. Ct. 48(l); *see also* Ariz. R. Sup. Ct. 80(a)(6) (“Communications to the . . . state bar . . . relating to alleged unauthorized practice of law, and testimony given in the proceedings shall be absolutely privileged conduct, and no civil action predicated thereon may be instituted against any complainant or witness.”). Rules 48(l) and 80(a)(6) also provide that certain enumerated people “shall be immune from suit for” their conduct, but that list of people does not include complainants who file charges.

¶2 In this case, we consider whether Plaintiff John Accursio may maintain a wrongful institution of civil proceedings (“WICP”) claim against Defendant Clark Wu on the basis that Wu filed a charge against Accursio with the State Bar. In doing so, we must determine whether the filing of a charge with the State Bar is a “civil proceeding” for purposes of a WICP claim. We conclude the filing of such a charge may serve as the predicate

¹ In this Opinion, we refer to the Rules of the Supreme Court of Arizona as the “Rules.”

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

“civil proceeding” for a WICP claim. Also, Rules 48(l) and 80(a)(6) do not immunize a complainant from a WICP claim for the act of filing a charge. These Rules merely provide that statements made to the State Bar or given in testimony are privileged, and a civil action may not rely upon such privileged statements. A plaintiff in a WICP action, however, may rely upon relevant, admissible evidence that is not privileged, such as the complainant’s non-privileged communications, the timing of filing, and other background facts.

¶3 We also consider when the “civil proceeding” commences, as such timing is relevant to a WICP claim. We conclude the timing depends on the nature of the charge. When a charge alleges a lawyer admitted to practice in Arizona has violated the Ethical Rules, the “civil proceeding” commences when the lawyer is provided written notice of a screening investigation and required to provide a written response to the allegations. *See* Ariz. R. Sup. Ct. 55(b)(1). When a charge alleges a person has engaged in the unauthorized practice of law, such “proceeding commences upon receipt by the state bar of a charge against a respondent.” Ariz. R. Sup. Ct. 78(a).

¶4 Accursio’s complaint sufficiently alleges that the charge Wu filed with the State Bar commenced a “civil proceeding,” and Accursio alleges non-privileged facts in support of his claims. Therefore, we reverse the dismissal of Accursio’s WICP and related aiding and abetting claims under Arizona Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. On remand, the trial court will determine whether Accursio can prove a WICP claim without considering the content of privileged communications to the State Bar, an issue that is not before us.

BACKGROUND

¶5 Accursio appeals the trial court’s dismissal of his WICP and aiding and abetting claims for failure to state a claim upon which relief can be granted. *See* Ariz. R. Civ. P. 12(b)(6). For purposes of evaluating this motion to dismiss, we “must . . . assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom.” *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 ¶ 7 (2008). Therefore, the facts here are taken from Accursio’s complaint.

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

¶6 This case began with a dispute over ownership interests in Tree House Labs, LLC and access to business records. In 2021, Tree House Labs and others filed a lawsuit in Maricopa County Superior Court, Case No. CV2021-019322 (the “Underlying Action”). Wu and his law firm, BB Group, LLC, represented the plaintiffs in the Underlying Action. Accursio, a lawyer admitted to practice in New York and Washington, D.C., represented the defendants in the Underlying Action. Two lawyers admitted to practice in Arizona served as co-counsel with Accursio (“Arizona co-counsel”), also representing the defendants in the Underlying Action. At some point during those proceedings, Accursio told Wu that BB Group’s representation of the plaintiffs appeared to violate conflict of interest provisions in the Ethical Rules. In 2022, the plaintiffs voluntarily dismissed the Underlying Action.

¶7 Since 2021, Accursio and Arizona co-counsel have made multiple requests for records from Wu’s clients. More recently, Wu indicated that Accursio’s clients needed to sign a non-disclosure agreement before Wu’s clients would provide the requested records. Wu sent a draft non-disclosure agreement to Accursio and Arizona co-counsel. Accursio reviewed the agreement and sent a second draft version to Wu and Arizona co-counsel. Shortly after, Wu accused Accursio of engaging in the unauthorized practice of law in Arizona. Accursio replied that his conduct was permissible under Ethical Rule 5.5, as he was associating with Arizona co-counsel. *See* Ariz. R. Sup. Ct. 42, Ethical Rule 5.5(c)(1) (allowing a lawyer admitted in another United States jurisdiction to provide temporary legal services that involve Arizona law under certain circumstances, including when “undertaken in association with a lawyer who is admitted to practice in Arizona and who actively participates in the matter”).

¶8 Accursio contacted the State Bar and was purportedly informed that his representation qualified for the exception in Ethical Rule 5.5. In addition, Accursio discussed with the State Bar Wu’s potential conflict of interest, and filed a bar charge against Wu, Charge No. 22-1747.

¶9 Accursio then informed Wu of the charge that he filed against him. Immediately thereafter, Wu filed a charge with the State Bar against Accursio, Charge No. 22-1748, alleging that Accursio had engaged in the unauthorized practice of law in Arizona. As a result of this charge, a State

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

Bar staff member contacted Accursio and requested information from him. Accursio drafted and delivered a response letter to the State Bar.

¶10 Later, Accursio received a letter from Senior Bar Counsel explaining that “a screening investigation is being undertaken pursuant to Rule 55(b), Ariz. R. Sup. Ct.” The letter also stated:

Your participation in the screening investigation is extremely important, as Bar Counsel will make a recommendation at the end of the investigation as to the disposition of this matter. Pursuant to [Ethical Rule] 8.1(b) and Rule 54(d), Ariz. R. Sup. Ct., you have a duty to cooperate with this investigation. Failure to fully and honestly respond to, or cooperate with, the investigation is, in itself, grounds for discipline.

The letter requested that Accursio provide specific information about his alleged involvement in drafting or editing (or providing legal advice about) a memorandum of understanding and various employment offer letters before associating with local counsel.

¶11 Accursio submitted the requested information to Senior Bar Counsel in a redacted letter and an unredacted letter. Due to the sensitive nature of the unredacted information, Accursio simultaneously requested a protective order. The State Bar filed a Request for Protective Order Sealing a Portion of the Record with the Presiding Disciplinary Judge, and it was granted.

¶12 While the charge against Accursio was pending, Accursio received and accepted an offer of employment with a New York law firm. Accursio informed the New York law firm of the pending charge against him, and the firm subsequently rescinded the offer of employment.

¶13 Ultimately, the State Bar dismissed the charge against Accursio purportedly because the alleged unauthorized practice of law could not be proven by clear and convincing evidence. Accursio informed the New York law firm of the dismissal of the charge, but the firm did not reinstate Accursio’s employment offer. Although Accursio later secured other employment, the compensation was less than he would have received at the New York law firm.

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

¶14 Accursio filed this lawsuit, which included two claims relevant here: (1) a WICP claim against Wu based on the charge he filed against Accursio, and (2) a claim against BB Group and one of its lawyers, Justin Brandt, for aiding and abetting Wu’s tortious filing of a charge against Accursio.² Accursio’s complaint alleges he did not engage in the unauthorized practice of law, and Wu filed the charge “without any supporting evidence,” “without probable cause,” and “in retaliation” for the charge Accursio filed against Wu. Wu, Brandt, and BB Group (collectively “Defendants”) moved to dismiss Accursio’s claims for failure to state a claim upon which relief can be granted. See Ariz. R. Civ. P. 12(b)(6).

¶15 The trial court determined that Wu potentially subjected himself to WICP liability by filing a charge against Accursio. But “the State Bar’s disciplinary counsel conducted a screening investigation and dismissed the bar charge before instituting a proceeding.” The court observed the similarities between this case and *Goldman v. Sahl*, which affirmed the dismissal of an abuse of process claim premised on the filing of a State Bar charge. 248 Ariz. 512, 530 ¶ 64 (App. 2020) (determining “the mere filing of a bar charge is not ‘use’ of a judicial process” and thus plaintiff failed to state a claim for relief for abuse of process). The court determined that “as in *Goldman*, Accursio fails to state a viable claim for [WICP].”

¶16 Next, the court observed that “aiding and abetting is a theory of secondary liability.” *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Loc. No. 395 Pension Tr. Fund*, 201 Ariz. 474, 485 ¶¶ 34, 36 (2002) (stating that one element for aiding and abetting tortious conduct is that “the primary tortfeasor must commit a tort that causes injury to the plaintiff”). Because Accursio failed to state a WICP claim, the court determined that the aiding and abetting claim must also be dismissed. The court dismissed Accursio’s WICP and aiding and abetting claims with prejudice.

² The lawsuit included several other parties and claims that are not relevant to the issues before us.

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

¶17 The court of appeals vacated the dismissal of the WICP and aiding and abetting claims. *See Accursio v. Tree House Labs, LLC*, No. 1 CA-CV 24-0298, 2025 WL 52198, at *7 ¶¶ 38–39 (Ariz. App. Jan. 9, 2025) (mem. decision). The court determined that a state bar discipline proceeding may be a civil proceeding for purposes of a WICP claim, noting that a “WICP claim arising out of the alleged misuse of the attorney disciplinary process is consistent with the Restatement.” *Id.* at *4–5 ¶¶ 25–27 (citing Ariz. R. Sup. Ct. 48(a) and Restatement (Second) of Torts § 680 (1977) (referring to “the initiation . . . of civil proceedings . . . before an administrative board”)).

¶18 The court also noted that “[c]ommunications to the [State Bar] shall be absolutely privileged conduct, and no civil action predicated thereon may be instituted against any complainant or witness.” *Id.* at *3 ¶ 20 & nn.2–3 (quoting Ariz. R. Sup. Ct. 48(l) and 80(a)(6)). But this did not preclude Accursio’s WICP claim because his allegations are not based on Wu’s communications in the charge. *Id.* at *3–4 ¶¶ 20–24.

¶19 Finally, the court rejected the argument that Accursio failed to state a claim because the State Bar dismissed the charge before a proceeding commenced. *Id.* at *5–7 ¶¶ 28–38. The charge against Accursio was based on the unauthorized practice of law (a matter governed by Rules 75 through 80), but the State Bar’s letter to Accursio indicated “a screening investigation is being undertaken pursuant to Rule 55(b).” *Id.* at *6 ¶¶ 31–32. The court determined that Accursio’s complaint stated a viable claim whether evaluated under Rule 78 or Rule 55. *Id.* ¶¶ 32–33. Rule 78(a) provides that “[a]n unauthorized practice of law proceeding commences upon receipt by the state bar of a charge against a respondent.” *Id.* ¶ 31. And under Rule 55, a civil proceeding commenced because the State Bar conducted a screening investigation—twice asking for information from Accursio in response to the charge and obtaining a protective order to seal sensitive information in his responses. *Id.* at *6–7 ¶¶ 35–37. “Because Accursio was required to respond to requests for information by a regulatory body with authority to compel his cooperation had he resisted, the Bar’s [unauthorized practice of law] investigation was a ‘proceeding’ for purposes of a WICP claim.” *Id.* at *7 ¶ 37.

¶20 We granted review to determine whether a WICP claim may be predicated on a charge filed with the State Bar and, if so, when that “civil

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

proceeding” commences for purposes of the WICP claim. These are issues of statewide importance that are likely to recur. We have jurisdiction under article 6, section 5(3) of the Arizona Constitution.

DISCUSSION

¶21 We review the interpretation of court rules de novo and according to the same principles we use for statutory interpretation. *Contreras v. Bourke*, 260 Ariz. 319, 322 ¶ 12 (2025); *Phillips v. O’Neil*, 243 Ariz. 299, 301 ¶ 8 (2017). We also “review dismissal of a complaint de novo.” *State ex rel. Brnovich v. Ariz. Bd. of Regents*, 250 Ariz. 127, 130 ¶ 7 (2020). Dismissal is appropriate only if “as a matter of law . . . plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of proof.” *Fid. Sec. Life Ins. Co. v. State Dep’t of Ins.*, 191 Ariz. 222, 224 ¶ 4 (1998). Looking only to the pleadings, we “must assume the truth of all well-pleaded factual allegations and indulge all reasonable inferences from those facts, but mere conclusory statements are insufficient.” *Id.*

A. May A Charge Serve As The Predicate “Civil Proceeding”?

1. WICP Claim

¶22 To state a WICP claim, a plaintiff is required to allege that the defendant (1) instituted a civil proceeding that was (2) motivated by malice, (3) begun or maintained without probable cause, (4) terminated in plaintiff’s favor, and (5) damaged plaintiff. See *Stephens v. State*, 262 Ariz. 233, 239 ¶ 25 (2026); *Bradshaw v. State Farm Mut. Auto. Ins. Co.*, 157 Ariz. 411, 416–17 (1988); *Carroll v. Kalar*, 112 Ariz. 595, 596 (1976). At issue here is whether the filing of a charge with the State Bar constitutes a “civil proceeding” for purposes of a WICP claim. We begin with an overview of the State Bar and the Rules governing the process after a charge is filed.

2. The Supreme Court’s Regulation Of The Practice Of Law

¶23 Under the Arizona Constitution, “[t]he judicial power shall be vested in an integrated judicial department.” Art. 6, § 1. “[T]he Arizona Constitution’s creation of an integrated judiciary gives to this Court the power not just to regulate all courts but also to regulate the practice of law.” *Scheehle v. Justices of the Supreme Court of the State of Arizona*, 211 Ariz. 282, 290 ¶ 29 (2005); see also *In re Riley*, 142 Ariz. 604, 607 (1984) (“[T]he Supreme

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

Court of Arizona has the exclusive jurisdiction to regulate the admission to the practice of the law and the discipline of those admitted.”).

¶24 Early in this state’s history, petitions alleging lawyer misconduct and seeking discipline were filed directly with the Arizona Supreme Court. *See In re Bailey*, 30 Ariz. 407 (1926). This Court had original jurisdiction to hear the proceeding and inherent authority to discipline a respondent lawyer who engaged in misconduct. *See id.*; *In re Spriggs*, 36 Ariz. 262 (1930).

¶25 But now, the Arizona Supreme Court “maintains under its direction and control a corporate organization known as the State Bar of Arizona.” Ariz. R. Sup. Ct. 32(a); *see also State v. Harold*, 74 Ariz. 210, 214 (1952). “The State Bar exists only by virtue of this [C]ourt’s rules, adopted under authority of article III and article VI, §§ 1 and 5 of the Arizona Constitution.” *In re Smith*, 189 Ariz. 144, 146 (1997). Also, the State Bar can have no greater jurisdiction or authority than this Court. *See Drummond v. Stahl*, 127 Ariz. 122, 126 (App. 1980); *In re Riley*, 142 Ariz. at 608.

¶26 A person or entity with concerns about a lawyer’s unprofessional conduct or the unauthorized practice of law may communicate those concerns to the State Bar by filing a charge. The charge sets into motion a variety of procedures that may eventually culminate in an action before the Arizona Supreme Court. *See* Ariz. Const., art. 6, §§ 1, 5(3), and 5(6); Ariz. R. Sup. Ct. 55–59, 78–79.

3. Charges Relating To An Arizona Lawyer’s Unprofessional Conduct

¶27 Rules 46 through 69 detail the process for addressing allegations of unprofessional conduct by lawyers admitted to practice in Arizona. This process begins with the filing of a charge with the State Bar. If a charge proceeds to the State Bar’s screening investigation stage, “[t]he respondent shall provide a written response to the allegations to bar counsel within twenty (20) days after notice of the investigation is given.” Ariz. R. Sup. Ct. 55(b)(1). “If respondent fails to timely respond,” bar counsel may then “seek an investigative subpoena pursuant to Rule 47(h)(1) to compel respondent’s attendance and production of documents.” Ariz. R. Sup. Ct. 55(b)(1)(B). “The subpoena may compel a respondent to

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

provide a written response to the allegations, as required in Rule 55(b)(1), the attendance of witnesses and the production of pertinent books, papers and documents, and answers to written interrogatories.” Ariz. R. Sup. Ct. 47(h)(1). Also, “a deposition upon subpoena [may be] required as result of a respondent’s failure to comply with bar counsel’s request for information,” in which case “the respondent shall be liable for the costs of the deposition.” *Id.*

¶28 There are significant implications for failure to appear or comply with a subpoena, as “the person may be subject to civil contempt proceedings.” Ariz. R. Sup. Ct. 47(h)(4), 55(b)(1)(B). In those civil contempt proceedings, if a respondent continues to not comply with a subpoena to appear and provide information or documents, the presiding disciplinary judge “may issue an order holding the person in contempt and impose reasonable sanctions to ensure compliance with the subpoena.” Ariz. R. Sup. Ct. 47(h)(4)(B). If a respondent is “found to be in contempt under these proceedings, the presiding disciplinary judge may, among other possible sanctions, summarily suspend the respondent from the practice of law until the respondent complies with the subpoena or order.” *Id.* Notably, all these provisions apply before a complaint is ever filed with the presiding disciplinary judge under Rule 58(a). *See* Ariz. R. Sup. Ct. 58(a) (“Formal discipline proceedings shall be instituted by bar counsel filing a complaint . . . with the disciplinary clerk.”); *see also* Ariz. R. Sup. Ct. 47(h), 55(b).

¶29 Also, a respondent against whom a charge has been filed “may tender, with the agreement of bar counsel, a conditional admission to the charge . . . in exchange for a stated form of discipline” or “may voluntarily consent to disbarment,” all before a complaint is ever filed. Ariz. R. Sup. Ct. 57(a)(1), (5). The respondent may agree to various forms of sanctions that are available under Rule 60(a), such as (1) disbarment, (2) suspension, (3) reprimand, (4) probation, (5) restitution “to persons financially injured, including reimbursement to the state bar client security fund,” and (6) payment of costs and expenses. *See* Ariz. R. Sup. Ct. 60(a), (d); *see also* Ariz. R. Sup. Ct. 57(a). Moreover, a person harmed by a lawyer’s conduct may file a charge with the State Bar and seek redress from the State Bar’s Client Protection Fund. *See* Ariz. R. Sup. Ct. 32(d)(8); *see also The Client Protection Fund of the State Bar of Arizona, Declaration of Trust* (created on Jan. 7, 1961, and amended on Sep. 29, 2017) (describing the Client Protection

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

Fund and identifying eligible claims as losses caused by the dishonest conduct of a lawyer arising out of and by reason of a lawyer-client relationship).

4. Charges Relating To The Unauthorized Practice Of Law

¶30 Rules 75 through 80 detail the process for addressing allegations that a person has engaged in the unauthorized practice of law in Arizona. This process begins with the filing of a charge with the State Bar. *See* Ariz. R. Sup. Ct. 75(a) (“Proceedings against non-members . . . may also be instituted pursuant to Rules 47 through 60, and such proceedings may be concurrent with proceedings under [Rules 75 through 80].”); *see also* Ariz. R. Sup. Ct. 78(a). After the State Bar receives such a charge, unauthorized practice of law counsel, volunteer bar counsel, or staff investigators may commence an investigation. Ariz. R. Sup. Ct. 78(b)(1)–(2). “For purposes of investigation by unauthorized practice of law counsel, the chief bar counsel or the chair or vice-chair of the committee shall have the power to issue investigative subpoenas with the same force and effect as in a civil action in superior court.” Ariz. R. Sup. Ct. 77(c).

¶31 If a respondent fails to comply with any request for information, the respondent’s deposition may be required pursuant to a subpoena, in which case “the respondent shall be liable for the actual costs of conducting the deposition, including but not limited to service fees, certified reporter fees, travel expenses and the cost of transcribing the deposition, regardless of the ultimate disposition of the unauthorized practice of law proceeding.” Ariz. R. Sup. Ct. 78(b)(3)(B). Also, during the investigation, a subpoena may be issued “to compel the attendance of witnesses, the production of pertinent books, papers and documents, and answers to written interrogatories.” Ariz. R. Sup. Ct. 78(b)(4); *see also* Ariz. R. Sup. Ct. 77(c). A respondent may be subject to sanctions for failure to respond promptly to an inquiry or request from unauthorized practice of law counsel for information relevant to the matter under investigation. Ariz. R. Sup. Ct. 76(a)(3)–(4). Notably, all these provisions apply before a complaint is ever filed in superior court alleging the unauthorized practice of law under Rule 79(a). *See* Ariz. R. Sup. Ct. 79(a) (“Formal unauthorized practice of law proceedings shall be instituted by unauthorized practice of law counsel filing a . . . complaint with the clerk of the superior court.”).

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

¶32 Also, before a complaint is ever filed, the respondent may enter into a consent agreement, “tender[ing] a conditional admission to the charge . . . in exchange for the imposition of a stated sanction,” which may include an agreement to cease and desist certain activities, refund fees collected, pay costs and expenses, make appropriate restitution, or any other lawful sanction agreed to by the parties. *See* Ariz. R. Sup. Ct. 78(c); *see also* Ariz. R. Sup. Ct. 76(b)(1). Indeed, in any unauthorized practice of law proceeding, possible sanctions include (1) a cease and desist order, (2) an injunction, (3) a civil or criminal contempt citation, (4) “restitution . . . to any individual for money, property, or other items of value received and retained by a respondent,” (5) a civil penalty up to \$25,000, and (6) costs, expenses, and attorney fees relating to the proceeding. Ariz. R. Sup. Ct. 76(b).

5. Civil Proceeding

¶33 We now consider whether a charge filed with the State Bar may constitute a “civil proceeding” for purposes of a WICP claim.

¶34 The Rules repeatedly identify the process after a charge is filed with the State Bar as a “proceeding”—both for charges alleging unprofessional conduct against an Arizona lawyer and charges alleging the unauthorized practice of law. *See, e.g.,* Ariz. R. Sup. Ct. 46(h)(12) (defining “[d]iscipline proceeding” as “any action involving a respondent pursuant to the rules relating thereto”); Ariz. R. Sup. Ct. 57(a)(1) (stating “[a] respondent against whom a charge has been made” may consent to discipline “at any stage of the proceedings”); Ariz. R. Sup. Ct. 75(b)(16) (defining “[u]nauthorized practice of law proceeding” as “any action involving a respondent pursuant to the rules relating to the unauthorized practice of law”); Ariz. R. Sup. Ct. 78(a) (stating “[a]n unauthorized practice of law proceeding commences upon receipt by the state bar of a charge”). The use of “proceeding” in these Rules is consistent with the term’s definition in Black’s Law Dictionary. *See Proceeding*, Black’s Law Dictionary (12th ed. 2024); *Proceeding*, Black’s Law Dictionary (5th ed. 1979). Thus, a proceeding exists after a charge is filed with the State Bar. But is it a “civil proceeding”?

¶35 “[C]ourts generally give words their ordinary meaning and may look to dictionary definitions.” *DBT Yuma, L.L.C. v. Yuma Cnty. Airport*

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

Auth., 238 Ariz. 394, 396 ¶ 9 (2015) (internal citation omitted). The term “civil” means (1) “Of, relating to, or involving the state or its citizenry,” (2) “Of, relating to, or involving private rights and remedies that are sought by action or suit, as distinct from criminal proceedings,” and (3) “Of, relating to, or involving any of the modern legal systems derived from Roman law.” *Civil*, Black’s Law Dictionary (12th ed. 2024); *Civil*, Black’s Law Dictionary (5th ed. 1979) (to same effect); *see also Civil*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/civil> (last visited Aug. 20, 2026) (defining “civil” as “of or relating to citizens” and “of or relating to the state or its citizenry”). Also, Black’s Law Dictionary defines a “civil proceeding” as “[a] judicial hearing, session, or lawsuit in which the purpose is to decide or delineate private rights and remedies, as in a dispute between litigants in a matter relating to torts, contracts, property, or family law.” *Civil Proceeding*, Black’s Law Dictionary (12th ed. 2024).³

¶36 As an initial matter, we note that all these proceedings occur through the judicial branch of government. *See Goldman*, 248 Ariz. at 525 ¶ 40 (recognizing that a discipline proceeding is a quasi-judicial proceeding). The filing of a charge with the State Bar and subsequent steps occur by virtue of the Rules adopted by this Court. And a complainant who files a charge with the State Bar submits himself to the jurisdiction of this Court and either (1) the State Bar or (2) the superior court. *See Ariz. R. Sup. Ct. 53(b), 77(a)*. If bar counsel ultimately files a complaint against an Arizona lawyer, the presiding disciplinary judge presides over the discipline proceeding, *see Ariz. R. Sup. Ct. 58*, and a decision may be appealed to the Arizona Supreme Court, *see Ariz. R. Sup. Ct. 59*. The presiding disciplinary judge is appointed by the Arizona Supreme Court. *Ariz. R. Sup. Ct. 51(a)*. Also, an unauthorized practice of law matter may result in a complaint being filed in the superior court, and the superior court’s decision is reviewable by the court of appeals and this Court. *Ariz. R. Sup. Ct. 79*.

³ According to our review, Black’s Law Dictionary first provided a definition of “civil proceeding” in 2014, and it is identical to the definition quoted in this opinion. *See Civil Proceeding*, Black’s Law Dictionary (10th ed. 2014).

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

¶37 As discussed, the proceedings that follow the filing of a charge are not mere informal inquiries. Instead, they occur through defined procedures under the Rules. A charge puts into motion an adjudicative process that may result in (1) the respondent being required to respond to a complainant's allegations with information, documents, or depositions, (2) the issuance of investigative subpoenas, (3) the initiation of civil contempt proceedings, (4) the respondent being required to pay restitution to persons financially injured, civil penalties, or other amounts, or (5) the respondent being subject to significant adverse action, such as disbarment. *Supra* ¶¶ 27–32. The Rules even use the term “civil” when addressing the initial phase of the proceedings when a charge is merely pending with the State Bar – before a complaint is ever filed. *See* Ariz. R. Sup. Ct. 47(h)(4), (i); *see also* Ariz. R. Sup. Ct. 77(c) (stating the State Bar “shall have the power to issue investigative subpoenas with the same force and effect as in a civil action in superior court”).

¶38 Defendants assert that filing a charge with the State Bar is akin to “[f]iling a police report, causing noise citations to be issued, and demanding prosecution of ordinance violations,” which “do not show that a party has used an instrument of the judicial process.” Not so. First, those examples are not proceedings that occur through the judicial branch of government and trigger a quasi-judicial proceeding. Second, *Goldman* indicated that a bar charge is akin to a police report for which the prosecutor then has discretion whether to proceed. 248 Ariz. at 530 ¶ 63. But *Goldman* did not recognize that investigative subpoenas may be issued and significant adverse action may be taken against a respondent who fails to comply at the charge investigation stage. The subject of a police investigation does not have a similar obligation to cooperate. *Goldman*'s comparison is not convincing.

¶39 Defendants rely on other language in *Goldman* to support their position that a charge filed with the State Bar is not a civil proceeding. *Goldman* acknowledged that “an action within a disciplinary proceeding may implicate an action for improper litigation conduct,” but determined “the mere filing of a bar charge is not ‘use’ of a judicial process” as required for abuse of process. *Id.* ¶ 64. *Goldman* then proceeded to state, “[i]n this case, there was no process, nor was there a proceeding to sustain a claim for the wrongful institution of civil proceedings.” *Id.* But there was no WICP claim in *Goldman*, and thus the court did not consider whether a “civil

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

proceeding” existed. *See id.* at 516 ¶ 1. *Goldman’s* brief mention of WICP was dicta that was unnecessary to its outcome and failed to analyze the substance of the Rules in context with the term “civil proceeding.” *See State v. Brown*, 260 Ariz. 476, 486 ¶ 49 (2025). *Goldman’s* perfunctory reference to WICP does not compel us to exclude charges filed with the State Bar from being considered “civil proceedings.”

6. The Dissent

¶40 Our dissenting colleagues do not dispute that a proceeding occurs after a charge is filed with the State Bar. They just dispute the characterization of that proceeding as a “civil proceeding.”

¶41 The dissent points to Rule 48(a), which provides: “Discipline and disability proceedings are neither civil nor criminal, but are sui generis.” *Infra* ¶¶ 104–105, 109–111, 138. Although Defendants do not rely on Rule 48(a), the dissent contends that this sentence supports the proposition that a State Bar discipline proceeding can never be a “civil proceeding” for purposes of a WICP claim. We disagree.

¶42 First, Rule 48(a) does not state that a discipline proceeding may never constitute a civil proceeding for a collateral legal purpose. The dissent’s construction effectively reads language into Rule 48(a) that does not exist.

¶43 Second, discipline proceedings are unique and are, therefore, sui generis. *See Sui Generis*, Black’s Law Dictionary (5th ed. 1979) (explaining “sui generis” is Latin and means “[o]f its own kind or class”). As discussed, a proceeding exists after a charge is filed with the State Bar and that proceeding may (or may not) become a civil proceeding. *Supra* ¶ 34; *infra* ¶ 77 (explaining that a civil proceeding does not commence under Rule 55 until a respondent is given the written notice of investigation and must provide a written response to the allegations). A discipline proceeding is not automatically a civil proceeding. Whether a discipline proceeding ever amounts to a civil proceeding depends on the stage and substance of each particular proceeding, which is evaluated on a case-by-case basis. That feature makes discipline proceedings unique.

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

¶44 Third, Rule 48(a) cannot be read in isolation, but instead must be read in context with the remainder of Rule 48, as context is a primary determinant of meaning. See *San Diego Gas & Elec. Co. v. Ariz. Dep’t of Revenue*, 259 Ariz. 105, 108 ¶ 11 (2025) (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 167 (2012) (explaining that courts must interpret a statute’s plain language in context, because “[c]ontext is a primary determinant of meaning”)); *S. Ariz. Home Builders Ass’n v. Town of Marana*, 254 Ariz. 281, 286 ¶ 31 (2023) (explaining that we determine the meaning of a statute “according to the plain meaning of the words in their broader statutory context”); *State v. Aguilar*, 209 Ariz. 40, 47 ¶ 23 (2004) (“We interpret court rules according to the principles of statutory construction.”). The following provisions appear immediately after Rule 48(a): (1) Rule 48(b) adopts specific Arizona Rules of Civil Procedure that apply to proceedings before the presiding disciplinary judge, (2) Rule 48(c) provides that the Arizona Rules of Evidence, with certain exceptions, “shall be followed as far as practicable,” and (3) Rule 48(d) and (e) set forth the standard of proof and burden of proof that apply. See Ariz. R. Sup. Ct. 48. We do not read Rule 48(a) in isolation, or invoke “a narrow, crabbed reading of [the] text.” *State v. Serrato*, 259 Ariz. 493, 497 ¶¶ 15–16 (2025). Instead, we analyze Rule 48 as a cohesive whole so that we do not overlook contextual clues that inform the meaning of subsection (a). See *id.* Read in context, Rule 48(a) means that discipline proceedings are also unique as they relate to the applicability of certain court rules and the relevant standard of proof and burden of proof.

¶45 The dissent traces the history of Rule 48(a) and contends that its text was originally sourced from American Bar Association (“ABA”) Model Rule for Lawyer Disciplinary Enforcement (“Model Rule”) 17(A), which, in turn, was addressed by ABA Standard 1.2, and we should therefore use the commentary to ABA Standard 1.2 to inform our understanding of Rule 48(a). *Infra* ¶¶ 104–05. Even assuming we should look to the commentary of ABA Standard 1.2 to interpret the meaning of Rule 48(a), that commentary supports our position. The commentary observes that (1) the question of what rules “should be applied . . . must be determined upon the facts presented in a particular case,” and (2) “[t]he general consensus is that disciplinary proceedings are unique and thus may properly be characterized as *sui generis*.” Joint Committee on Professional Discipline of the Appellate Judges’ Conference and the Standing Committee on Professional Discipline, *Standards for Lawyer Disciplinary and*

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

Disability Proceedings 1.2 cmt. (A.B.A., Tentative Draft 1978) (cleaned up). We agree that discipline proceedings are unique. As discussed, the filing of a bar charge initiates a proceeding, and whether it ever becomes a civil proceeding depends on the facts presented in each particular case (i.e., whether the process reaches a point where the respondent is required to respond subject to significant penalties). *Supra* ¶ 34; *infra* ¶ 77. Accordingly, we agree with the dissent’s observation that “the sui generis nature of disciplinary proceedings concerns the need to engage in a case-by-case determination.” *Infra* ¶ 105. Discipline proceedings are also unique with respect to the applicability of certain court rules and the relevant standard of proof and burden of proof. *Supra* ¶ 44.

¶46 The WICP cause of action remedies harms resulting from a civil proceeding that was motivated by malice and lacked probable cause. Similar types of harms may arise immediately after a charge is filed with the State Bar. Even before a complaint is ever filed, these adverse consequences may include investigative subpoenas, contempt proceedings resulting in sanctions, or an agreement that requires diversion, imposes discipline, or provides restitution to those financially injured. *See Ariz. R. Sup. Ct.* 47(h)(4), 55(b)(1)(B), 56, 57(a), 60.

¶47 The dissent does not address the substance and significance of the proceedings under the Rules—namely, that a charge may ultimately result in a respondent having to respond with information, documents, or depositions; the issuance of investigative subpoenas; the initiation of civil contempt proceedings; the mandatory payment of restitution to persons financially injured or other sanctions; or other significant adverse action against a respondent, such as disbarment. *See supra* ¶¶ 27–29. We cannot ignore the fundamental character and nature of discipline proceedings provided in the Rules. These proceedings bear several hallmarks of a lawsuit filed by a plaintiff against a defendant—e.g., compulsory process, adverse consequences for failing to participate, disclosures, subpoenas, depositions, sanctions, monetary obligations, and orders aimed at compensating injured parties, many of which pertain expressly to civil actions. The substance of the applicable Rules supports a determination that a discipline proceeding can be a “civil proceeding” for purposes of a WICP claim.

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

¶48 The dissent claims that discipline proceedings do not occur within the adversarial framework of “private litigation between parties with competing interests,” and their purpose is “to protect the public and ensure the integrity of the legal profession.” *Infra* ¶¶ 118–19 (citing cases for the proposition that the purpose of lawyer discipline is to protect the public and deter misconduct by the attorney and others). But a proceeding does not cease to be civil in nature merely because it serves the purpose of protecting the public and deterring misconduct by others while simultaneously seeking to achieve a private remedy for an injured person. *See, e.g.*, A.R.S. § 44-1528(A)(2) (permitting the attorney general, under the Consumer Fraud Act, to seek an injunction in court prohibiting a person from continuing unlawful practices and also authorizing a court to “[r]estore to any person in interest any monies or property, real or personal, which may have been acquired by” an unlawful practice). Moreover, in this context, a key method of protecting the public and deterring misconduct by others is through the Rules’ various enforcement mechanisms and sanctions, one of which requires a respondent to pay restitution to persons damaged by the lawyer’s conduct, thereby making that injured person whole. *See* Ariz. R. Sup. Ct. 60(a)(6) (“Restitution may be imposed by order . . . to persons financially injured, including reimbursement to the state bar client security fund.”). These proceedings assist in resolving certain types of private disputes – a function that persists even though the respondent is opposite the State Bar.

¶49 A discipline proceeding also adjudicates professional licensing interests that implicate private rights, such as a lawyer’s suspension from the practice of law or disbarment. A charge filed with the State Bar puts into motion a proceeding that decides issues pertaining to private rights and remedies.

¶50 Although “proceeding” does not contain the modifier “civil” in Rule 55, this does not preclude a discipline proceeding from being civil in nature. A “proceeding” is a general term that can include a “civil proceeding,” as already reflected in Arizona law. *See, e.g.*, A.R.S. §§ 12-401(14) (addressing venue for “[a]ctions . . . to stay proceedings”); -168 (“Proceedings before the [tax] court are original, independent proceedings and shall be tried de novo.”); -1143 (explaining that, in eminent domain actions, “[a] proceeding under this article may be instituted by filing a complaint”). Indeed, Rule 48’s adoption of (1) multiple

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

Rules of Civil Procedure, and (2) the Rules of Evidence applicable in the superior court that are to be followed as far as practicable, reinforces our conclusion that a State Bar discipline proceeding is a type of civil proceeding.⁴ *See* Ariz. R. Sup. Ct. 48(b)–(c).

¶51 In sum, Rule 48(a)’s “sui generis” phrase does not transform the substance of all the Rules previously addressed into a categorical requirement that we may never recognize a discipline proceeding as a type of civil proceeding for a WICP claim. Rule 48(a) does not substantively declare the nature of a discipline proceeding as a wholly distinct category that can never be civil in nature. The text of the relevant Rules, including Rule 48(a), establishes that a State Bar proceeding may constitute a “civil proceeding” for purposes of a WICP claim. In Part C, we address when that “civil proceeding” commences.

B. Do Rules 48(l) And 80(a)(6) Grant Complete Immunity From Suit For Filing A Charge With The State Bar?

¶52 We now consider the impact of Rules 48(l) and 80(a)(6) on a WICP claim arising from the filing of a charge with the State Bar. Rule 48(l) provides, in relevant part:

Communications to the . . . state bar . . . and testimony given in the proceedings shall be absolutely privileged conduct, and no civil action predicated thereon may be instituted against any complainant or witness. Members of the board, members of the committee, the presiding disciplinary judge, hearing panel members, the peer review committee, client protection fund trustees and staff, fee arbitration committee arbitrators and staff, the Committee on the Rules of Professional Conduct, participants in an approved member assistance program, including those seeking assistance and those seeking to provide assistance, or participants or staff in a State

⁴ For the reasons discussed in detail, we do not—as the dissent implies—rely solely on Rule 48’s reference to certain Rules of Civil Procedure to conclude that discipline proceedings are civil proceedings. *See infra* ¶ 105.

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

Bar law office or practice management assistance program, state bar staff, and court staff shall be immune from suit for any conduct in the participation in the program.

Similarly, Rule 80(a)(6) provides, in relevant part:

Communications to the . . . state bar . . . relating to alleged unauthorized practice of law, and testimony given in the proceedings shall be absolutely privileged conduct, and no civil action predicated thereon may be instituted against any complainant or witness. Board members, bar counsel, unauthorized practice of law counsel, volunteer bar counsel, investigators, and state bar and court staff shall be immune from suit for any conduct in the course of their official duties.

¶53 In *Goldman*, the court of appeals observed that Rule 48(l) codifies common law privileges and immunities. 248 Ariz. at 527 ¶ 47. The court discussed the litigation privilege in common law and explained that “[a] privilege applies to the content of the communication, which serves to defeat an action predicated on the privileged *statement*.” *Id.* at 522 ¶ 30. “An examination of our jurisprudence reflects an application of a privilege protecting the content of the bar charge—reasoning that a disciplinary proceeding is a quasi-judicial proceeding and a bar charge is entitled to the litigation privilege.” *Id.* at 525 ¶ 40. But Rule 48(l) “does not provide the actor with an immunity against a right of action premised on improper litigation conduct,” such as claims for WICP, malicious prosecution, and abuse of process.⁵ *Id.* at 522 ¶ 30, 524 ¶ 36 n.5. We agree with *Goldman* on these points.

¶54 The litigation privilege does not grant immunity from all causes of action. If it did, WICP would not be a cause of action because the party who instituted the civil proceeding would have absolute immunity from all civil liability. As *Goldman* correctly observed, a privilege is distinct

⁵ Abuse of process differs from WICP. As *Goldman* explained, the elements of an abuse of process claim are (1) a willful act in the use of a judicial process; (2) for an ulterior purpose not proper in the regular conduct of the proceedings. 248 Ariz. at 522 ¶ 27.

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

from an immunity. *Id.* at 522–23 ¶ 31 (explaining generally that a privilege precludes the use of privileged communications as evidence to sustain a cause of action but does not bar the cause of action altogether; the privilege only renders the cause of action unsustainable if based exclusively on privileged statements).

¶55 Rules 48(l) and 80(a)(6) expressly provide that “[c]ommunications to the . . . state bar” and “testimony given in proceedings shall be absolutely privileged conduct.” “Communications” and “testimony” limit the reach of the privilege by referring only to statements made to the State Bar or given in testimony. *See Communication*, Black’s Law Dictionary (5th ed. 1979) (“Information given; the sharing of knowledge by one with another.”); *Testimony*, Black’s Law Dictionary (5th ed. 1979) (“Evidence given by a competent witness under oath or affirmation.”). Significantly, Rules 48(l) and 80(a)(6) do *not* refer to the act of filing a charge. As relevant here, therefore, the “absolutely privileged conduct” refers to the statements that the complainant made to the State Bar—not his act of filing the charge. And the language “no civil action predicated thereon may be instituted against any complainant” means that those privileged statements may not be used in a civil action against the complainant.⁶

¶56 The text and structure of Rules 48(l) and 80(a)(6) further demonstrate the distinction between “privilege” and “immunity.” The *first* sentence of each Rule states that communications to the State Bar and testimony given in proceedings “shall be absolutely privileged conduct” and refers to a “complainant” and “witness.” *See* Ariz. R. Sup. Ct. 48(l), 80(a)(6). The *second* sentence states that an enumerated group of people (e.g., State Bar staff, board members, and others) “shall be immune from suit for any conduct in the participation of the program” or “in the course of their official duties.” *Id.* Significantly, in providing immunity from suit

⁶ The dissent points to this Court’s reference in *In re Alexander*, 232 Ariz. 1, 10 ¶ 36 (2013), about a lawsuit being based in part on the filing of bar complaints, “even though Rule 48(l) prohibits civil lawsuits against bar complainants.” *See infra* ¶ 98. This statement is consistent with our interpretation today: Rule 48(l) prohibits civil lawsuits against complainants when based only on privileged statements in the charge.

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

to several enumerated categories of people, the second sentence does *not* refer to a “complainant.” *Id.*

¶57 The use of different terms in these Rules—“privilege” in the first sentence (which applies to a “complainant”) and “immunity” in the second sentence (which does not apply to a “complainant”)—demonstrates that “privilege” and “immunity” serve different functions. *See Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*, 249 Ariz. 396, 407 ¶ 34 (2020) (declining to interpret two distinct terms as having the same meaning); *see also* Scalia & Garner, *supra*, at 170 (explaining when one term is used “in one place, and a materially different term in another, the presumption is that the different term denotes a different idea”). Reading “privilege” to have the same meaning as “immunity” would disrupt the text and structure of Rules 48(l) and 80(a)(6) that extend a “privilege” to a complainant but not an “immunity.” Put simply, Rules 48(l) and 80(a)(6) do not grant complete immunity to a complainant—thereby shielding that person from suit altogether—for the act of maliciously filing a charge with the State Bar without probable cause. Indeed, Rules 48(l) and 80(a)(6) do not even reference the filing of a charge.

¶58 Defendants and the dissent effectively contend that Rules 48(l) and 80(a)(6) immunize the act of filing a charge with the State Bar. But this reading undermines the text and structure of Rules 48(l) and 80(a)(6) and incorrectly collapses the privilege into a blanket immunity. If Rules 48(l) and 80(a)(6) completely immunized a complainant from suit, the first sentence in those provisions would have used the word “immunity” (rather than “privileged”) and the second sentence would have included “complainants” in the list of people granted immunity. The dissent’s endeavor to trace the history of Rules 48(l) and 80(a)(6) to determine their meaning—including its reliance on the ABA commentary’s discussion of “immunity”—fails to account for the key textual differences in Rules 48(l) and 80(a)(6) as drafted. *See* Scalia & Garner, *supra*, at 170.

¶59 Also, the word “conduct” in Rules 48(l) and 80(a)(6) does not independently enlarge the privilege beyond the person’s communications made to the State Bar and testimony given. The subject of the provisions is “[c]ommunications,” which in turn defines the word “conduct” for purposes of the Rules. Rules 48(l) and 80(a)(6) expressly identify the “absolutely privileged conduct” as “testimony given” and

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

“communications to the . . . state bar” — not the act of “filing” a charge. This means that a complainant’s statements that he *made* in a charge and a witness’s statements that he *gave* in testimony are “absolutely privileged conduct” that cannot be used to support a civil action. *See Conduct*, Black’s Law Dictionary (5th ed. 1979) (“[p]ersonal behavior; deportment; mode of action; any positive or negative act”). The dissent claims that the word “conduct” supports a conclusion that “a civil action may not be predicated on the act of filing a state bar complaint.” *Infra* ¶ 128. We might agree if Rules 48(l) and 80(a)(6) referenced the act of filing a bar complaint, but they do not. The text and structure of Rules 48(l) and 80(a)(6) do not support converting a privilege into a categorical immunity from suit.

¶60 According to the dissent, the source for now-Rule 48(l) is ABA Model Rule 12, and the related ABA Standard is 8.3—Immunity of Complainants. *Infra* ¶¶ 89–92. The dissent contends that we should, in turn, examine the commentary to ABA Standard 8.3 to understand the original public meaning of Rule 48(l) (and the virtually identical language in Rule 80(a)(6)) and that such commentary is “useful to bench and bar.” *Infra* ¶¶ 87–92, 102.

¶61 But the path from ABA Standard 8.3 to Rules 48(l) and 80(a)(6) is neither as clear nor as direct as the dissent suggests. ABA Standard 8.3’s first iteration provided that “[c]omplainants should be absolutely immune from civil liability for all communications to the agency.” *See Standards for Lawyer Disciplinary and Disability Proceedings*, *supra* ¶ 45, 8.3. Standard 8.3 expressly provided complainants with an “immunity,” not a “privilege.” *Id.* But Arizona has adopted Rules 48(l) and 80(a)(6), which only provide a “privilege” to complainants and exclude complainants from the list of specific individuals who have an “immunity.” Due to the materially different language, we doubt the usefulness of Standard 8.3 and its commentary in our interpretation of Rules 48(l) and 80(a)(6).⁷

⁷ Moreover, the commentary to ABA Standard 8.3 states that “[i]t is unlikely that even a malicious complaint will cause any damage beyond some inconvenience.” *See Standards for Lawyer Disciplinary and Disability Proceedings*, *supra* ¶ 45, 8.3 cmt. But, as discussed, the Arizona Supreme Court Rules impose more than “some inconvenience” on respondents when a proceeding reaches a certain point.

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

¶62 Even if we look to ABA Standard 8.3's commentary for guidance, that commentary supports our position. The commentary states: "Immunity from civil actions attaches only to communications made to the agency." See *Standards for Lawyer Disciplinary and Disability Proceedings*, *supra* ¶ 45, 8.3 cmt. Under our interpretation of Rules 48(l) and 80(a)(6), the statements made in a charge are absolutely privileged, and no civil action predicated solely on such statements may be instituted against a complainant. Thus, if a WICP claim is based exclusively on privileged statements in the charge, the complainant is effectively immune from suit. This may explain why other materials addressing reports of lawyer misconduct have at times conflated the terms "privilege" and "immunity" and referred to a complainant's "immunity." See, e.g., AZ Jud. Adv. Op. 90-13 (Ariz. Sup. Ct. Jud. Eth. Adv. Comm.), at *3 n.5, 1990 WL 10521402.

¶63 Also, at least one jurisdiction expressly immunizes a *complainant's filing* of a charge and *participation* in the attorney discipline system. See Tex. R. Disciplinary P. 17.09 (titled "Immunity") ("No lawsuit may be instituted against any Complainant or witness predicated upon the filing of a Grievance or participation in the attorney disciplinary and disability system."). In contrast, Arizona's Rules do not grant immunity to a complainant for filing a charge or participating in the system. See Ariz. R. Sup. Ct. 48(l), 80(a)(6).

¶64 The dissent contends that we have improperly engaged in "textualism unmoored from original public meaning." *Infra* ¶ 106. We have not. We interpret court rules using the same principles that govern statutory interpretation. *Aguilar*, 209 Ariz. at 47 ¶ 23. "Statutory interpretation requires us to determine the meaning of the words the legislature chose to use," *S. Ariz. Home Builders Ass'n*, 254 Ariz. at 286 ¶ 31, according to their original public meaning and broader statutory context, *Matthews v. Indus. Comm'n*, 254 Ariz. 157, 163 ¶ 29 (2022). Our interpretation of Rules 48(l) and 80(a)(6) is consistent with this Court's established methodology. We have focused on the plain meaning of the specific words this Court adopted in Rules 48(l) and 80(a)(6) at the time of their adoption. And notably, the dissent does not contend that the public meaning of the terms "privilege" or "immunity" has changed since their adoption.

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

¶65 Further, our analysis of Rules 48(l) and 80(a)(6) is consistent with how privileges apply in judicial proceedings. In *Samaritan Foundation v. Goodfarb*, this Court reiterated the U.S. Supreme Court’s conclusion that the attorney-client privilege “only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney.” 176 Ariz. 497, 501–02 (1993) (quoting *Upjohn Co. v. United States*, 449 U.S. 383, 395–96 (1981)). More recently, in *State ex rel. Adel v. Adleman*, this Court explained that a party seeking to assert the attorney-client privilege may produce a privilege log that identifies privileged communications by date, time, and participants, but does not reveal the communications themselves. 252 Ariz. 356, 361 ¶ 14 (2022). And in *Fann v. Kemp*, a case involving the legislative privilege, this Court explained that a legislative body may prepare a privilege log that identifies a communication and explains why the document is privileged “without revealing its content or otherwise violating the privilege.” 253 Ariz. 537, 547–48 ¶¶ 33–34 (2022) (citing Ariz. R. Civ. P. 26(b)(6)(A)(i)). In those cases, as here, the communication is privileged, but the fact that a communication took place is not privileged.

¶66 We note the court of appeals’ statement in *Drummond* that “[i]n our opinion, public policy and legal precedent compel us to adopt the position that there is an absolute privilege extended to anyone who files a complaint with the State Bar alleging unethical conduct by an attorney.” 127 Ariz. at 126. But this Court has not blessed this statement in *Drummond*. Instead, we promulgated Rules 48(l) and 80(a)(6), which clarified our view and did not exist at the time of *Drummond*.

¶67 *Drummond* tied the absolute privilege to the filing of a charge—but Rules 48(l) and 80(a)(6) do not even reference the filing of a charge. *See id.* Rules 48(l) and 80(a)(6) textually take a different approach, establishing that a complainant’s statements made to the State Bar are privileged and cannot be used in a civil action. But a complainant is not altogether immune from suit for filing a charge. *See Goldman*, 248 Ariz. at 522 ¶ 30, 524–25 ¶ 39 (recognizing that “prior caselaw has held that an absolute privilege applies to those that submit a bar charge,” but this does not provide “a basis to interpret a rule in a manner that would grant an alleged tortfeasor an absolute immunity” for all improper litigation conduct). Thus, the broad statement in *Drummond* does not persuade us to

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

interpret the now-existing Rules 48(l) and 80(a)(6) in a manner contrary to their text.

¶68 The privilege and the right to file a WICP claim serve different but important interests. The privilege allows unfettered communications to the State Bar in connection with possible wrongdoing. WICP is a cause of action for wrongfully weaponizing that process. Our interpretation preserves both policy objectives. Under the dissent’s interpretation, by contrast, complainants who file knowingly fabricated, retaliatory, and malicious charges with the State Bar would receive complete immunity. But Rules 48(l) and 80(a)(6) do not support this construction.

¶69 Also, the dissent believes our decision “employ[s] a novel interpretation” that dramatically changes Arizona lawyer regulation. *Infra* ¶ 108. It does not. Indeed, six years ago, the court of appeals ruled that Rule 48(l) “does not provide the actor with an immunity against a right of action premised on improper litigation conduct.” *Goldman*, 248 Ariz. at 522 ¶ 30.

¶70 Additionally, the dissent contends that our interpretation of Rules 48(l) and 80(a)(6) “will prove unworkable in practice” because evaluating a WICP claim necessarily requires examination of the charge’s contents. *Infra* ¶¶ 129, 139. Not so. Courts routinely separate privileged communications from non-privileged communications—in the context of attorney-client privilege, legislative privilege, clergy-penitent privilege, and the like. In those cases, a claim may proceed if sufficiently supported by non-privileged evidence. As relevant here, the privilege protects a complainant’s statements made to the State Bar—not all underlying facts. In a case like this, a WICP claim may be supported by non-privileged evidence, such as the complainant’s non-privileged statements; the fact the complainant filed a charge and timing of the filing; what the complainant knew, reviewed, and considered before filing the charge; the complainant’s motivation in filing the charge; surrounding events and circumstances; any inconsistencies on the part of the complainant; the respondent’s conduct; the outcome of the charge; and other relevant, admissible evidence. Thus, not all WICP claims necessarily require examining what was stated in a charge. In sum, the existence of a privilege does not eliminate a cause of action altogether.

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

¶71 To be clear, a plaintiff's WICP claim will be barred if he *only* relies on privileged statements that the complainant made in a charge to support an element of the claim. See Ariz. R. Sup. Ct. 48(l), 80(a)(6) (providing "no civil action predicated thereon may be instituted against any complainant"). But privileged communications differ from, and do not protect, the act of filing a charge. Cf. *Granger v. Wisner*, 134 Ariz. 377, 379–80 (1982) (explaining "the privilege protects only confidential communications between a client and his or her attorney" but "does not extend to facts which are not part of the communication," and therefore "the fact that a client has consulted an attorney" and "the dates and number of visits to the attorney are normally outside the scope and purpose of the privilege").

¶72 Here, Accursio alleges facts apart from the statements in Wu's charge that sufficiently allege a WICP claim. For example, Accursio's complaint alleges: (1) Accursio was an attorney licensed to practice in New York and Washington, D.C., (2) Accursio worked with local counsel in Arizona and was not engaged in the unauthorized practice of law in Arizona, (3) Wu was aware that Accursio was working with local counsel in Arizona, (4) Accursio told Wu that BB Group's representation appeared to violate conflict of interest rules, (5) Accursio filed a charge against Wu with the State Bar, (6) Accursio informed Wu of that charge, and Wu retaliated immediately thereafter by filing a State Bar charge against Accursio, and (7) Brandt told Accursio: "We are relying on the advice of ethics counsel and will continue to do so unless we are informed by the bar that you are not engaged in the unauthorized practice of law in Arizona."

¶73 Statements made in a charge filed with the State Bar are absolutely privileged, and a respondent may not rely on the privileged statements in a subsequent civil action. See Ariz. R. Sup. Ct. 48(l), 80(a)(6). But this rule does not foreclose Accursio from seeking discovery of and relying on non-privileged evidence in support of his claim. This may be a heavy lift. But the issue of whether Accursio can ultimately prove all elements of his WICP claim without referencing privileged communications to the State Bar is not before us. The trial court will determine that issue on remand.

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

C. When Does A Civil Proceeding Commence?

¶74 The trial court determined that Accursio could not prevail because the State Bar dismissed the charge before a civil proceeding ever commenced. We must now determine when a civil proceeding commences in this context.

¶75 Unauthorized practice of law charges are governed by Rules 75 through 80. *But see* Ariz. R. Sup. Ct. 75(a) (“Proceedings against non-members . . . may also be instituted pursuant to Rules 47 through 60, and such proceedings may be concurrent with proceedings under [Rules 75 through 80]”). Here, however, Senior Bar Counsel notified Accursio that a screening investigation was beginning under Rule 55. It is not entirely clear whether the State Bar proceeded under Rule 55 or Rule 78, and so we analyze the issue under both Rules.

1. Rule 55

¶76 Rule 55(a) (“Commencement; Determination to Proceed”) requires bar counsel to evaluate all charges alleging unprofessional conduct, misconduct, or incapacity. Bar counsel may refer the matter for a screening investigation after determining the alleged conduct may warrant the imposition of a sanction. Referring the matter for a screening investigation requires that “[b]ar counsel . . . give the respondent written notice that the respondent is under investigation and of the nature of the allegations.” Ariz. R. Sup. Ct. 55(b). “No disposition adverse to the respondent shall be recommended by bar counsel until the respondent has been afforded an opportunity to respond in writing to the charge.” *Id.* The respondent has twenty days after receiving the notice of investigation to provide a written response. Ariz. R. Sup. Ct. 55(b)(1).

¶77 A civil proceeding commences under Rule 55 when a respondent is given the written notice of investigation and must provide a written response to the allegations. A respondent who fails to respond faces significant adverse action. Failure to respond may result in an investigative subpoena to compel attendance and production of documents. *See* Ariz. R. Sup. Ct. 55(b)(1)(B). It may also subject the respondent to contempt proceedings that could result in various forms of sanctions including fines and potential disbarment. *See id.*; Ariz. R. Sup. Ct. 47(h)(4). Moreover, a respondent’s responses may prompt the need for the

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

State Bar to seek a protective order with the presiding disciplinary judge, as occurred here. *See* Ariz. R. Sup. Ct. 70(g). Thus, a civil proceeding may commence even before a complaint is filed with the presiding disciplinary judge.

2. Rule 78

¶78 Rule 78(a) (“Commencement”) states that “[a]n unauthorized practice of law proceeding commences upon receipt by the state bar of a charge against a respondent.” This Rule leaves no ambiguity for charges alleging the unauthorized practice of law—the State Bar’s receipt of a charge is when the civil proceeding commences.

3. Commencement Of Civil Proceeding

¶79 We conclude that a civil proceeding commenced against Accursio, regardless of whether the issue is analyzed under Rule 55 or Rule 78. Accursio was subject to a screening investigation, whereby he was required to substantively respond to the charge or otherwise face significant adverse action, and a protective order was obtained from the presiding disciplinary judge. A civil proceeding commenced against him under Rule 55.

¶80 A civil proceeding also commenced against Accursio under Rule 78 because the State Bar received a charge against him.

4. Defendants’ Public Policy Arguments

¶81 Defendants highlight the public policy interest in not creating a chilling effect that discourages people from reporting lawyer misconduct to the State Bar. But WICP claims cannot be based on charges that are merely imprudent, mistaken, or even incorrect. The elements of a WICP claim require proof of much more—a plaintiff must prove malice, lack of probable cause, a charge terminating in plaintiff’s favor, and damages. *See Stephens*, 262 Ariz. at 239 ¶ 25.

ACCURSIO v. TREE HOUSE LABS, LLC
Opinion of the Court

¶82 Further, the interest highlighted by Defendants is not the exclusive interest at stake. By virtue of the existence of WICP claims, Arizona law also recognizes an interest in preventing harm to a person by the malicious institution of a proceeding that lacks probable cause. Such harm could include, among other things, damage to one's professional reputation or loss of job opportunities or clients.

CONCLUSION

¶83 Although we agree with the court of appeals' ultimate disposition, we vacate its memorandum decision to replace its reasoning with our own.

¶84 We reverse the trial court's dismissal of Accursio's WICP and aiding and abetting claims, and remand to the trial court for further proceedings consistent with this Opinion.

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

MONTGOMERY, J., joined by CRUZ, J., dissenting:

¶85 The Majority holds that (1) a charge filed with the State Bar constitutes a “civil proceeding” for purposes of a wrongful institution of civil proceedings (“WICP”) claim, and (2) Arizona Supreme Court Rules 48(l) and 80(a)(6) privilege only statements made to the State Bar or provided in testimony while leaving a complainant otherwise exposed to civil liability. *Supra* ¶ 2. Because the Majority’s analysis is directly contrary to the scope of the protection the language in Rule 48(l) originally afforded complainants, as well as Rule 80(a)(6), we respectfully dissent. We would vacate the court of appeals’ memorandum decision and affirm the trial court’s dismissal of Accursio’s WICP and aiding and abetting claims.

**I. THE ORIGINAL PUBLIC MEANING OF RULE 48(l) DOES NOT
SUPPORT THE MAJORITY’S CONCLUSION**

¶86 “We construe rules of court using the same principles applicable to [the] interpretation of statutes.” *Chronis v. Steinle*, 220 Ariz. 559, 560 ¶ 6 (2009). When interpreting court rules, “we seek to give terms the original public meaning understood by those who used and approved them.” *Matthews v. Indus. Comm’n*, 254 Ariz. 157, 163 ¶ 29 (2022) (noting use of original public meaning regarding constitutional provisions); *State ex rel. Ariz. Dep’t of Revenue v. Tunkey*, 254 Ariz. 432, 437 ¶ 23 (2023) (Bolick, J., concurring) (observing that “[s]tatutory interpretation requires us to determine the meaning of the words the legislature chose to use according to their original public meaning and broader statutory context” (citation modified)). Therefore, we turn to the history of Rule 48(l) to determine its original public meaning, which also informs the interpretation of Rule 80(a)(6).

¶87 In 1984, the Arizona Supreme Court adopted sweeping amendments to Part V of the Rules of the Supreme Court addressing the admission and discipline of attorneys. *See* West, 1984 Special Pamphlet (“Special Pamphlet”) viii (Oct. 1984) (setting forth Supreme Court Order September 7, 1984).⁸ The prefatory comment to the Rules stated that the

⁸ In full, the Order deleted prior Rules 27 through 49 and substituted amended Rules 27 through 121.

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

purpose of the revisions was “to improve proceedings relating to the discipline and disability of attorneys.” Special Pamphlet 1. The comment further acknowledged the sources for the amendments:

The work of the American Bar Association Standing Committee on Professional Discipline was a major source for the revision of the rules relating to the discipline of attorneys, and commentary to those works, where the same have been incorporated in these rules, will be useful to bench and bar. See, e.g., ABA Joint Committee on Professional Discipline, *Standards for Lawyer Discipline and Disability Proceedings* (ABA 1978) (referred to herein as “ABA Standard”). The ABA committee was continuing its work at the same time as the State Bar of Arizona Special Committee to Revise the Disciplinary Rules, and some of these amendments therefore find their origin in two different documents: ABA Standing Committee on Professional Discipline, *Suggested Guidelines for Rules of Disciplinary Enforcement* (3d ed. June 9, 1977) (referred to herein as “ABA 1977 Rule ____”); and *Model Rules for Lawyer Disciplinary Enforcement* (October 1979 draft) (referred to herein as “ABA Model Rule ____”).

*Id.*⁹

¶88 The ABA Standards drafted by the Joint Committee were later adopted by the ABA House of Delegates in February 1979 and published in *Professional Discipline for Lawyers and Judges*. See *Model Rules For Lawyer Disciplinary Enforcement* xi (2007). “The ABA Standing Committee on Professional Discipline then transformed the Standards into court rule format,” which were adopted as the Model Rules for Lawyer Disciplinary

⁹ Notably, two Arizonans participated in these efforts. One of the Co-Chairmen of the ABA Joint Committee was then-Chief Justice James Duke Cameron of the Arizona Supreme Court, who was also serving on the Court when it promulgated the new rules and jointly signed the Order. Mark I. Harrison, a District 12 Member and a member of the Standing Committee on Professional Discipline, served on the Subcommittee on Lawyer Discipline.

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

Enforcement by the ABA House of Delegates in 1989. *Id.*; see also *Miller v. Wash. State Bar Ass’n*, 679 F.2d 1313, 1317 n.4 (9th Cir. 1982) (discussing the development of the Model Rules). Thus, the genesis of a Model Rule begins with an ABA Standard. And, as the Court’s prefatory comment states, where works of the ABA Standing Committee are incorporated in Part V, commentary to the works “will be useful to bench and bar.” Special Pamphlet 1.

¶89 Turning to the language of Rule 48(l), it was originally adopted by the Sept. 7, 1984 Order as Rule 54(l) “Immunity from civil suit”: Communications to the court, state bar, commission, committee or bar counsel relating to lawyer misconduct or disability and testimony given in the proceedings shall be absolutely privileged conduct, and no civil action predicated thereon may be instituted against any complainant or witness. Members of the board, commission, hearing committees and bar counsel and staff shall be immune from suit for any conduct in the course of their official duties.

Special Pamphlet 97.

¶90 After each rule, a source for the rule is identified. The source for Rule 54(l) is “ABA Model Rule 12.” *Id.* Model Rule 12, “Immunity” states:

A. From Civil Suit. Communications to the board, hearing committee, or counsel relating to lawyer misconduct or disability and testimony given in the proceedings shall be absolutely privileged, and no lawsuit predicated thereon may be instituted against any complainant or witness. Members of the board, members of hearing committees, counsel and staff shall be immune from suit for any conduct in the course of their official duties.

Standing Comm. on Pro. Discipline and The Nat’l Ctr. for Pro. Resp., *Model Rules for Lawyer Disciplinary Enforcement* 14 (October 1979 Draft).

¶91 The related ABA Standard, 8.3 “Immunity of Complainants,” provides: “Complainants should be absolutely immune from civil liability

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

for all communications to the agency, but disclosure of the information to anyone else should not be protected.” Joint Committee on Professional Discipline of the Appellate Judges’ Conference and the Standing Committee on Professional Discipline ABA, *Standards for Lawyer Disciplinary and Disability Proceedings: Tentative Draft 47 (“Standards”)* (June 1978). Given the direction from this Court in the prefatory comment to the Rules that “commentary to those works . . . will be useful to bench and bar,” the commentary to ABA Standard 8.3 is therefore relevant to determining the original public meaning of the scope of protection afforded to complainants when this Court adopted the Rule. Special Pamphlet 1.

¶92 Pertinent to our inquiry here, the commentary to ABA Standard 8.3 reads:

Complainants are granted absolute privilege from suit, rather than qualified privilege, because qualified privilege is inadequate. *Immunity from suit under the qualified privilege is overcome by simply alleging malice. See Wiener v. Weintraub*, 22 N.Y.2d 330, 292 N.Y.S.2d 667 (1968); *Ramstead v. Morgan*, 219 Or. 383, 347 P.2d 594 (1959).

A policy of *conferring absolute immunity on the complainant* encourages those who have some doubt about a lawyer’s conduct to submit the matter to the proper agency, where it may be examined and determined. *Without immunity, some valid complaints will not be filed.* The individual lawyer may suffer some hardship as the result of the occasional filing of a malicious complaint, but a profession that wants to retain the power to police its own members must be prepared to make some sacrifice to that cause.

It is unlikely that even a malicious complaint will cause any damage beyond some inconvenience. The members of the agency to whom the complaint is submitted will surely not hold it against the lawyer, for their very function is to separate meritorious from undeserving complaints. The policy of agencies not to divulge the existence of complaints while they are being investigated effectively protects the lawyer from any unwarranted public disclosure. Thus, the lawyer is given

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

more practical protection than a party to an ordinary suit, in which pleadings are public.

Immunity from civil actions attaches only to communications made to the agency.

Standards 47 (emphasis added). Therefore, the Majority’s conclusion that a complainant can be subject to a WICP claim alleging malice is directly contrary to the original understanding of the scope of absolutely privileged conduct.

¶93 It is true, as the Majority notes, that the second sentence of Rule 48(l), then 54(l), provides immunity for the persons listed rather than an absolute privilege. *Supra* ¶¶ 56–57. And our canons of statutory construction presume that privilege and immunity carry different meanings. See *State v. Harm*, 236 Ariz. 402, 407 ¶ 19 (App. 2015) (noting that “when the [L]egislature chooses different words within a statutory scheme, we presume those distinctions are meaningful and evidence an intent to give a different meaning and consequence to the alternate language”); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012) (discussing the Presumption of Consistent Usage canon and noting that where a term is used “in one place, and a materially different term in another, the presumption is that the different term denotes a different idea”). However, that is a presumption. Here, although the commentary begins by using the term “privilege,” it also consistently uses “immunity” to describe the scope of protection afforded to a complainant. *Standards* 47. Thus, the presumption otherwise applicable to different terms is defeated by the consistent description of the scope of protection regardless of the specific term used.

¶94 The presence of “privilege” and “immunity” does not, however, equate the scope of protection between complainants and the enumerated persons with responsibility for administering the disciplinary system. That distinction is made by the conduct protected. A complainant is only protected from a civil suit with respect to communications to the persons listed “relating to lawyer misconduct, lack of professionalism or disability” or with respect to testimony in disciplinary proceedings. Ariz. R. Sup. Ct. 48(l). Should a complainant share information with any other person or share unrelated information with the listed persons, then an

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

attorney harmed by that conduct may seek to hold the complainant liable. In contrast, the listed persons who have a role within the disciplinary system cannot face liability “for *any* conduct in the course of their official duties.” *Id.* (emphasis added).

¶95 This understanding of the broad scope of immunity afforded by Rule 54(l) is carried forward in a formal opinion issued by this Court’s Judicial Ethics Advisory Committee (“JEAC”) in 1990.¹⁰ In response to “an increasing number of requests from attorneys as to the parameters of their duty to report another lawyer’s apparent misconduct,” the Committee issued a formal opinion regarding the obligation to report in Arizona.¹¹ AZ Jud. Adv. Op. 90-13 (Ariz. Sup. Ct. Jud. Eth. Adv. Comm.), at *1, 1990 WL 10521402.

¶96 The Committee observed that “[a] duty to report, however, can easily breed a climate of suspicion and distrust and, if applied too literally and not tempered with reason and judgment, is susceptible to trivialization and abuse.” *Id.* at *3. With respect to the “trivialization and abuse” observation, the Committee acknowledged, despite the use of “privilege” in the Rule, that “[t]he potential for abuse is heightened by the absolute *immunity* conferred on complainants by Rule 54(l), Rules of the Supreme Court, 17A A.R.S. at 475.” *Id.* at n.5 (emphasis added). In further support, the Committee cited *Drummond v. Stahl*, 127 Ariz. 122, 126 (App. 1980) (concluding that “there is an absolute privilege extended to anyone who files a complaint with the State Bar alleging unethical conduct by an attorney”).¹²

¹⁰ The Committee initially operated without formal authority until Chief Justice Frank Gordon signed Administrative Order 89-23 on December 13, 1989. The Order served to “ratify the prior existence and functioning of the [JEAC].” Thereafter, the Court organized the JEAC by Order dated February 25, 1991, under Arizona Supreme Court Rule 82.

¹¹ The concerns arose from an opinion issued by the Supreme Court of Illinois in the matter of *In re Himmel*, 533 N.E.2d 790 (Ill. 1988). The Court suspended Himmel, an attorney, for one year for failure to report another attorney’s misconduct to the appropriate state bar authorities.

¹² Although *Drummond* predated the adoption of Rule 54(l), the court of appeals’ reasoning is reflected in the commentary to ABA Standard 8.3.

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

¶97 In 1996, further amendments were made to the rules governing the regulation of lawyers to permit complainants to reveal that they had filed a complaint. Petition to Amend Rules 47, 48, 49, 52, 53, 54, 55, and 61, R-96-0012 (June 1996). As noted in the petition, “[t]he proposed amendments to Rules 54 and 61 relate primarily to the confidentiality rules currently applicable to disciplinary records and proceedings. Presently, those rules prohibit disciplinary complainants from disclosing the fact that they have filed an ethical complaint with the Bar or that the Bar is investigating.” R-96-0012 at 11. The proposal drew a pointed comment on the basis that the proposed amendments regarding confidentiality were “fundamentally unfair and discriminatory.” *Id.* The comment went on to observe that the amendments would:

[A]llow untruthful, unsubstantiated, and unfounded complaints against an attorney to become public records. At the same time, the attorney has no adequate remedy at law to prevent or dissuade such unfounded complaints, *since absolute judicial privilege protects anyone who files a complaint*, leaving attorneys with fewer rights than other citizens.

Id. (emphasis added).

¶98 And this Court recognized the plain import of the protections Rule 48(l) affords in the matter of *In re Alexander*, 232 Ariz. 1 (2013). As part of the Court’s review of the discipline imposed, it noted that the disciplinary panel found a violation of Ariz. R. Sup. Ct. 42, Ethical Rule (“ER”) 3.4(c), Fairness to Opposing Party and Counsel, arising from a lawsuit that was based in part on the filing of bar complaints, “*even though Rule 48(l) prohibits civil lawsuits against bar complainants.*” *Id.* at 10 ¶ 36 (emphasis added). The Court rejected the finding of a violation of ER 3.4(c).

¶99 In support of the Court’s rejection, the Court observed that the attorney had “testified she could not recall researching ‘the nature of immunity provided to complainants in Bar proceedings.’” *Id.* at 10–11 ¶ 38 (emphasis added). The Court further observed that “motions to dismiss the complaint argued that defendants were *immune* from civil liability for initiating bar complaints, but none cited Rule 48(l) or cases relying on that rule.” *Id.* at 11 ¶ 38 (emphasis added). This Court’s treatment of Rule 48(l) in that disciplinary proceeding comports with the scope of the protection

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

that the Rule’s language offered when adopted.¹³

¶100 Subsequent amendments to Rule 54(l) broadened the scope and increased the number of persons afforded immunity from civil suit associated with the disciplinary system, but the language concerning the absolute privilege for a complainant never changed. *See, e.g.*, Rules Petition 92-0019 (Aug. 1992) (adding monitors for the Members Assistance Program and Law Office Management Program to the list of those to whom communications are absolutely privileged and who are immune from civil suit). In 2003, the Court renumbered and reorganized the Rules concerning lawyer regulation. *See* Order R-03-0002 (2003). In this process, the language of Rule 54(l) was moved to Rule 48(l).¹⁴

¶101 Also in 2003, the Court ordered an amendment to Rule 31 and promulgated new Rules 76 through 80. Order 02-0017 (2003). The underlying petition explained that Rules 76 through 80 were proposed to “create an unauthorized practice of law regulatory system similar to the present procedure for prosecuting lawyer disciplinary cases.” Petition to Amend Supreme Court Rule 31 and to Add Rules 32, 76–80, R-02-0017 at 2 (2002).

¶102 Rule 80, as drafted, was “virtually identical to the Rules of Construction and Rules of Procedure to the Admission and Discipline of Attorney Rules set forth in Rules 54 and 55.” *Id.* at 13. The proposed Rule, titled “Immunity from civil suit,” stated:

Communications to the Court, State Bar, Hearing Commission, Probable Cause Panel, Unauthorized Practice of Law Counsel, volunteer Bar counsel or investigators relating to testimony given in the proceedings shall be absolutely privileged as provided by law, and no civil action predicated

¹³ The Court’s references to “immunity” in the context of the scope of protection offered by Rule 48(l) are not fairly read to be limited to statements. *See supra* ¶ 55 n.6.

¹⁴ Inexplicably, the notes for the 2003 amendments state that language in Rule 48(l) and (m) came from Rule 54(l) and (m). However, the language constituting Rule 48(m) never existed as Rule 54(m).

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

thereon may be instituted against any complainant or witness.

Id. at 32, Ex. A. This language is now at Rule 80(a)(6). Nothing in the petition or any comment to the petition suggested that an unauthorized practice of law complainant had a different scope of immunity compared to a lawyer misconduct complainant.

¶103 Accordingly, the Majority’s textualist conclusion regarding the scope of immunity afforded to a complainant by Rule 48(l) is demonstrably at odds with the original public meaning of the protection provided at the time it was first adopted, as demonstrated by the Court’s own JEAC, practitioners, and this Court. With respect to Rule 48(a), that language has a similar pedigree.

¶104 The same petition in 2003 that transferred Rule 54(l) to Rule 48(l) transferred Rule 54(a) to Rule 48(a). Order R-03-0002 (2003). Rule 54(a) stated: “Disciplinary and disability proceedings are neither civil nor criminal, but are *sui generis*.” The source for Rule 54(a) is identified as Model Rule 17(A), *see* Special Pamphlet 97, which stated: “*ADDITIONAL RULES OF PROCEDURE. Nature of Proceedings.* Disciplinary proceedings are neither civil nor criminal but are *sui generis*.” The nature of disciplinary proceedings is addressed by ABA Standard 1.2. “Nature of Proceedings,” which provides: “Lawyer discipline and disability proceedings are *sui generis*, and rules of procedure for civil, criminal, and administrative proceedings do not automatically apply.” *Standards* 2. And, just as the commentary to ABA Standard 8.3 informs the understanding of Rule 54(l), now 48(l), so too does the commentary to ABA Standard 1.2 inform our understanding of Rule 54(a), now 48(a):

The question whether a particular rule of the civil or criminal law, not otherwise provided for by statute or categorically established by case law, should be applied . . . must be determined upon the facts presented in a particular case. *Emslie v. State Bar*, 520 P.2d 991 (Cal. 1974).

The holder of a license to practice law is subject to discipline for breaches of the standards of professional conduct; the license must not be arbitrarily taken away and the holder is

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

entitled to procedural due process in any proceeding relating to such conduct. *In re Oliver*, 333 U.S. 257 (194[8]). Such due process rights include fair notice of the charges (Standard 8.21), right to counsel (Standard 8.33), right to discovery and subpoena (Standards 8.29 and 8.34), right to cross-examine witnesses (Standard 8.35), right to present arguments to the adjudicators (Standards 8.42 and 8.50), and right of appeal (Standard 8.46).

Disciplinary proceedings have been characterized as neither civil nor criminal: *Niklaus v. Simmons*, 196 F. Supp. 691 (D. Neb. 1961); *In re Black*, 363 P.2d 206 (Ore. 1961); *In re Echeles*, 430 F.2d 347 (7th Cir. 1970). They have also been characterized as both civil and quasi-criminal: *Erdmann v. Stevens*, 458 F.2d 1205 (2d Cir. 1972); *Polk v. State Bar of Texas*, 480 F.2d 998 (5th Cir. 1973); *In re Ruffalo*, 390 U.S. 544 (196[8]).

The general consensus is that disciplinary proceedings are unique and thus may properly be characterized as *sui generis*. See *Yokozeki v. State Bar*, 521 P.2d 858 (Cal. 1974); *State v. Post[o]rino*, 193 N.W.2d 1 (Wis. 1972).

Standards 2–3.

¶105 The commentary makes clear that the *sui generis* nature of disciplinary proceedings concerns the need to engage in a case-by-case determination about which rules of procedure to apply, while ensuring that disciplinary proceedings satisfy due process. But determining which rules apply to a given disciplinary proceeding does not serve to convert it into a civil proceeding. If this were true, then probate, juvenile, and family law proceedings could just as easily become a civil proceeding based solely on the importation of a rule of civil procedure. Cf. Ariz. R. Prob. P. 4(a)(1) (“The Civil Rules apply to probate proceedings unless they are inconsistent with these probate rules or A.R.S. Title 14. For purposes of applying Civil Rule 42.1, ‘action’ has the same meaning as ‘probate case’ under Rule 3 of these rules.”); Ariz. R.P. Juv. Ct. 103(d) (“The Civil, Civil Appellate, Criminal, Family Law, Probate, Protective Order, and Supreme Court Rules are applicable only as specifically set forth or incorporated by reference in

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

these rules.”); Ariz. R. Fam. Law P. 1(c) (“The *Arizona Rules of Civil Procedure* apply only when these rules expressly incorporate them. If language in these rules is substantially the same as language in the civil rules, case law interpreting the language of the civil rules will apply to these rules.”).

¶106 The Majority’s analysis demonstrates that textualism unmoored from original public meaning can produce results that conflict with a provision’s original meaning. And that is not how this Court interprets the law. Whenever the meaning of a provision is in question, it is critical to confirm the meaning at the time the provision was adopted.¹⁵

¶107 *Goldman v. Sahl*, 248 Ariz. 512 (App. 2020), which the Majority agrees with and relies on, provides no safe harbor either. *Supra* ¶¶ 53–54. *Goldman*, just as the Majority does here, interpreted the text of Rule 48(l). *Goldman*, 248 Ariz. at 522 ¶ 29. The court of appeals acknowledged that “[a]lthough we recognize that our prior caselaw has held that an absolute privilege applies to those that submit a bar charge, that recognition does not provide us with a basis to interpret a rule in a manner that would grant an alleged tortfeasor an absolute immunity, undoubtedly abrogating all the injured party’s rights of action associated with the conduct, without first identifying the origin of such immunity.” *Id.* at 524–25 ¶ 39. Unfortunately, the court never identified the source: Model Rule 12, with the useful commentary accompanying ABA Standard 8.3. Neither did *Goldman* acknowledge *In re Alexander*. The failure to consider the very source of the immunity it was looking for or to engage with this Court’s treatment of Rule 48(l) renders *Goldman*’s reasoning of little service here and undeserving of

¹⁵ The prototypical example is using the current meaning of the phrase “domestic violence” and applying it to determine the meaning of Article IV, Section 4 of the United States Constitution: “*The United States* shall guarantee to every State in this Union a Republican Form of Government, and *shall protect each of them* against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) *against domestic Violence.*” See Lawrence B. Solum, *Surprising Originalism: The Regula Lecture*, 9 ConLawNOW 235, 243 (2018) (“Our intuitive reaction to clever arguments that Article Four referred to spousal abuse is that these verbal gymnastics are a form of sophistry.”).

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

the Majority's reliance.

¶108 Ultimately, it may be advisable to permit a WICP claim arising out of a bar charge in limited circumstances, and the Majority sets forth a rational public policy justification based on individuals “wrongfully weaponizing that process.” *Supra* ¶ 68. But if the Majority wishes to enact its policy preference and end the scope of protection a complainant has had for over forty-one years, it should not do so through an Opinion employing a novel interpretation that will jeopardize the protections for the people the disciplinary system is designed to protect: members of the public who may be dissuaded from contacting the State Bar with the mere threat of a lawsuit.¹⁶ Such “[a] dramatic change to Arizona [lawyer regulation] should occur through rulemaking, not through an opinion effectively rewriting our [disciplinary] rules.” *Craig v. Craig*, 227 Ariz. 105, 107 ¶ 15 (2011). Indeed, “[t]he rules governing disciplinary matters are the result of a carefully crafted rulemaking process. This process benefits greatly from public input and can readily be modified when appropriate.” *Hancock v. O’Neil*, 253 Ariz. 509, 514 ¶ 19 (2022). And as much as bad facts can make for bad law, they can also make for a bad interpretation of our rules.

II. BAR DISCIPLINARY PROCEEDINGS ARE NOT CIVIL PROCEEDINGS

¶109 Even if we abandon this Court’s original public meaning jurisprudence, the Majority’s conclusion that a charge filed with the State Bar can constitute a “civil proceeding” for WICP purposes cannot be fairly reconciled with the plain text of the Rule and rational analysis. That is not what the Rule says, and this Court should not amend a rule while construing it. *See State v. Salazar-Mercado*, 234 Ariz. 590, 592 ¶ 4 (2014) (“We interpret court rules to effect the rule-makers’ intent, using the same principles we apply when interpreting statutes.”); *see also State v. Brown*, 260 Ariz. 476, 482 ¶ 27 (2025) (noting that to “effectively rewrite [a] statute [is] something we cannot do”). Rule 48(a) declares in unambiguous terms: “Discipline and disability proceedings are neither civil nor criminal, but are

¹⁶ The Majority’s rejoinder that they are not engaged in a novel interpretation overlooks *In re Alexander* and gives too much weight to *Goldman*. *Supra* ¶ 69.

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

sui generis.” Ariz. R. Sup. Ct. 48(a); *Matter of Marquardt*, 161 Ariz. 206, 215 (1989) (discussing with approval a West Virginia Supreme Court decision in which the court “[s]ummarily dismiss[ed] any *ex post facto* concerns [regarding imposition of a disciplinary rule that did not exist at the time of the offending conduct] because attorney disciplinary cases are *sui generis*”). Although the Majority acknowledges this, *supra* ¶ 43, it then reads the phrase so narrowly as to drain it of any substantive meaning through a “legal purpose” gloss the rule’s text does not support, *supra* ¶ 42.

¶110 Rule 48(a) states, without qualification, that discipline proceedings “are neither civil nor criminal.” That is not a stray phrase awaiting a contextual determination – it is a direct classification of the exact proceeding at issue. The Majority’s response is to read a limitation into the rule that it does not state: Rule 48(a) forecloses treating a discipline proceeding as civil only for its own internal purposes (procedure, evidence, standard of proof) but not for a collateral “legal purpose” such as a WICP claim.

¶111 Rule 48(a) does not describe discipline proceedings as *sui generis* in passing – it answers, in terms, the precise question the Majority spills much ink over trying to answer by other means. *Supra* ¶¶ 33–51. And nothing in Rule 48(a)’s text draws the line the Majority ascribes to it. A provision that says a thing “is neither X nor Y” is not naturally read to mean “is neither X nor Y, except when a court later finds it convenient for an unrelated tort claim.” The plain and natural reading of Rule 48(a) is as a substantive declaration about the nature of disciplinary proceedings, not a procedural housekeeping provision.

¶112 If the Majority is right that “*sui generis*” is mainly concerned with which procedural and evidentiary rules apply – a role already fully performed by Rule 48(b) (importing specific civil procedure rules), 48(c) (evidence), and 48(d)–(e) (standard and burden of proof) – then Rule 48(a)’s classification does no independent work at all, and the Majority has relegated it to mere surplusage. See *Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11 (2019) (“A cardinal principle of statutory interpretation is to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous.”).

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

¶113 Rule 48(b)'s work to import thirty specific rules of civil procedure one provision at a time is itself telling. A proceeding that was simply civil by default would not need its procedural rules requisitioned piecemeal by cross-reference. The selective borrowing is textual evidence that the underlying proceeding is not inherently civil—otherwise the rules would simply apply wholesale.

¶114 The Majority's contextual reading is further undermined by the way this Court uses the word "proceeding" without the modifier "civil" throughout the relevant rules. Rule 55 is titled "Initiation of Proceedings; Investigation." Rule 78(a) states that "[a]n unauthorized practice of law proceeding commences upon receipt by the state bar of a charge against a respondent." Ariz. R. Sup. Ct. 78(a). The absence of the adjective "civil" in either rule is fully consistent with Rule 48(a)'s designation of these proceedings as *sui generis* rather than civil. Had this Court intended for disciplinary proceedings to constitute "civil proceedings" for all purposes or a particular purpose—including as predicates for WICP claims—the rules would say so. They do not.

¶115 Additionally, the Majority's definitions of "proceeding," "civil," and "civil proceeding" do not help its cause. "Proceeding" is defined as:

In a general sense, the form and manner of conducting juridical business before a court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment. Term also refers to administrative proceedings before agencies, tribunals, bureaus, or the like.

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

Proceeding, Black's Law Dictionary (5th ed. 1979).¹⁷

¶116 “Civil” is defined as “[o]f or relating to the state or its citizenry. Relating to private rights and remedies sought by civil actions as contrasted with criminal proceedings.” *Civil*, Black's Law Dictionary (5th ed. 1979). And, although there is no entry for “civil proceeding” in the fifth edition of Black's, there is an entry for “civil action,” which reads: “Action brought to enforce, redress, or protect private rights.” *Civil Action*, Black's Law Dictionary (5th ed. 1979).

¶117 Combining civil and proceeding leads to the definition provided by the Majority, “[a] judicial hearing, session, or lawsuit in which the purpose is to decide or delineate private rights and remedies, as in a dispute between litigants in a matter relating to torts, contracts, property, or family law.” *Supra* ¶ 35 (emphasis added). But this definition further supports the distinction that Rule 48(a) makes between a civil proceeding and a disciplinary proceeding. And the definition of “civil” likewise makes clear that a civil proceeding involves determining private rights and remedies between litigants. None of the definitions offered by the Majority correlates with what a lawyer disciplinary proceeding consists of.

¶118 Adjudicating allegations of lawyer misconduct does not occur within the adversarial framework that defines civil proceedings, which consists of private litigation between parties with competing interests. A bar charge does not adjudicate a dispute “between litigants.” It is bar counsel's own investigation of a licensee, undertaken on the Court's regulatory authority, in which the complainant is not a party seeking judgment, and the respondent's opposite number is the State Bar, not the complainant. Ariz. R. Sup. Ct. part V. Regulation of the Practice of Law. This distinction matters.

¹⁷ Curiously, the Majority's definition for “proceeding,” *supra* ¶ 34, goes to the last entry and skips over the last part of the preceding entry, which further underscores the remedial nature of a proceeding: “In a more particular sense, any application to a court of justice, however made, for aid in the enforcement of rights, for relief, for redress of injuries, for damages, or for any remedial object.” *Proceeding*, Black's Law Dictionary (5th ed. 1979).

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

¶119 WICP claims—and their tort predecessor, malicious prosecution¹⁸—exist to redress harm caused by the wrongful use of legal processes designed to resolve private disputes. Bar disciplinary proceedings serve to protect the public and ensure the integrity of the legal profession. *See, e.g., In re Alexander*, 232 Ariz. at 15 ¶ 63 (stating that “the primary objectives of lawyer discipline are ‘(1) to protect the public and the courts and (2) to deter the [disciplined] attorney and others from engaging in the same or similar misconduct’” (quoting *In re Zawada*, 208 Ariz. 232, 236 ¶ 12 (2004))); *In re Swartz*, 141 Ariz. 266, 277 (1984) (discipline exists to protect the public and deter misconduct); *In re Richey*, 76 Ariz. 152, 154 (1953) (“The purpose of disciplining lawyers is the protection of the public, the profession and the administration of justice, and not the punishment of the persons disciplined . . .”).

¶120 The Majority’s answer—that a proceeding “does not cease to be civil in nature merely because it serves the purpose of protecting the public . . . while simultaneously seeking to achieve a private remedy for an injured person”—rests on a tension it cannot resolve, because it assumes its conclusion without proving it. *Supra* ¶ 48. And the Majority’s assertion that a disciplinary proceeding is unique because “[w]hether a discipline proceeding ever amounts to a civil proceeding depends on the stage and substance of each particular proceeding . . . which is evaluated on a case-by-case basis,” is certainly unique reasoning, but it does not support an equally unique and contrary understanding of *sui generis* as provided

¹⁸ *Dinsman v. Wilkes*, 53 U.S. 390, 402 (1851) (observing that a suit for malicious prosecution “has been extended to civil as well as criminal cases where legal process has been maliciously used against another without probable cause”). “The action of malicious prosecution, which was first developed as a remedy against the unjustified initiation of criminal proceedings, has undergone a slow process of extension into the field of the wrongful initiation of civil suits.” *Wong v. Tabor*, 422 N.E.2d 1279, 1283 (Ind. Ct. App. 1981); *see also* 8 American Law of Torts § 28:21 (noting that malicious prosecution “had its origin as a remedy for unjustifiable criminal proceedings and in the majority of American courts has been extended into the field of wrongful initiation of civil suits”).

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

for in the Rule. *Supra* ¶ 43.

¶121 The Majority’s subsequent discussion of discrete points of what a disciplinary proceeding entails, the implication of private rights involving a license, and the recovery of restitution leads the Majority to the conclusion: “that a State Bar proceeding may constitute a ‘civil proceeding’ for purposes of a WICP claim.” *Supra* ¶ 51. But the move from defining “proceeding,” “civil,” and “civil proceeding” to the conclusion is not adequately reasoned. Nowhere does the Majority muster a clear statement of why a bar disciplinary proceeding is a civil proceeding.

¶122 We would hold that a bar disciplinary proceeding, which is neither civil nor criminal, cannot constitute a “civil proceeding” for a WICP claim. Because Accursio’s WICP claim is predicated solely on Wu’s filing of a bar charge, the claim fails as a matter of law, as does the aiding and abetting claim. We would affirm the trial court’s dismissal on that basis alone.

III. THE PLAIN TEXT OF RULES 48(l) AND 80(a)(6)

¶123 Assuming, contrary to our view, that a bar proceeding can constitute a “civil proceeding” for WICP purposes, we would nonetheless affirm the trial court’s dismissal given that the act of filing a bar charge is absolutely privileged conduct. The Majority’s effort to sever the act of filing a bar charge from its contents to privilege the latter but not the former cannot be reconciled with the plain text of Rules 48(l) and 80(a)(6) or with what constitutes a communication.

A. The Text of Rules 48(l) and 80(a)(6) Privileges the Conduct of Filing

¶124 Rule 48(l) provides, in relevant part, that “[c]ommunications to the . . . state bar . . . and testimony given in the proceedings shall be absolutely privileged *conduct*, and no civil action predicated thereon may be instituted against any complainant or witness.” Ariz. R. Sup. Ct. 48(l) (emphasis added). Rule 80(a)(6) contains materially identical language in the unauthorized practice of law context. Ariz. R. Sup. Ct. 80(a)(6). The operative word the Majority must account for—and yet does not—is “conduct.”

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

¶125 The Majority reads “absolutely privileged conduct” as though it meant “absolutely privileged statements.” *Supra* ¶ 55. Under this reading, the word “conduct” is stripped of independent meaning and functions as a synonym for statements made to the state bar or in testimony. But this Court does not interpret rules in a manner that renders words superfluous. *Sundaram*, 245 Ariz. at 568 ¶ 11 (“A cardinal principle of statutory interpretation is to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous.”).

¶126 The Majority argues that “communications” and “testimony” as used in the Rules limit the privileged conduct to statements, *supra* ¶ 55, and that “communications,” in turn, “defines the word ‘conduct’ for purposes of the rules,” *supra* ¶ 59. As the Majority notes, Black’s Law Dictionary defines communication as “[i]nformation given; the sharing of knowledge by one with another.” *Communication*, Black’s Law Dictionary (5th ed. 1979). But Black’s also defines a communication as an “[a]ct of or system of transmitting information,” and “[a] ‘communication’ is ordinarily considered to be a deliberate interchange of thoughts or opinions between two or more persons.” *Id.* Thus, here “communication” encompasses both the act of sharing information about alleged misconduct and the information itself.

¶127 The definition of “testimony” does not help the Majority’s cramped reading of the Rule either. Black’s defines the term as “[e]vidence given by a competent witness under oath or affirmation; as distinguished from evidence derived from writings, and other sources.” *Testimony*, Black’s Law Dictionary (5th ed. 1979). Thus, testimony is a type of evidence, though it also requires the act of attending a proceeding and speaking. But Black’s equates neither communication nor testimony with a statement, and if the Rule meant what the Majority wants it to mean, then it would read: Any statement offered by a complainant is absolutely privileged – dispensing with the problematic word “conduct.” Alas, it does not. To say that a statement of alleged misconduct is privileged but not the act of exchanging it makes no sense. The Majority privileges the message while exposing the messenger to civil liability for sending it. That result is not supported by the text and undermines the evident purpose of the Rules.

¶128 “Conduct” is a broader term encompassing actions and behavior. *Conduct*, Black’s Law Dictionary (5th ed. 1979) (“[p]ersonal

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

behavior; deportment; mode of action; any positive or negative act”). Thus, although “communications” informs the scope of conduct involved, it does not sever the product of the conduct—statements—from the act of production, sharing a statement regarding lawyer misconduct with the State Bar. And the Majority cites no rule of grammar or authority for its contrary linguistic construction. *See supra* ¶ 59. The plain terms of Rules 48(l) and 80(a)(6) privilege the conduct of communicating with the State Bar, including the act of filing a bar charge. The phrase “no civil action predicated thereon” then means no civil action may be predicated on that conduct—that is, a civil action may not be predicated on the act of filing a state bar complaint. Accursio’s WICP claim is therefore predicated on the very conduct that is absolutely privileged under the Rules.¹⁹

B. The Majority’s Content/Conduct Distinction Cannot Be Applied in Practice

¶129 The Majority’s distinction between a statement and the act of sharing—filing—will prove unworkable. To adjudicate a WICP claim predicated on the filing of a bar charge, a fact finder must evaluate whether the charge was filed without probable cause and with malice.

¶130 The Majority assures readers that privileged statements are off-limits while the act of filing is actionable, *supra* ¶ 55, but it provides no workable framework for how courts and juries are to evaluate probable cause and malice without consulting the charge itself. A fact finder asked to assess probable cause must look at what was alleged in the charge and whether the evidence—the statements—supported the allegations. *See Carroll v. Kalar*, 112 Ariz. 595, 596 (1976) (discussing the sufficiency of facts for determining whether there is probable cause). A fact finder asked to find malice and determine whether the bar charge was filed for a wrongful

¹⁹ Additionally, the Majority’s commencement analysis calls into question whether there is a distinction between instituting or commencing a proceeding and who is the acting party. *See supra* ¶ 77 (identifying Bar Counsel’s decision to issue a written notice of investigation requiring a written response as commencing a proceeding under Rule 55); *but see supra* ¶ 78 (stating that a proceeding commences “upon receipt by the state bar of a charge against a respondent” with no identified actor).

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

purpose or improper motive will have to examine what was stated in the charge, how it was framed, and whether the stated basis for the charge was pretextual.

¶131 This practical reality confirms that the act of filing a bar complaint and the statements made to establish misconduct cannot be cleanly severed for purposes of WICP liability. The Majority’s rule will require parties and courts to engage in precisely the kind of inquiry that “absolutely privileged conduct” forecloses. The result will be that bar complainants will face civil exposure despite the Rules’ declaration that their conduct is “absolutely privileged” and that “no civil action predicated thereon may be instituted.” The Majority’s interpretation converts an absolute privilege into a contingent one—absolute only as to defamation claims, but vulnerable through a carefully pleaded WICP claim.

C. The Majority’s Analogies and Textual Supports Are Flawed

¶132 The Majority draws an analogy to the attorney–client privilege and the legislative privilege, noting that those privileges protect the content of communications, while the mere occurrence of a communication is not itself privileged. *Supra* ¶ 65. But those evidentiary privileges serve a different function than Rules 48(l) and 80(a)(6) do. The attorney–client privilege “encourage[s] a client to confide in his or her attorney all the information necessary in order that the attorney may provide effective legal representation.” *Granger v. Wisner*, 134 Ariz. 377, 379 (1982). It is unnecessary to also protect a client’s act of meeting with the attorney. The legislative privilege “protect[s] the integrity and functioning of the [L]egislature.” *Fann v. Kemp*, 253 Ariz. 537, 540 ¶ 1 (2022). But there is no corollary need to protect the act of legislators gathering together.

¶133 In contrast, Rules 48(l) and 80(a)(6) function to protect those who might not otherwise bring an allegation of wrongdoing to the attention of the disciplinary system, especially those who will now be threatened with a civil action to dissuade reporting. Thus, Rules 48(l) and 80(a)(6) function to prevent civil suits; both Rules use the phrase “no civil action predicated thereon may be instituted.” The analogy to evidentiary privileges misses this critical distinction.

¶134 The Majority also points to Texas Rule of Disciplinary Procedure 17.09, adopted effective May 1, 1992, after our Rules, which

ACCURSIO v. TREE HOUSE LABS, LLC
JUSTICE MONTGOMERY, joined by JUSTICE CRUZ, Dissenting

expressly immunizes complainants from suit “predicated upon the filing of a Grievance or participation in the attorney disciplinary and disability system.” *Supra* ¶ 63. But for the textual gyrations in the Majority’s analysis, our Rule says the same thing. That Texas found it necessary to add specific language reaching the act of filing—on top of privileging communications—is at least equally consistent with Texas addressing a concern that Arizona’s broader term “conduct” already resolves. The comparative-law contrast the Majority draws is ambiguous at best and adds nothing to applying the plain meaning of Arizona’s Rules.

**IV. THE ANTI-ABROGATION CLAUSE DOES NOT REQUIRE A
DIFFERENT RESULT**

¶135 The Majority does not reach the Anti-Abrogation Clause (the “Clause”) given its resolution of this matter. However, because we would dismiss *Accursio*’s WICP claim, we address it.

¶136 The Clause prohibits abrogation of “rights of action that existed at statehood or that are based in rights of action existing at statehood.” *Torres v. JAI Dining Servs. (Phoenix), Inc.*, 256 Ariz. 212, 216 ¶ 13 (2023). Our inquiry then is “whether a plaintiff alleging the same harm could have recovered damages against the same type of defendant at statehood.” *Id.* at 218 ¶ 16 (emphasis omitted).

¶137 The pre-statehood cases recognizing the tort of malicious prosecution involved criminal charges or the institution of civil suits—the traditional predicate for the tort. *See, e.g., McDonald v. Atl. & Pac. R.R. Co.*, 3 Ariz. 96, 98 (1889) (setting forth elements that require a “criminal charge”); *Cunningham v. Moreno*, 9 Ariz. 300, 302 (1905); *see also Ackerman v. Kaufman*, 41 Ariz. 110, 112–13 (1932) (discussing the history of WICP in the civil context). We have found no reported cases from the territorial era or early statehood in which a plaintiff recovered malicious prosecution damages against a person who filed a complaint with a bar association or analogous professional regulatory body. Therefore, the Clause is not implicated in denying a WICP claim arising from the filing of a bar charge. *See Torres*, 256 Ariz. at 218 ¶ 16 (noting that the Clause does not create new causes of action but protects pre-existing rights of action).

V. CONCLUSION

¶138 As originally understood at the time the language in Rule 48(l) was originally adopted and as later reflected in Rule 80(a)(6), as understood by the Court’s own JEAC, practitioners, and this Court, a complainant cannot be subject to suit predicated on the filing of a bar complaint or a complaint alleging the unauthorized practice of law. And even aside from an original public meaning interpretation, the Majority’s analysis cannot be reconciled with how this Court engages in statutory interpretation. Bar disciplinary proceedings are, by the express declaration of this Court’s Rules, “neither civil nor criminal, but are sui generis.” Ariz. R. Sup. Ct. 48(a). They cannot serve as the predicate “civil proceeding” for a WICP claim.

¶139 Alternatively, and independently, Rules 48(l) and 80(a)(6) absolutely privilege the conduct of filing a bar charge—including the act of filing itself—and no civil action may be predicated on that conduct.²⁰ The Majority’s statement/conduct distinction reads the word “conduct” out of the Rules and will prove unworkable in practice. We would vacate the court of appeals’ memorandum decision and affirm the trial court’s dismissal of Accursio’s WICP and aiding and abetting claims.

²⁰ Because we hold that a bar charge is not a “civil proceeding,” and alternatively that the act of filing it is absolutely privileged conduct, the WICP claim fails at the threshold. We therefore have no occasion to address two issues the Majority reaches: (1) when a “civil proceeding” commences for WICP purposes, *supra* ¶¶ 74–80; and (2) the public-policy considerations permitting such a claim, *supra* ¶¶ 81–82. Both inquiries presuppose that a bar charge can support a WICP claim—the premise we reject. Our silence does not equate to agreement with the Majority’s treatment of either, and we express no view on them.