BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,

Petitioner 111 DB 2023

v. Attorney Reg. No. 200101

LISA ANN JOHNSON, (Allegheny County)

Respondent.

BRIEF AND PROPOSED FINDINGS OF RESPONDENT

Respondent Lisa Ann Johnson, by her counsel Bethann R. Lloyd of DiBella Weinheimer, P.C. respectfully submits her Brief and Proposed Findings as follows.

TABLE OF CONTENTS

I. OVERVIEW.....2

II. PROPOSED FINDINGS OF FACT.....4

III. PROPOSED CONCLUSIONS OF LAW.....45

IV. ARGUMENT AS TO MISCONDUCT.....46

V. ARGUMENT AS TO DISCIPLINE.....66

VI. CONCLUSION.....73

I. OVERVIEW

The charges against Ms. Johnson stem from her handling of two environmental matters. Throughout the Petition is a misplaced undertone that the claims themselves were, at least in part, frivolous. Ms. Johnson acknowledges missteps, but her clients' water quality issues were serious, fact-based and life-changing, which is why she so passionately advocated on her clients' behalf.

In the *Dibble* matter, Ms. Johnson regrets that her representation fell short of the expectations of Rule 1.1 in several respects. As a solo practitioner with no experience before the EHB, she was unfamiliar with the administrative procedures which created challenges in advancing formal discovery, motions practice, admitting evidence and the overall presentation of the case. At times, Ms. Johnson's filings were not as precise as they should have been. Her criticism of the judge and the EHB were fact-based, even if expressed too strongly. She now recognizes more restraint was in order. While Ms. Johnson's aggressive style pushed the bounds of zealous advocacy at times, it was rooted in a strong desire to rapidly solve her clients' water quality issues.

Petitioner's reliance on the Opinions of the EHB in the *Dibble* case, quoting extensively in its Brief from the Opinions themselves, as opposed to reliance upon witness testimony, is unsatisfactory evidence upon which to

establish Petitioner's burden of proof. The Opinions should not be received as a substitute for production of evidence in the form of documents and witnesses, as the license and livelihood of a lawyer is at stake.[1]

Ms. Johnson disagrees with the EHB's sanction rendered in the *Dibble* case, most strongly as to her clients who did nothing wrong. However, she disagrees also with the EHB's analysis and incorrect assumptions as to her motivations and mindset. She was and is not dishonest and engaged in no intentional misrepresentations. She had no intent to delay, as that would have been entirely contrary to her client's goals. Nevertheless, to the extent her own conduct led to these false conclusions, she has heeded the criticism. With the exception of this matter, Ms. Johnson's competence, professionalism and advocacy has been above reproach. Ms. Johnson has since demonstrated increased restraint and more precise and focused advocacy.

In respect to the *Glahn* matter, Petitioner did not call any witnesses in support of its Petition or introduce a single exhibit. Petitioner relied instead on

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1Ms. Johnson acknowledges the Hearing Committee's denial of her Motion in Limine, but respectfully preserves her exception to the ruling, as Petitioner's Brief extensively utilizes the analysis and factual conclusions in the Opinion of the EHB in an attempt to prove misconduct. Ms. Johnson cannot cross-examine an Opinion. The EHB reached erroneous conclusions as to her intent and statements which should not be considered as substantive evidence of misconduct in this disciplinary case. The fact that Ms. Johnson was sanctioned in the *Dibble* case is conceded, but the Opinion and analysis therein of her conduct should not be considered, or if considered at all, should not be deemed preclusive or persuasive. Of note, the sanction in the *Dibble* case remains on appeal.

Ms. Johnson's Answer to the Petition. This evidence is not satisfactory to support a violation or the discipline Petitioner is seeking.

II. PROPOSED FINDINGS OF FACT

(Background)

1. Ms. Johnson has been licensed to practice law in Pennsylvania since 2005. (T. 192).
2. She attended the University of Pittsburgh for undergraduate school, majoring in psychology, and graduating in 2000. (T. 192).
3. Thereafter, Ms. Johnson attended the police academy and became a police officer, working both as an undercover officer for a period of time and then in the detective division. (T. 193). There were no blemishes on her service history. (T.193).
4. While still a police officer, Ms. Johnson attended law school at the University of Pittsburgh, serving on the law review and graduating in 2005. (T.194).
5. Ms. Johnson practiced initially with Klett Rooney (which was acquired by Buchanan Ingersoll) until 2013. (T. 195). During these years, she became a member of the energy section. (T. 196). Thereafter, she worked in-house for another energy company. (T.198-199).

6. Following her work with the energy companies, Ms. Johnson changed her focus, providing pro bono legal services to asylum seekers and volunteering with the Southern Poverty Law Center. (T. 200).
7. In the year prior to the representation at issue, Ms. Johnson and a law school friend began practicing together. (T.201).
8. During the *Glahn* and *Dibble* matters, however, she was a solo practitioner without a legal assistant. (T.202, 251).
9. Other than the asylum cases that she handled, Ms. Johnson had no litigation background. (T. 202).
10. Ms. Johnson is married, but separated from her husband. The two have a very amicable relationship, sharing equal custody of their teenage twins, with Ms. Johnson being the main breadwinner. (T.302).

(ODC's Proposed Findings)

For efficiency and the convenience of the Committee, Ms. Johnson sets forth below which of Petitioner's Proposed Findings of Fact are acceptable, which she believes should be rejected, and which require additional proposed context for a fuller understanding of the events at issue.

11. **Pet. No. 1-3**: Ms. Johnson accepts Petitioner's Proposed Findings No. 1-3.

12. **Pet. No. 4.** Ms. Johnson accepts No. 4. Ms. Johnson proposes additional findings for context:

a. Ms. Stanley, who is Ms. Dibble's sister, resided in the Dibble's home. (T.149-150)

b. Ms. Stanley described the water quality in the home as "perfect" for many years. In the months leading up to January 2020, it went bad almost overnight. (T. 149, 152).

c. Simultaneous with the change in water quality, the oil and gas company was working near the property. The activities were sufficiently close that Ms. Stanley could feel the house shaking. (T.152).

d. Ms. Stanley took pictures to document the water conditions, including brown water coming through the water line into the toilet and sediment in the water. (T.152)(R-2)(R-3)(R-3)(R-4). She also experienced water stoppages, a chemical smell and an oily film. (T.154). Ms. Stanley ceased drinking the water. (T. 158). The water also irritated her skin when bathing. (T. 158).

e. The Dibble property was just 177 feet outside the zone of presumed liability per the Oil and Gas Act ("Act"). (T. 92, 93-95 (Barrette)).

f. Ms. Dibble contacted the oil and gas company and was advised to contact the DEP. (T.150, 157).

g. Ms. Johnson came to represent Ms. Dibble and Ms. Stanley in January 2020, as Ms. Johnson knew Ms. Dibble from childhood, growing up in Susquehanna County. (T.157)(T.203).

h. Ms. Johnson researched the issues, including reviewing the Act, the Environmental Rights Amendment to the Pennsylvania Constitution, and information about the wells and fracking operations. (T.206).

i. To the extent that matter could proceed to litigation, Ms. Johnson had reservations about handling it and tried to find more experienced lawyers, but without success. (T.207-208).

j. Ms. Johnson had never previously appeared before an administrative agency, such as the Environmental Hearing Board. ("EHB"). (T. 202).

k. Mr. Johnson disclosed to her clients that she had no litigation experience. (T. 157 (Stanley))(T.207 (Johnson)).

l. The clients had no other options for lawyers. (T. 157(Stanley)).

m. On January 10, 2020, Ms. Johnson wrote to the oil and gas company. Her letter was not disrespectful in any way and her only demand was for potable water for her client, which the company declined to provide. (R-28)(T.84-86 (Barrette)).

n. On February 20, 2020, Ms. Johnson wrote directly to the company's lawyer, Attorney Barrette addressing pre-drill samples, coordinates, statutory presumptive distances and the Act itself. (R-28)(T.86-88). This letter was not hostile and the only request was for potable water, which the company still declined to provide. (T.89 (Barrette)).

o. Ms. Johnson worked cooperatively with the DEP in early 2020 and allowed the DEP to test the water. Elevated levels of turbidity, iron and bacteria were detected. (T. 161)(T.213-214).

p. Through Ms. Johnson, the clients hired a private laboratory to test the water, Eurofins. (T.161)(T.215).

q. Eurofins' initial report detected the same pollution as found by the DEP, and also, TEG at a level of 2.8J. (R-10). TEG is a manmade chemical that is not naturally found in the ground. (T.232). The DEP does not typically test for glycols, such as TEG. (T.232).

r. Ms. Johnson sought out more information about the "2.8J" designator to better understand its meaning. (T.216-217).

s. Ms. Johnson shared the results of initial Eurofin's testing with the DEP, including the raw data. She also authorized the DEP to speak directly to Eurofins. (T.220 (Johnson))(T.90-91 (Barrette)).

t. When DEP questioned Eurofin's findings as to the presence of TEG, Ms. Johnson asked Eurofins to test again. (T.222). Ms. Johnson also called Eurofins to discuss the discrepancy between the DEP's findings and Eurofin's testing. (T.222-223).

u. Ms. Johnson shared Eurofins' second report (July 14, 2020) with the DEP. (T.223; R-15). However, at that point, she declined to share the 2nd set of raw data, as she felt the DEP was no longer in a cooperative mindset. (T.224).

v. As the DEP's investigation dragged on throughout 2020, Ms. Stanley moved out of the home because she could not use the water. (T.162-163).

13. **Pet. No. 5**. Ms. Johnson accepts No. 5 as an accurate excerpt of the letter, but rejects the conclusions of the DEP, which were not established by Petitioner.[2] Ms. Johnson adds:

2 Whether or not the oil and gas company actually polluted the water is not a matter to be decided by this Hearing

a. The letter was a final determination of the DEP, triggering a right to appeal to the EHB. (ODC-2).

b. Ms. Dibble and Ms. Stanley sought to appeal because they disagreed with the findings and felt the DEP was not providing assistance. (T. 149, 162)

c. At the time of the DEP's final determination, it had been a year since Ms. Dibble initiated her complaint. (T.96 (Barrette)(T.162).

d. Pursuant to the Act, the DEP is required to investigate within 10 days and make a determination within 45 days. 58 Pa.C.S. §3218.

e. The DEP confirmed pollution (elevated levels of iron, turbidity and bacteria), but concluded that oil and gas activity was not the cause. (T.162)(ODC-2).

f. In the interim, a Grand Jury investigation investigating the fracking industry was made publicly available in June 2020, which Ms. Johnson immediately obtained and read. The concerns, events and illnesses described matched her clients' experiences. (T.226-227)(R-27). This Report informed her thinking. (T.228).

Committee. Throughout this Brief, however, Ms. Johnson provides context to explain that her disagreement with the DEP was in good faith and based on facts.

g. The Grand Jury Report was critical of the DEP and the industry. It documented a close alignment between the DEP and the energy companies, inadequate investigation, reliance on old criteria, as well as a failure to fully disclose all chemicals utilized in fracking. (R-27, e.g. pgs. 4, 6, 7)("Even when homeowners went to the trouble of hiring their own experts, some DEP employees did not listen. We appreciate that not every complaint is founded. But, in areas of this Commonwealth where fracking has taken a toll, many people do not believe that DEP is an honest broker" pg. 7).

14. **Pet. No. 6**. Ms. Johnson accepts No. 6.

15. **Pet. No. 7 & 8.** Ms. Johnson accepts No. 7 and 8. Ms. Johnson adds:

a. Discovery can be expensive. (T. 137 (Barrette)).

b. The DEP did not initiate discovery until the very last day of the discovery deadline. (T.110).

c. Th oil and gas company did not serve any discovery. (T.108-109 (Barrette)).

d. Ms. Johnson acknowledged she should have initiated formal discovery (T.238-239). She was investigating and preparing through other techniques.

e. Ms. Stanley testified that Ms. Johnson spent endless hours investigating and researching. (T.161).

f. Ms. Johnson testified that she interviewed her own clients, studied the Act, obtained many documents through a Right to Know request, searched the websites Frack Focus and marcellusgas.org for well records and production reports, reviewed the above mentioned Grand Jury Report and also reviewed a groundwater site assessment in nearby Dimmock, Pa. (T.239-241).

g. Further examples of what she gathered and/or reviewed were also listed in detail in her Answer to the Petition (Answ. ¶7), as well as her earlier Statement of Position. (OC-73, 001065).

h. Ms. Johnson's initiation of subpoenas is addressed below.

16. **Pet. No. 9**: Ms. Johnson accepts No. 9.

17. **Pet. No. 10.** Ms. Johnson accepts No. 10.

18. **Pet. No. 11**. Ms. Johnson accepts No. 11, but only in part. Ms. Johnson acknowledges her testimony, but asks the Hearing Committee to reject the final quotation in parenthesis derived from ODC-76, as there was no evidence presented by Petitioner of harassment of opposing

counsel and this was not the testimony of any witness, including Attorney Barrette. Ms. Johnson adds to explain her mindset at the time:

a. Ms. Johnson was surprised when the oil and gas company intervened, given its strong stance that there was no relationship between its activities and the water pollution. (T.245)

b. Ms. Johnson's concern was that the company's and counsel's intent was to cause a distraction and derail the case. (T.246).

c. Buchanan Ingersoll's energy practice, which includes Attorney Barrette, is comprised of 10 lawyers. (T. 99).

d. Approximately 99% of Attorney Barrette's practice is representing energy companies. (T.83).

e. Ms. Johnson had read about the tactics of the oil and gas company and its counsel in other cases. (T.246-247).

f. Ms. Barrette had previously sought to sanction other lawyers. (T.102).

g. Two Buchannon Ingersoll lawyers were on the rules committee of the EHB at the time of Dibble proceedings, including one lawyer serving as Chair (T.122-123). The rules committee provides input to the EHB from the oil and gas industry and DEP. (*Id.*).

19. **Pet. No. 12:** Ms. Johnson accepts No. 12.

20. **Pet. No. 13:** Ms. Johnson accepts No. 13. She adds:

a. In this February 23, 2021 letter, Ms. Barrette's partner threatened Ms. Johnson with sanctions and attached to his letter an approximately 300 page filing by which the oil and gas company initiated a Dragonetti Action seeking $5 million and sanctions against another lawyer. (T.103-106)(ODC-77).

b. Ms. Johnson viewed this letter as indication of the oil and gas company's intent to attack her and her clients. (T.247).

c. Before sending this letter, the lawyers at Buchanan Ingersoll did not call Ms. Johnson to speak with her, determining, even though they had never met her, never spoke to her and had no knowledge of her, that everything needed to be writing. (T. 107).

21. **Pet. No. 14**: Ms. Johnson accepts No. 14.

22. **Pet. No. 15**. Ms. Johnson accepts No. 15, but only in part. Ms. Johnson acknowledges her testimony and agrees that her legal authorities were not sufficient. The factual basis is explained above. Ms. Johnson asks the Hearing Committee to reject the final sentence, as the quotation derived from ODC-76 is not the testimony of any witness, nor

was "unrelenting harassment of opposing counsel" established at the hearing by clear and convincing evidence.

23. **Pet. No. 16.** Ms. Johnson accepts No. 16. She adds:

a. Prior to the EHB litigation, Ms. Johnson did not fully appreciate the formality of the EHB proceedings. (T.236). She did review the rules of practice and procedures on the website (T.236), but agreed she should have taken even more time to learn the rules. (T.307).

24. **Pet. No. 17 & 18.** Ms. Johnson accepts Nos. 17 and 18.

25. **Pet. No. 19.** Ms. Johnson accepts No. 19 as an excerpt of the letter, but rejects the conclusions of the DEP, which were not established by Petitioner. (See footnote No. 2).

26. **Pet. No. 20 & 21**. Ms. Johnson accepts No. 20 and 21.

27. **Pet. No. 22**. Ms. Johnson asks the Hearing Committee to reject No. 22 and instead, find as follows:

a. Ms. Johnson interpreted the email as DEP's acknowledgement of TEG being utilized at the site itself, but focusing instead on the DEP's sampling of the water. (T.255).

b. Ms. Johnson understood at the time that that glycol dehydrators were utilized on almost every site. (T.255).

c. Ms. Johnson's interpretation, even if erroneous, was consistent with her general knowledge of fracking fluids and her clients' private laboratory results.

28. **Pet. No. 23**: Ms. Johnson accepts No. 23 as an accurate excerpt of the DEP's Brief, but rejects the argument and conclusions of the DEP. Ms. Johnson adds:

a. Ms. Johnson's review of the 2020 Grand Jury report informed her thinking in identifying at least 7 different ways in which the DEP failed to test and would not listen to landowners or credit the results of the landowners' private laboratory reports. (T.227-230)(R-27).

b. As such, Ms. Johnson was and remained skeptical of the DEP throughout the proceedings. (T.234).

29. **Pet. No. 24, 25, 26 and 27**: Ms. Johnson accepts Nos. 24, 25 and 26 and 27.

30. **Pet. No. 28**: Ms. Johnson accepts No. 28 as an excerpt of a longer Opinion.

31. **Pet. No. 29, 30, 31 and 32**. Ms. Johnson accepts No. 29, 30, 31 and 32. She adds:

a. The first subpoena Ms. Johnson filed was directed to the oil and gas company CEO. (ODC-1, Dkt. Entries)(T.142 (Barrette))(ODC-17).

b. The Subpoenas Ms. Johnson filed on June 22, 2021 were never served because on June 24, 2021, the company filed an Emergency Motion to Stay Compliance with Subpoenas. This Motion was granted on June 25, 2021. (See, ODC-1, Dkt. 39 & 42).

c. Accordingly, as of the time of the July 1, 2021 Motion, relief had already been granted.

32. **Pet. No. 33**: Ms. Johnson accepts No. 33.

33. **Pet. No. 34**: Ms. Johnson accepts No. 34. She adds:

a. In reading the EHB Rules, Ms. Johnson believed that procedural motions required a statement of the other side's position, but other types of motions did not. (T.248-249). The requirements differed as to accompanying briefs as well. (T.250).

b. Attorney Barrette testified that there was no likelihood that the oil and gas company would consent to a discovery extension. (T.113 (Barrette)). The company did not consent to anything during the entire proceeding. (*Id.*)

34. **Pet. No. 35 & 36:** Ms. Johnson asks the Hearing Committee to reject No. 35 and 36 as incorrect. The quotations in the parenthesis of each proposed finding derived from ODC-76 are not the testimony of any witness and lack foundation. Ms. Johnson proposes instead as follows:

a. After the EHB indicated in denying summary judgment that more discovery was needed, Ms. Johnson asked for 90 days to conduct discovery. (T.251-252)(ODC-18).

b. Motions to extend discovery are not uncommon in litigation. (T.114 (Barrette)).

c. The EHB has certain standard time frames for disposition, such that it was common for an EHB case to take up to a year to resolve. (T.115 (Barrette)).

d. The *Dibble* case proceeded during COVID. (T.115 (Barrette)).

e. At the time of this Motion to Extend Discovery, no hearing date had yet been set before the EHB, nor were summary judgment motions filed. (T.113-114 (Barrette)).

f. The relief sought in the Motion was proper, and denied on a procedural error in that she did not confer with the other parties prior to filing.

g. Ms. Johnson divulged in the Motion that the DEP had rejected a proposal of settlement and attached the DEP's letter. (ODC-18).

h. What Ms. Johnson did not clearly explain was that simultaneous with the EHB proceeding, Ms. Johnson had been in discussions with other government agencies. (T.341-342). She did not think it appropriate to put the details of such conversations in her motion, and even at the disciplinary hearing itself, was resistant to divulge the details of pending conversations as inappropriate. (*Id.*)(*See also*, T.261).

i. Ms. Johnson's language should have been more precise, as she was attempting to balance her conversations and understanding of her conversations with the Attorney General's office.

35. **Pet. No. 37, 38 & 39**: Ms. Johnson accepts No. 37, 38 and 39. Ms. Johnson's proposed additional facts have been addressed above.

36. **Pet. No. 40**: Ms. Johnson accepts No. 40 as an excerpt of the Motion only, not for the substantive truth of the contents as argued by opposing counsel.

a. As illustration of why the factual representations should not be accepted as true, the oil and gas company argued in its Motion that the constituents utilized in its operations were available on a public

website. However, the Act allows the industry to keep "trade secrets" and "proprietary chemicals" confidential. 58 Pa.C.S. §3222.1(b)(3)(4) & (d).

b. There are also other statutory exceptions to disclosure, such as chemicals present in trace amounts, chemicals not intentionally added to the stimulation fluid, or chemicals not disclosed by the manufacturer. §3222.1(c). (T.228-229, 231).

c. The above concerns were addressed in the Grand Jury Report. (R-27).

37. **Pet. No. 41.** Ms. Johnson accepts No. 41 and 41(a).

38. **Pet. Nos. 42, 43, 44 and 45:** Ms. Johnson accepts No. 42, 43, 44 and 45. Ms. Johnson adds:

a. Although she should have sought out the nonmoving party's position, it was obvious that the oil and gas company would oppose.

b. Although Ms. Johnson was not strictly compliant with the EHB Rules, the EHB had discretion to disregard her procedural error. 25 Pa.Code §1021.4 ("The Board at every stage of an appeal or proceeding may disregard and error or defect of procedure which does not affect the substantial rights of the parties.")

39. **Pet No. 46 & 47**: Ms. Johnson accepts No. 46 and 47.

40. **Pet No. 48**: Ms. Johnson accepts No. 48. Ms. Johnson proposes additional findings:

a. After receiving the EHB's Order resolving the pending summary judgment motions, Ms. Johnson was considering other avenues to obtain relief for her clients, which she did throughout the proceedings. (T.256).

b. She sought to certify the Order for immediate appeal, believing that it would promote efficiency. (T.256)(ODC-1, Dkt. 84).

c. The EHB denied said Motion. (ODC-1, Dkt. 88).

d. On or about December 20, 2021, Ms. Johnson filed a Petition for Review with the Commonwealth Court. (*Id.* Dkt. 89).

e. While the Petition for Review was pending, the pre-hearing memorandum was due.

41. **Pet. No. 49, 50, 51 & 52:** Ms. Johnson accepts Nos. 49, 50, 51 and 52.

42. **Pet. No. 53:** Ms. Johnson accepts Nos. 53. She adds:

a. The Memorandum was consistent with Ms. Johnson's thinking that the burden shifted on account of the DEP's dereliction of its statutory duty under the Act, 58 Pa.C.S. §3218. She argued that

the burden to engage and utilize experts was on the DEP. (ODC-34).

b. A similar argument was raised subsequently, in response to a motion for nonsuit. (T.319-326, 349-350)(ODC-51).

43. **Pet. No. 54.** Ms. Johnson accepts No. 54, in part, and as to the Pre-hearing Memorandum. However, the quotations from ODC-76 in the parenthesis are not the testimony of any witness and should be rejected. Ms. Johnson proposes additional findings:

a. Ms. Johnson incorrectly expected the EHB to consider items that she had filed on the docket. (T.237-238).

b. Ms. Johnson filed multiple items on the EHB docket, including pictures, well records, fracking chemicals, witness statements, water tests, surface activities inspection reports, as well documents attached to support summary judgment, such as the Eurofins' test results. (ODC-1, e.g. Dkt. 47, 48, 49, 50, 58-59)(T. 110-112).

c. Ms. Johnson acknowledges she did not explicitly identify exhibits and that was an error. At the time, she had reviewed samples of other pre-trial statements and noticed that some lawyers reserved the right to add exhibits, so that is what she did, acknowledging she should have been more careful. (T.257).

d. Ms. Johnson did not neglect to identify experts. There was no money to hire experts to testify at the hearing. (T.257-258).

e. Ms. Johnson's Pre-Hearing Memorandum otherwise listed provided a detailed narrative of the facts, a statement of legal issues, a section on experts, and a detailed preliminary list of potential fact witnesses. (ODC-34).

f. Therein, Ms. Johnson also addressed the burden of proof, arguing that the DEP had improperly and unlawfully shifted its obligations under the Act to the landowners. (*Id.*, ¶13)

44. **Pet. No. 55, 56, 57, 58 and 59:** Ms. Johnson accepts Nos. 55, 56, 57, 58 and 59.

45. **Pet. No. 60 & 61.** Ms. Johnson asks the Hearing Committee to reject Nos. 60 and 61. Once more, the quotations in the parenthesis taken from ODC-76 are not the testimony of any witness and should be rejected. Further, the proposed findings are incorrect. Ms. Johnson proposes instead:

a. Ms. Johnson was not attempting to stall or materially delay the proceedings by filing a Motion to Stay. (T.259).

b. The requested stay was for a finite duration of 60 days. (*Id.*)(T. 116 (Barrette))(ODC-40).

c. Preceding this Motion, Ms. Johnson had been in discussions with governmental agencies, including the EPA and attorney general, and she assumed and hoped it was heading in the direction of including the other litigants in those discussions. (T.259-261).

d. Ms. Johnson should have been more precise (T.261), but she did not state that conversations were already occurring. She phrased it as "will have," meaning, in the future.

e. A litigant need not cite any particular legal authority to request a stay.

f. Though no immediate activity or settlement discussions resulted, 6 months later, a prosecutor was assigned. (T.262)(R-21).

g. Had anyone other than Ms. Johnsons' clients been interested in negotiations, such discussions had the potential to impact the proceedings. Ms. Johnson was looking for a prompt solution, as she knew the hearing result could be appealed and merely prolong relief. (T.262-263).

46. **Pet. No. 62 & 63:** Ms. Johnson accepts No. 62 and 63.

47. **Pet. No. 64**: Ms. Johnson accepts No. 64, but not the conclusions by her adversary therein that the Motion was frivolous or that she was engaging in any type of extortion.

48. **Pet. No. 65**: Ms. Johnson accepts No. 65.

49. **Pet. No. 66**. Ms. Johnson accepts No. 66, but solely as an excerpt of the DEP's filing, not for the proposition that settlement discussions, had they occurred, would not have had any potential to effect the proceedings.

50. **Pet No. 67 & 68**: Ms. Johnson accepts No. 67 and 68.

51. **Pet. No. 69**: Ms. Johnson accepts No. 69, but solely for the fact of the filing itself, not the conclusions, which were the arguments and advocacy of the opposing party. Ms. Johnson adds:

a. Ms. Johnsons' Motion to Stay filed on February 3, 2022, was 2 pages in length consisting of 5 paragraphs. (ODC-40).

b. The Motion was denied on February 9, 2022, including (without prejudice) the company's request for legal fees incurred to respond to the motion. (ODC-44).

c. On February 15, 2022, the company then filed its Motion for Sanctions again seeking legal fees in responding to the Motion. (ODC-46).

d. This filing was on the eve of the hearing, which was scheduled for February 22, 2022.

52. **Pet. No. 70**: Ms. Johnson accepts No. 70.

53. **Pet. No. 71**. Ms. Johnson accepts No. 71, in part, as excerpts of her filing. She rejects the quotations in the parenthesis at the end of No. 71 which are taken from ODC-76 and are not based on the testimony of any witness. To add context to No. 71(f), Ms. Johnson adds:

a. Ms. Johnson's reference here and elsewhere to retired Chief Justice Castille relates to an expert report he authored in another action (*Cabot et al. v. Speer et. al.*) critical of the tactics of the same oil and gas company and its same counsel. Ms. Johnson discovered the report and it concerned her. (T.246)(*See also,* ODC-77, Exh. A)(*Cabot et al. v. Speer et al.).*

54. **Pet. No. 72**: Ms. Johnson asks the Hearing Committee to reject No 72, as explained in response to No. 22 and 23.

55. **Pet. No. 73**: Ms. Johnson asks the Hearing Committee to reject No. 73, as she was expressing her opinion based on her reasonable and fact-based perception of differing treatment during the case. Once more, the quotations in the parenthesis taken from ODC-76 are not the testimony of any witness and should be rejected. Ms. Johnson adds:

a. The three quoted words are taken from a 21 page filing in which Ms. Johnson's overarching argument was that the entire process was unfair to the landowners as the DEP's determination letter was

late, its investigation inadequate in many respects, and the EHB rulings improper. (ODC-48). She cited heavily to the expert report of Justice Castille in the *Speer* matter, as it informed her thinking and response. (*Id.*)

56. **Pet No. 74**: Ms. Johnson accepts No. 74, except as to the quotations in the parenthesis taken from ODC-76. She adds:

a. In 2022, the oil and gas company pled no contest to a criminal charge arising under the clean stream law in Susquehanna County and agreed to a $15 million dollar fine. (T. 125 (Barrette)).

57. **Pet. No. 75:** Ms. Johnson accepts No. 75.

58. **Pet. No. 76:** Ms. Johnson accepts No. 76.

59. **Pet. No. 77.** Ms. Johnson asks the Hearing Committee to reject No. 77.

a. Ms. Johnson did not make misrepresentations at the hearing.

b. Ms. Johnson's client's goal was to obtain clean water, not money for themselves and that is the point she was attempting to make. (T.253-254).

c. Attorney Barrette conceded that the Dibbles never demanded any form of monetary compensation from the oil and gas company, only legal fees. (T.124 (Barrette)).

d. Ms. Johnson's legal fees and expenses were in a separate category. Ms. Johnson also thought as a sole practitioner doing the same type of work as the oil and gas company lawyers, she should be paid roughly the same amount, and accepts that she could have made this point more eloquently. (T.254).

60. **Pet. No. 78.** Ms. Johnson accepts No. 78 as an excerpt of her 31 page filing.

61. **Pet No. 79, 80 and 81.** Ms. Johnson asks the Hearing Committee to reject No. 79, 80 and 81. Ms. Johnson proposes:

a. Earlier in the *Dibble* case, the Judge had removed certain personal statements that she filed on the docket. (T. 293)(R-19). She did not understand at the time why those statements were removed. (T.348).

b. In March 2022, Ms. Johnson received notice that several docketed items in both cases were removed unilaterally by the Judge. (T.294-296). Her attempt to refile was rejected. (*Id.*) The Judge also denied a site visit in the *Dibble* case, four days after it was filed. (T.294-295.)(ODC-1, Dkt 128).

c. Mr. Johnson received no explanation, so she wrote a letter to the Judge on March 14, 2022 inquiring. (ODC-69)(T.295).

d. She expressed further concern in another letter dated March 15, 2022 as to removal of a Motion the previous day. (R-25).

e. On March 16, 2022, the Judge entered an Order in *Dibble* striking her letter. (ODC-1, Dkt. 129).

f. Ms. Johnson did not understand why the docketed items were removed. (T.295). The docket itself review that other filings, such as letters, were accepted. (ODC-1).

g. Ms. Johnson explained that she did not believe there was intentional bias, but she did call out what she perceived to be inherent bias in the system against the landowners, a vulnerable and often elderly population (as were her clients) with limited means, often without counsel, health problems (citing Mr. Glahn and also a study), and no clean drinking water going up against sophisticated opponents and having to proceed before the EHB agency itself, with complex rules and deadlines. (T.297-300).

62. **Pet No. 82:** Ms. Johnson asks the Hearing Committee to reject No. 82 as her assertion was not false, but taken the wrong way, as already explained above in response to No. 77.

63. **Pet. No. 83:** Ms. Johnson asks the Hearing Committee to reject No. 83, as already explained above in No. 81.

64. **Pet. No. 84:** Ms. Johnson asks the Hearing Committee to reject No. 84. Ms. Johnson adds:

a. Ms. Johnson agrees that she did not present evidence at the hearing, but she was referring more generally to the items filed of record, as discussed above in No. 54.

65. **Pet. No. 85 and 86:** Ms. Johnson accepts No. 85 and 86. Ms. Johnson adds:

a. Ms. Johnson was never offered an evidentiary hearing, which is what she desired and believes she requested. She was offered oral argument on the phone and her clients would not have been present. (T.275, 308). In her filing, she took issue with the format of the oral phone argument. (ODC-53).

b. Ms. Johnson has since reflected and agreed she should have participated in the oral argument. (T.275).

66. **Pet No. 87**: Ms. Johnson asks the Hearing Committee to reject No. 66, as she was not knowingly making a false representation, as explained above. She regrets the tone.

67. **Pet. No. 88**. Ms. Johnson acknowledges that a sanction was imposed, but asks the Hearing Committee to reject the Opinion (ODC-76) as substantive evidence of misconduct, as ODC does not meet its

burden of proof by incorporating and relying upon an Opinion, as articulated in her Motion in Limine and repeated in Footnote No. 1 herein.

68. **Pet. No. 89**: Ms. Johnson acknowledges that a nonsuit occurred, but asks the Hearing Committee to reject the Opinion as substantive evidence of misconduct, as already articulated above. Ms. Johnson proposes instead:

a. The *Dibble* hearing was conducted virtually. (T.118).

b. Preceding the hearing, Ms. Johnson worked with her clients on topics and questions to prepare for the presentation of evidence through their testimony. (T.165).

c. The Motion for Sanctions, filed on the eve of the hearing, concerned her clients to the point that they wanted the motion resolved before proceeding. (T.166).

d. Ms. Johnson appeared at the hearing with her clients ready to give testimony. (T.332).

e. Consistent with her clients' wishes, at the outset of the hearing, Ms. Johnson asked the Judge to take up the pending Motion for Sanctions first. (T.166). The Judge declined. (T.166).

f. Thereafter, there was a pause in the proceedings during which Ms. Johnson consulted with her clients. (T.166-167).

g. Ms. Johnson's clients chose not to proceed as they were uncomfortable with the sanctions motions pending. (T.167)(T.121).

h. The clients were fully aware that if they refused to testify, they may not get a second chance. (T.167 (Stanley)).

i. During the hearing itself, Ms. Johnson was not hysterical, she did not yell, she did not raise her voice, she did not engage in name calling, she did not attack the judge or opposing counsel, but was respectful. (T.119-120 (Barrette); T.168 (Stanley)).

j. By Opinion and Order dated June 15, 2022, the EHB granted the motion for compulsory nonsuit.

k. Further, despite the oil and gas company not specifically seeking to sanction Ms. Johnson's clients, the EHB sanctioned her clients along with Ms. Johnson. (T.121 (Barrette)).

l. Both the Order for Sanctions and for nonsuit remain under appeal.

69. **Pet. No. 90**: Ms. Johnson accepts No. 90.

70. **Pet. No. 91**: Ms. Johnson asks the Hearing Committee to reject No. 91, for the reasons already described above, namely, that the Judge did remove and reject filings. Respondent is unaware of any legal authority for a Judge to remove a filing from the docket. The Judge could, arguably, summarily deny a motion, but not remove it.

71. **Pet. No. 92**: Ms. Johnson asks the Hearing Committee to reject No. 92, as while she acknowledges being too aggressive in tone, this was her opinion at the time based on her collective experience in litigating the matter.

72. **Pet No. 93**: Ms. Johnson asks the Hearing Committee to reject No. 93. Once again, while she acknowledges being too aggressive in tone, this was her opinion at the time based on her collective experience in litigating the matter.

(Glahn & Gorencel v. DEP)

73. **Pet. No. 94, 95, 96 & 97**: Ms. Johnson accepts No. 94, 95, 96 and 97. Ms. Johnson proposes additional findings as important background:

a. In the *Glahn* case, the couple had lived at their property for 38 years. (T.175).

b. Their water supply is a spring vault that comes from an aquifer under the ground. (T. 176).

c. In July 2020, Ms. Gorencel noticed that her dogs were sick, her fish were dying in the pond, algae was overflowing from the spring vault and her canned peas were turning orange. (T. 176, 179)(R-5, R-6, R-7, R-8).

d. Prior to this time, they had no problems with the water and no issues with the pond. (T.177, 179).

e. During the time these changes in water quality occurred, there was fracking activity on a well pad approximately 550 feet from the home. (T. 178). In addition, above the house on top of the mountain an energy company was putting in a pipeline. (T.178). This was not the same energy company as in the *Dibble* case. (T. 178).

f. The landowners' goal was to get an investigation done and get help. (T.182).

g. The landowners were elderly, retired and the male had significant health issues. (T.182-183).

h. The DEP's initial investigation found pollution and presumed that nearby oil and gas activities were the cause. (R-22).

i. The landowners understood from discussions with the energy company that they would not receive any help until the DEP issued its final determination. (T.184).

j. The DEP did not issue a final determination. (T.184-185).

k. Ms. Johnson was engaged in April of 2021. (T.181).

l. At the time of Ms. Johnson's engagement, the DEP had identified issues with the water (T.187), but was already well beyond the 45 day statutory period for making a final determination. (T.280).

m. Ms. Johnson knew that the final determination of the DEP is the trigger for an appeal to the EHB, but the DEP would not act so she looked for options for her clients. (T. 281).

n. The landowners, utilizing Ms. Johnson, appealed to the EHB to try to force the DEP to act. (T.185-186).

o. The legal question arose as to whether the DEP's inaction within the statutorily mandated time period was an appealable event. (T. 282-283).

74. **Pet. No. 98**: Ms. Johnson accepts No. 98. Ms. Johnson adds:

a. One EHB Judge dissented. (T.286)(R-23). This reinforces the validity of Ms. Johnson's legal position, even if not successful.

b. On appeal, the Commonwealth Court affirmed, but disapproved of the prolonged inaction by the DEP. *Glahn v. Dep't of Env't Prot. (Env't Hearing Bd.)*, 2023 Pa. Commw. LEXIS 98, *12 (2023). (T.287).

75. **Pet. No. 99 & 100:** Ms. Johnson accepts Nos. 99 and 100.

76. **Pet. No. 101:** Ms. Johnson asks the Hearing Committee to reject No. 101. To the contrary:

a. Ms. Gorencel explained the "takings" argument from her perspective:

> "When you're sitting on your 20.4 acres that you just spent the last 36 years building for your retirement, something where you had an organic garden, you had a spring, you had 24 acres to hunt on, you had a greenhouse, and all of a sudden somebody moves in and it's – it's destroyed, yeah, somebody came in and took my livelihood and Roger's livelihood, and they have no qualms about what they have done to us." (T. 187).

b. Ms. Johnson's legal argument was premised upon the DEP's failure to comply with its 45 day statutory mandate to issue a Determination Letter in combination with the EHB's failure to enforce the statute against the DEP. (T.289).

c. A "taking" theory was recognized in *Litz v. Md. Dep't of the Env't*, 131 A.3d 923 (Md. 2016). In *Litz*, the Maryland Court specifically observed: "it is not frivolous to hypothesize that state, county, and municipal agencies may have duties to step in to protect the public health." *Id.* at 934 (emphasis supplied). In *Litz*, the Maryland Court of Appeals held that government inaction in the face of an

affirmative duty to act can give rise to a taking in the form of inverse condemnation. (T.290-291).

d. The *Litz* case was raised at the time of the proceedings and footnoted in the *Glahn* Opinion. (T.290-291)(R-23, nt. 4).[3]

e. Ms. Johnsons' argument was furthermore supported by Joseph Belza, *Inverse Condemnation and Fracking Disasters: Government Liability for the Environmental Consequences of Hydraulic Fracturing Under a Constitutional Takings Theory*, 44 B.C. Envtl. Aff. L. Rev. 55 (2017). (T.289)(ODC-73, 001065).

f. To summarize Ms. Johnson's thinking, government inaction, both by the DEP and the EHB, is not only a violation of the Pennsylvania Constitution (the Environmental Rights Amendment), but a taking of private property. (T. 291).

g. Arguments made the *Glahn* case were novel, but not frivolous.

77. **Pet. No. 102**: Ms. Johnson accepts No. 102, but only to the extent that these are excerpts of the Opinion and Order. Ms. Johnson disagrees with the conclusion and adds:

3 While R-23 is not identified in hearing transcript under the listing of exhibits, it was utilized and admitted as evidence during the hearing. (T.352-353). R-19 and ODC-69 were similarly moved and admitted. (*Id.*)

a. As referenced above, the Dissenting Opinion held the DEP's inaction within the EHB's jurisdiction to review. (R-23. Dissenting Opinion).

78. **Pet. No. 103**. Ms. Johnson accepts No. 103.

79. **Pet. No. 104**: Ms. Johnson accepts No. 104.

80. **Pet. No. 105**. Ms. Johnson accepts No. 105. Ms. Johnson adds:

a. Ms. Johnson acknowledged an error of citation in her Statement of Position. She was simply attempting to provide statutory notice as a prerequisite to a possible mandamus and declaratory judgment action. (ODC-73, ¶145).[4]

81. **Pet. No. 106**. In response to No. 106, Ms. Johnson does not challenge Attorney Barrette's credibility as a witness.

(Respondent's Additional Proposed Facts)

82. Ms. Johnson testified credibly and expressed remorse for certain acknowledged missteps during her handling of the *Dibble* case. As examples, she acknowledged that she should have conducted more formal discovery in the *Dibble* case (T.238-239) and should have identified exhibits in the pre-trial statement. (T.243-244).

4 ODC-73 was admitted into evidence. (T.339)

83. Attorney Barrette never met Ms. Johnson prior to the hearing (T.80), interacted with her via videoconferencing perhaps 2 times, including the hearing (T.80-81), and never spoke to Ms. Johnson on the phone. (T. 82). All of their communications were in writing (T. 107).

84. Attorney Barette had no involvement in the *Glahn* case. (T. 79).

85. Petitioner did not call any witness to support its allegations in respect to the *Glahn* case.

86. Ms. Johnson's burden shifting argument in the *Dibble* case was not successful, but it was not without reason, as the DEP had not fulfilled its statutory duty to assist the landowners by investigating on a timely basis.

87. The *Dibble* case is currently on appeal to the Commonwealth Court. (T.78).

88. In the *Dibble* case, the clients' only goal was to obtain clean water, not to burden or harass the oil and gas company. (T. 168-169). The clients never heard Ms. Johnson express any intent to engage in conduct to harass or burden the company. (*Id.*)

89. From the perspective of her clients, Ms. Johnson was passionate, diligent and vigorous in advancing her cases. (T.169 (Stanley))(T.187-188 (Gorencel))(T.159-160).

90. Ms. Johnson expressed to her clients no interest in delaying either case, but instead, a desire to move the matters along. (T.163 (Stanley); T.188 (Gorencel)).

91. Ms. Johnson anticipated, having no prior experience before the EHB, that the entire process would be faster. (T.237).

92. Ms. Stanley was not oblivious to the fact that Ms. Johnson made missteps, but testified that she would definitely still want Ms. Johnson as her lawyer. (T.172).

93. Ms. Gorencel testified that "Lisa is the best lawyer that I have ever engaged with. She's very passionate. She lets you know what she's doing. If you have questions, you ask her, and she tells you what [it] is she [is] trying to accomplish and where we go from here[.]" (T.189).

(Mitigation, Character Evidence and Past Discipline)

94. Ms. Johnson cooperated with ODC in connection with the Complaint. (T.306)(ODC-73 (Statement of Position)).

95. Ms. Johnson regrets her tone in the underlying proceedings and most of all, any impact on her clients. (T.307).

96. Ms. Johnson has learned to strike a better balance and modulate any outrage before drafting. (T.306).

97. Ms. Johnson continues to litigate before the EHB and more recently litigated a matter EHB that proceeded to an approximately 11-12 day hearing before the same Judge who presided in the *Dibble* case where he praised all counsel's professionalism. (T.243)(T.380). In the more recent case, she served formal discovery, took depositions, filed pretrial statements and introduced evidence at the hearing, including the examination of witnesses. (T.244).

98. Other than the Sanctions Order in the *Dibble* case, Ms. Johnson has never been sanctioned; nor have any sanctions been sought against her. (T.303).

99. Outside of the events of this proceeding, no client, court, or employer has questioned her competency. (T.303).

100. Ms. Johnson has no history of public discipline. However, she self-reported one prior issue to the Disciplinary Board unrelated to the practice of law. After she left Buchanan in 2013 and the circumstances surrounding it, she struggled with PTSD for several years, during which she self-medicated with alcohol. (T.303-304). On one occasion, she picked up her children and drove to her house. An officer who had followed her car arrested her for driving under the

influence and added child endangerment charges. She was convicted. (T.304).

101. After the above incident, Ms. Johnson received therapy for PTSD, reached out to Lawyers Concerned for Lawyers, and in 2016, became a volunteer for LCL. (T.304-305).

102. Attorney Michael Bruzzese testified as a character witness on behalf of Ms. Johnson, commenting on his present-day observations of her skills as a lawyer. He has practiced law for 33 years, both as a solo practitioner and with a big firm. (T.389). He has known Ms. Johnson since June 2023 in the context that they are co-counsel on an oil and gas case. (T.390-391). Mr. Bruzzese has assessed her professionalism and demeanor in court and found Ms. Johnson to be cogent, to the point, informative, and her arguments well delivered. (T.392). In interacting with her clients, Ms. Bruzzese's assessment is that she is patient, caring and good at relaying complicated legal issues. (T.392). Mr. Bruzzese assessed her legal writing as well and found her arguments to be well researched, well supported and logical. (T.394.) In his opinion, her writing is excellent, the citations to the record are on point and she advocates without anger. (T.395). He described the items he reviewed as complex legal issues. (T.396).

Ms. Johnson also seeks out constructive criticism and takes it very well. (T.396-397). Mr. Bruzzese has also observed Ms. Johnson in the context of her taking a deposition, during which he found she was organized, professional, prepared, focused and asked pertinent questions. (T.397-399). She also treated opposing counsel respectfully in this and other settings. (T.399-400). Ms. Johnson has not advanced facts in a dishonest way or misrepresented any facts. (T. 400). Mr. Bruzzese was aware of the sanctions against Ms. Johnson and the allegations of lack of candor and bad faith. (T.401-403).

103. Attorney William Anthony Sala, Jr. has known Ms. Johnson since 2014, first as colleagues and then, for a period of time, when she was his supervisor. (T.354). Since 2017, they have been acquaintances and friends. (T.354). Mr. Sala described Ms. Johnson as a "fantastic attorney" and detail oriented. (T.357-358). She is able to advocate within the realm of zealous advocacy. (T.359). Ms. Johnson has always demonstrated honesty. (T.359). She has not advanced legal arguments without basis. (T.359). Ms. Johnson is professional and did not engage in personal attacks on colleagues or clients, but would occasionally challenge a client to get to the right answer. (T.360-361).

Mr. Sala was aware of her criminal conviction and aware that she had been sanctioned. (T.362).

104. Attorney Steven Badger has known Ms. Johnson since 2018 and considers her a good friend. (T.364). He described her as a person with a very strong interest in social justice. (T.365). She is a person of high integrity and honesty, as well as a strong advocate for social justice and representing people who otherwise would not be heard due to limited resources. (T.365-366). Mr. Badger was aware that Ms. Johnson had been sanctioned. (T.369). Ms. Johnson may also have advised him of the conviction, as while he could not recall any details, he knew there was some prior trauma in her life and felt she dealt with it and overall, is a very good person and a credit to the bar. (T.372).

105. Ms. Jane Cleary testified on behalf of Ms. Johnson. She is not a lawyer, but a liaison for one of Ms. Johnson's clients, CEASRA. CAESRA retained Ms. Johnson in 2022. (T.376). Per Ms. Cleary, Ms. Johnson demonstrates the qualities of transparency, access, promptness, diligence, an ability to communicate and passion. (T.377-378). Ms. Clearly commented, "she's working beyond what a human being should work for our case, working all the time always accessible." (T.378). Ms. Clearly observed Ms. Johnson in the 12 day

hearing referenced above and found her to be very professional and calm. (T.379-380). Ms. Johnson engaged in no attacks on Judge Labukes, who commended all counsel at the conclusion for civility and courteousness. (T. 380). Ms. Clearly was aware of the sanctions order, as Ms. Johnson is the one who provided her with notice immediately. (T.383). Although Ms. Cleary knew that the sanction involved a conclusion of some level of dishonesty, Ms. Cleary commented that her organization was very impressed with Ms. Johnson's honesty in divulging the order, as otherwise they were unlikely to discover it on their own. (T.384-385).

III. PROPOSED CONCLUSIONS OF LAW

Petitioner has the burden of proving that an attorney's actions constitute professional misconduct. Based on existing precedent, that burden must be met by a preponderance of clear and satisfactory evidence. *ODC v. Kiesewetter*, 889 A.2d 47, 54 n.5 (Pa. 2005); *ODC v. Kerins*, 749 A.2d 441, 444 (Pa. 2000). The Supreme Court contemplated the meaning and sufficiency of this burden during oral arguments held on April 10, 2024 in two matters, *ODC v. Rayz* (Dkt. 2947 DD3) and *ODC v. Pisanchyn* (Dkt. 2914 DD3). To the extent the Supreme Court is contemplating a higher burden, Ms. Johnson advocates for utilization of the higher burden of clear and convincing evidence,

but recognizes the current precedent is preponderance of the evidence.

Ms. Johnson acknowledges a violation of RPC 1.1 in connection with the *Dibble* case, acknowledges that she did not keep a disciplinary complaint confidential, implicating Pa.R.D.E. 402(c), and acknowledges that her motions to disqualify counsel in *Dibble* had insufficient legal support. Otherwise, Ms. Johnson did not violate the Rules of Professional Conduct.

IV. ARGUMENT AS TO MISCONDUCT

Ms. Johnson attempts to address Petitioner's arguments in the order presented followed by any additional response to the specific Rules below.

A Competence/Diligence

Petitioner asserts Ms. Johnson's representation was not competent or diligent (RPC 1.1). As to the *Dibble* case, she regretfully agrees as to competency only. As to *Glahn*, she disagrees.

Starting with the *Glahn* case, Petitioner presented sparce evidence of incompetence. Petitioner relies on her lack of success pursuing an appeal before the EHB and also, a motion for reconsideration that did not technically set forth all the criteria. This is not clear and satisfactory proof of misconduct.

Ms. Johnson's overall representation in the *Glahn* case reveals that she was creative in attempting to advance claims before the EHB as the DEP was egregiously tardy in meeting its statutory obligations to investigate and issue a

determination. A dissenting EHB Judge agreed the EHB had jurisdiction over her appeal. The Dissenting Opinion was a significant recognition of the fact that inaction by the DEP is a statutory violation that harms real people, who are stuck in the limbo with the DEP not doing anything, but the EHB not ready to force the DEP's hand. Likewise, her "takings" argument was novel in Pennsylvania, but not without *any* legal basis, as a Maryland case was recognized as possible legal support.

Ms. Johnson agrees to a failure of competence in the *Dibble* case, but not to the extent asserted by Petitioner. Specifically, Ms. Johnson erred in not conducting more formalized discovery. She erred in not identifying exhibits explicitly on her pretrial statement. She has learned from these errors, as well as some of the other acknowledged procedural missteps along the way.

As for her failure to continually obtain the position of the other side in litigating the *Dibble* case, this is accurate and was an error, but without any practical significance, as the oil and gas company did not agree to anything and its position to oppose was obvious.

Petitioner faults Ms. Johnson for not identifying expert witnesses. This was not an oversight. Her clients had no money for experts at the hearing.

As for her failure to file a prehearing memorandum, Ms. Johnson had filed an appeal. When the EHB ordered her to file, she did so by the new

deadline.

Petitioner argues that Ms. Johnson refused to present evidence at the hearing. If the oil and gas company intended to be intimidating by filing another motion for sanctions on the eve of the hearing (having just been denied such relief within the week prior), it worked. It was Ms. Johnson's clients' choice not to proceed, after consultation, knowing they may not get a second chance. She regrets the extent to which any of her own conduct put her clients in the position of having to make such a choice.

Ms. Johnson disagrees with any assertion that she lacked diligence in either case. The entirety of proceedings reveal that she was extremely diligent and poured countless hours into her clients' cases, but she was challenged by her lack of litigation experience and the procedures. This is not a matter of lack of diligence.

In the *Glahn* case, her appeal to the EHB of the DEP's failure to reach a determination was an obvious attempt to move the matter along and obtain relief for her clients, due to the DEP's own lack of diligence.

In the *Dibble* case, the case proceeded along a fairly normal timetable overall, as cases often take a year to proceed to a hearing. The *Dibble* case also proceeded during a pandemic. Discovery extensions are common. A request for a 90 day extension for discovery at a time when the hearing was

not yet even scheduled did not delay the proceedings and was not intended to do so. Moreover, the EHB had just indicated in its denial of summary judgment motions that it thought more discovery in order, so all Ms. Johnson was attempting to do was heed the guidance of the Judge.

Nor was the motion to stay filed in the *Dibble* case frivolous or an attempt to delay. Ms. Johnson explored many avenues to try and obtain relief for her clients, with a full blown expensive hearing not being the ultimate way to bring about a satisfactory and final resolution. She hoped for a brief pause to allow time for another governmental agency to pursue action based on ongoing conversations with her and hopefully, bring about discussions and a quicker resolution. Unfortunately, that did not occur. The motion itself did not cause any delay, as it was denied summarily.

Ms. Johnson's clients, two of whom testified on her behalf, would be in the best position to know what was happening behind the scenes, not the EHB, on whose Opinion the Petitioner heavily relies. Ms. Johnson's clients acknowledged the passion and endless hours of work Ms. Johnson poured into their matters and recognized her passion, diligence and drive to obtain them some relief.

B. Mispresentations / False Assertions

1. DEP Email

Ms. Johnson misinterpreted the DEP's email relating to whether TEG was utilized at the site. The initial email was not clear in stating that the DEP "assumed for the sake of argument," and Ms. Johnson was highly skeptical of the DEP. She testified:

> Q And it's your position, I believe you testified yesterday, that you had misinterpreted Mr. Braymer's e-mail, ODC 10; correct?
>
> A Well, it was -- if what he was saying here -- may I explain how I read that?
>
> Q Sure.
>
> A So when I got that e-mail -- so glycol dehydrators are used on most all sites because the gas has to be dried out, so I took his e-mail to mean they're everywhere so he assumed it was there, and then he said the problem is the department's lab hadn't detected it, but our lab had, so that was their argument. (T.315).

Ms. Johnson acknowledges referencing this email again, believing that the DEP was contradicting itself.

Ms. Johnson became highly distrustful of the DEP, particularly given the DEP's lack of diligence as to her clients, its failure to credit the results of her private laboratory reports and her general knowledge of the chemicals used in association with fracking operations. Her review of the Grand Jury Report fueled her distrust of an agency whose job it was to protect her clients, not

throw up roadblocks.

In hindsight, Respondent should not have utilized counsel's email as evidence at any point in time and instead, should have engaged in formal discovery to determine the chemicals utilized at the site. However, she was not intentionally misrepresenting any facts or engaging in dishonesty.

Petitioner (in its section on Discipline) alleges Ms. Johnson made additional misrepresentations to the Hearing Committee in connection with her position as to "burden shifting." (ODC Brief pg. 63). Petitioner argues further that Respondent did not address burden shifting in her brief in response to the nonsuit motion. (ODC Brief pg. 64). Petitioner cross-examined Ms. Johnson about this topic, during which Ms. Johnson could not identify offhand the specific location in the record where this arose. During redirect examination, Ms. Johnson was shown ODC-51, her written response to the motion for nonsuit. (T.349). In that response, Ms. Johnson argued that the DEP's determination letter was 403 days too late. (ODC-51 ¶43). In the *immediate* next paragraph, she argued that to place the burden on landowners to discover information themselves is an abdication of the DEP's existence. (T.350)(ODC-51 ¶44). Continuing toward the end of her brief, Ms. Johnson argued that the DEP improperly and unlawfully shifted its obligations under applicable laws to landowners. (T.350)(ODC-51 ¶124).

That paragraph discussed burden shifting. (*Id.*).

Petitioner argues that Ms. Johnson did not make a burden shifting argument during the hearing when the oil and gas company made its motion for compulsory nonsuit. (ODC Brief pg. 64). However, no argument occurred that day—by anyone. Attorney Barrette made an oral motion for nonsuit and asked for briefing, to which all agreed. (See, Exh. R-20, pg. 19-20).

Ms. Johnson recognizes she could have been more precise and focused in her writing at various stages of the underlying proceedings. Undoubtedly, in the 2 years since her brief in response to the nonsuit motion, her ability to articulate her legal theory has improved based on her increased subject matter expertise and competency in litigation overall, but the concept of burden shifting is the gist of what she was arguing at the time, even as early as her pretrial memorandum, wherein she argued that the burden to engage and utilize experts was on the DEP, given its dereliction of duty under the Act.

Petitioner argues that Ms. Johnson should have known that there is no consequence for the DEP's failure to timely issue a determination letter. (ODC Brief pg. 64). Perhaps there is no recourse recognized in the present law. Fundamentally, however, it is a lawyer's role as an advocate to take a governmental agency to task for not doing its job. Perhaps it will take years

to come up with the right combination of facts and legal arguments to make headway for distressed landowners, but in the meantime, Ms. Johnson should not be criticized for her advocacy in attempting to find a legal remedy for an undeniable wrong.

2. Extension of Discovery

Ms. Johnson's Motion to Extend Discovery was not frivolous, nor did she engage in misrepresentations. Motions to enlarge discovery are common. And, to the extent Ms. Johnson had not engaged in formal discovery prior to that time, the EHB's denial of summary judgment provided a clue that she needed to develop more facts.

As to the more serious allegation concerning her comment about negotiations over a consent order, certainly her verbiage could have and should have been more precise. However, Ms. Johnson explained that throughout the proceedings, she was trying to find a resolution to restore her clients' water quality. She disclosed in this filing that the DEP had just rejected her clients' settlement proposal. (ODC-18, 000120). Had she truly intended to misrepresent the status or DEP's position, she would not have included that information.

However, her focus was that she was speaking with multiple governmental agencies throughout the case in an attempt to get relief for her

clients, such as the Attorney General and the EPA. She refers to these governmental agencies in her Motion as follows:

> 5 Appellants have requested that the **Environmental Protection Agency and other agencies to, in cooperation with the Department, to investigate the water pollution in Appellants' water supply**.
>
> 6 Appellants believe that continuing negotiation of the terms of a consent order and agreement with the Department is the best use of Appellants' and the Board's resources while discovery continues. (ODC-18)(emphasis supplied).

Ms. Johnson was optimistic that some agency would act imminently and bring the parties together for negotiations. Ms. Johnson should have been more careful with her word choices, but she was not misrepresenting facts.

3. Motion to Stay

Petitioner misreads Ms. Johnsons' Motion to Stay as indicating that conversations were ongoing. That is not what it says. In her Motion, Ms. Johnson indicated that her clients had filed complaints with the EPA and AG's office. (ODC-40). Ms. Johnson had also copied Attorney Barrette on one of her recent communications to the EPA and AG's environmental crimes unit. (ODC-40, 00346). Ms. Johnson attached Attorney Barrette's response to her Motion, and set forth:

> 4. Attorney Barrette's email states, in part:
>
> "That said, to the extent that anyone from the AG's office or the EPA would like to discuss your completely unsupported and false allegations

> against my client, Coterra Energy, Inc., I would be happy to discuss."
>
> 5. The conversations that Attorney Barrette will have with the AG's Office and the EPA have a direct bearing on this matter, and are grave enough, to warrant a stay of proceedings for sixty days to provide Attorney Barrette sufficient time to have such conversations with the AG's Office and the EPA. (ODC-40).

Based on Ms. Johnson's own contact with these agencies, and Attorney Barrette indicating she would talk to them (whether sincere or not, and even if motivated to quash any possible investigation), Ms. Johnson thought the agencies might reach out and that conversations would occur. Her Motion, when read in its entirety, should not have led anyone to believe that conversations were already in progress. Rather, Ms. Johnson was hopeful that some agency would help her clients and bring others to the table to talk.

4. Integrity of the Judge/EHB

Ms. Johnson regrets the tone taken with the Judge and the EHB. It was her opinion that practice before the EHB was a hostile forum for landowners. The relative poverty of her clients in comparison to the unlimited resources of the energy company is obvious. She was frustrated by the DEP's blatant disregard of its statutory duty to issue a determination—in both cases--on a timely basis. She was also practicing as a solo practitioner during a pandemic

and without litigation experience sufficient to strike the proper balance of tough advocacy with the need for better control.

ODC-48 is Ms. Johnson's Response to the Motion for Sanctions, filed in February 2022. As part of her 21 page response, she stated her opinion:

> 42) Denied. Landowners remain before the Board under objection in order to pursue their rightful claims and document the ongoing failures of the Wolf/Fetterman administration, this Board, the Department of Health and the Department in connection with this matter and all oil and gas investigations. Landowners' have a constitutional right to be heard in a forum where Landowners are free from harassment. The Board has been nothing but a discriminatory and hostile forum for Landowners and Landowners' counsel since the date Landowners filed their appeal with the Board on February 15, 2021. (ODC-48, 000431).

She also expressed her opinion in that same document that the EHB was biased in issuing the Rule to Show Cause. (ODC-48, 000432). Consider Ms. Johnson's perspective that her client had literally moved out of her house due to water quality problems, with no recourse in sight, yet she was the one facing sanctions for being aggressive to advance her clients' interests.

With particular reference to ODC-51 (¶53, 66), Ms. Johnson made a reference to bias and another reference suppression of speech in a 31 page brief in which she otherwise attempted to fend off a nonsuit motion.

When the documents are read in proper context, prior to March 2022,

Ms. Johnson challenged the process and proceedings as a whole as being unfair to her clients. She expressed opinions, not necessarily facts, based on her perceptions, as informed by the DEP's delay, the Grand Jury Report, Justice Castille's criticism in the other case and her experiences thus far. Ms. Johnson did not make direct attacks on the judge or impugn the integrity of the individual Judge or the EHB itself in these filings.

In March 2022, Ms. Johnson's tone became harsher, after Judge Labuskes removed several of Ms. Johnson's docketed filings implicating both cases. One item was a Motion for a Rule to Show Cause. The Motion could have simply been denied had the Judge thought it lacked merit, but it was removed instead. Ms. Johnson wrote a polite letter asking for the reasoning. (ODC-69).

> Dear Judge Labuskes:
>
> The purpose of this letter is to request that the Board provide an opinion as to its removal of Landowners' Motion for a Rule to Show Cause pursuant to the Board's Order at Dkt. 7. The Board provided no rationale for taking such an extreme action to remove Landowners' pleading, in which Landowners pursue their lawful rights.

She received no response. Coinciding with the removal of items from the docket, Ms. Johnson's concerns as to the Judge increased. She wrote again on March 15, 2022, commenting in her letter: "it sets an extremely dangerous precedent going forward that Judge Labuskes can remove any pleading from

the docket on a whim." (R-25). That was Ms. Johnson's concern, and it was based on actual events, not fantasy.

5. Monetary Demands

Ms. Johnson did not make false claims about her clients' demands in the *Dibble* case. Her clients' goal was restoration of the water quality. Her clients could have, but did not, assert some additional form of compensatory relief and that is the point Ms. Johnson was making, that her clients' interests were pure. Ms. Johnson demanded payment of legal fees, which would have been paid to Ms. Johnson, not her clients. In stating that her clients had not made any demands, the separate category of legal fees was not the focus of her statement and not a false statement or misrepresentation.

Nor did Ms. Johnson make a false statement when she expressed that she was the only one to produce evidence in the *Dibble* case. Her statement is being taken too literally. From Ms. Johnson's perspective, the DEP had found some pollution without causation, then did not complete its investigation for a year, ultimately offering no relief whatever to her clients. Ms. Johnson felt as if the burden was unfairly put on her clients to proceed to investigate, obtain private laboratory testing, file the appeal, file numerous documents on the docket (which is what she referenced in her 31 page Brief and again, in her Answer to the Petition) and prepare for a hearing, whereas it did not appear

the DEP was doing much of anything. And, perhaps the existing state of the law requires the landowners to shoulder the burden, but that was the essence of what she found unfair throughout.

When Ms. Johnson filed a response brief to the company's nonsuit motion, in one line of a 31 page brief, she expressed her view that her clients were the sole party to produce evidence, referring back to water testing, violations etc. that she had filed on the docket. (ODC-51, 00506). The EHB Judge presided over everything and knew the status, including, that quite technically, no one had produced any evidence to that point. Ms. Johnson did not then appreciate the need to produce at the hearing documents she had already filed on the docket. This is not an intention to misrepresent any facts, but a competency issue, which she has acknowledged and rectified in subsequent cases.

6. Pending Ethical Complaints

Ms. Johnson agrees that the complaints should have remained confidential.

7. Utilization of the EHB Sanctions Opinion as Evidence

Before turning to the specific Rule violations once more, Ms. Johnson urges the Hearing Committee to reject the Sanctions Opinion of the EHB as evidence of misconduct. The EHB guessed as to Ms. Johnson's motivations

and intent to delay, but in reality, it had no foundation to make conclusions as to Ms. Johnson's actual mindset or what she was attempting to accomplish behind the scenes. For instance, the EHB did know or comment on whether the landowners had the means to hire experts (they did not), but judged Ms. Johnson harshly for not having experts. The EHB was naturally not privy to Ms. Johnson's discussions with her clients during the hearing, leading to their decision not to testify. At most, the EHB could glean from the record that her clients felt intimidated.

As to the merits, while the Opinion contended her conduct precluded a review of the merits, Petitioner's sole witness in the disciplinary case was quite confident in the oil and gas company's position. Accordingly, there is no evidence based on the record developed at the Disciplinary hearing that a different outcome was possible in the *Dibble* case, which is unfortunate for her clients.

Rule 1.1

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

Rule 1.1 has been previously addressed.

Rule 1.3
A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.3 has been previously addressed. There was no violation.

Rule 3.1
A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

Ms. Johnson believes the issues have already been addressed above. Ms. Johnson did not commit a Rule 3.1 violation, with the possible exception of her two motions to disqualify counsel in the *Dibble* case, as she admits her legal authorities were not sufficient and her filing premature.

Rule 3.2
A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Ms. Johnson's diligence and attempts to expedite litigation have already been addressed. There is no Rule 3.2 violation.

Rule 3.3(a)(1)

A lawyer shall not knowingly: ... (1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer[.]

Ms. Johnson did not violate Rule 3.3(a)(1). She believes that she has addressed all alleged instances of false statements above. While certain of her pleadings may have been inartful or based on incorrect assumptions at a time when she lost objectivity, she did not *knowingly* make false statements and her goal was to obtain a full and fair hearing for her clients.

Rule 3.5(d)

A lawyer shall not: ...(d) engage in conduct intended to disrupt a tribunal.

Ms. Johnson did not disrupt the work of the EHB or the hearing itself, nor engage in conduct with an intent to do so and has not violated Rule 3.5(d).

With respect to the hearing itself, as opposing counsel and her clients agreed, during the hearing, she was professional and respectful. She engaged in no abusive or obstreperous conduct. Nor was she belligerent or theatrical. She simply requested the Judge to take up the Motion for Sanctions first.

At times, Ms. Johnson's written submissions were aggressive, but not disruptive to the point of a Rule 3.5(d) violation. It is believed that any other possible violation of this Rule has already been addressed above.

Rule 4.1(a)
In the course of representing a client a lawyer shall not knowingly: make a false statement of material fact or law to a third person[.]

This Rule does not pertain to statements to or filings with the EHB, but third parties. Ms. Johnson did not violate Rule 4.1(a). Ms. Johnson believes she has addressed all alleged instances of false statements to third parties above.

Rule 4.4(a)
(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Ms. Johnson did not violate Rule 4.4(a). She did not cause embarrassment, delay or burden to any third person, or intend to do so. Everything she did was with her clients' goals in mind, namely, restoration of their water quality. Nor did she utilize any improper method of obtaining evidence. Rather, she has been charged with the opposite, namely, not conducting formal discovery.

Rule 8.2(a)

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

Ms. Johnson regrets her harsh tone with the Judge and toward the EHB in her written filings, but her conduct did not rise to the level of a Rule 8.2(a) violation. She did not attack any jurist's qualifications. She did not accuse any jurist of corruption. It was her opinion that the entirety of the process and proceedings were biased against her clients, rural landowners, who were deprived of water fighting against an energy company with unlimited sources. The DEP's inaction weighed heavily on her mind, as she was litigating before the EHB. To the extent her harsh tone increased with Judge Lubukes after March 2022, she had a basis for her concerns as to his removal of filings and the EHB's failure to respond to her concerns.

Rule 8.4(c)

It is professional misconduct for a lawyer to: . . .
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation[.]

Ms. Johnson did not engage in any dishonesty, fraud, deceit or misrepresentation. Ms. Johnson believes the conduct at issue has been addressed above. This Rule implies some type of untrustworthy conduct, not a mere error. As explained in Office of Disciplinary Counsel v. Anonymous

Atty. A, 714 A.2d 402, 407 (Pa. 1998): "a culpable mental state greater than negligence is necessary to establish a prima facie violation of Rule 8.4(c). This requirement is met where the misrepresentation is knowingly made, or where it is made with reckless ignorance of the truth or falsity thereof." Petitioner's evidence did not rise to this level.

Rule 8.4(d)
It is professional misconduct for a lawyer to: . . . (d) engage in conduct that is prejudicial to the administration of justice[.]

Ms. Johnson regrets in the *Dibble* case that her clients were not heard at the hearing. The clients chose not to proceed, given the pending sanctions motion pending against her. To repeat what is stated above, to the extent her own conduct caused the clients to have to make that choice, she regrets it.

Petitioner's evidence did not show any actual prejudice. The only witness called, Attorney Barrette, was confident in the oil and gas company's position and of the facts supporting it.

Pa.R.D.E. 402(c)
Until the proceedings are open under subdivision (a) or (b), all proceedings involving allegations of misconduct by or disability of an attorney shall be kept confidential[.]

Ms. Johnson regrets that she did not keep the disciplinary action confidential. She has not repeated this conduct, but for explaining her conduct at the hearing.

V. ARGUMENT AS TO DISCIPLINE

No suspension of Ms. Johnson's license is appropriate on the facts presented. The Supreme Court has stated, in that in imposing discipline, the Court "must balance a concern for the public welfare with a respect for the substantial interest that the attorney has in continuing his professional involvement in the practice of law." *Office of Disciplinary Counsel v. Lewis*, 426 A.2d 1138, 1142 (Pa. 1981).

Starting with mitigation, Ms. Johnson cooperated fully with Petitioner in response to the DB-7 letter and provided a detailed and thoughtful Statement of Position. The conduct at issue relates to the legal services provided to just two clients and involved Ms. Johnson's foray into litigation to try and assist clients who otherwise had no counsel. Although she made missteps in the *Dibble* case, there is no pattern and practice of incompetence in general. Ms. Johnson's clients who were the actual litigants in the cases at issue spoke highly of her heart, her passion, her communication and her honesty.

Ms. Johnson expressed remorse during the hearing and credibly so.

Ms. Johnson has also taken steps to improve her practice, including partnering with other lawyers and demonstrating competence in her subsequent writings, oral presentations and discovery practices. Ms.

Johnson has grown as a lawyer in many ways, including reigning in her emotions.

Per the three lawyers who spoke on her behalf at the hearing, two of whom have worked with her, Ms. Johnson has a reputation in the legal community for truthfulness and honesty. The non-lawyer legal liaison was impressed with her honesty in disclosing the sanctions order.

Petitioner's request for a suspension is too harsh. Ms. Johnson has already been the recipient of an Opinion and Order imposing sanctions that is publicly available, so additional public discipline would seem to serve no additional purpose. Ms. Johnson recognizes that some level of discipline is warranted and respectfully suggests private discipline.

Petitioner argues that lengthy suspension is often imposed in matters involving frivolous litigation, particularly when combined with false accusations that impugn the integrity of a judge. Ms. Johnson addresses both.

As noted at the outset of this Brief, it has been an undertone of the Petition that the entirety of the proceedings were frivolous. This is precisely why Ms. Johnson presented evidence revealing the conditions of the water of her clients. Ms. Johnson will accept fair criticism for some of her missteps in prosecuting as to *Dibble*, but she rejects any notion of frivolous litigation

on the whole. Discipline on that basis is unjustified.

Only in cases of egregious attacks on the integrity of the judiciary have lengthy, or any, suspensions been imposed. For lesser conduct, public or lesser discipline is often imposed.

As illustration, in the recent case of *ODC v. Mulvihill*, 56 DB 2023 (Decided 4/12/2023)(RPC 3.5(d), 4.4(a), 8.2(a), 8.4(b) and 8.4(d)), the lawyer received a *public reprimand* for his conduct in the course of representing clients in statutory appeals. He disrupted the proceedings by arguing with the Board, duplicating objections, attacking opposing counsel with offensive language, referring to the court as "kangaroo court" and after, took to Facebook to further stalk and denigrate the professional skills of opposing counsel. He was repeatedly chastised by the Board for obstreperous and disrespectful conduct. As further example, during the Zoom hearing, he was disruptive by using nicotine, snacking and receiving a call. This lawyer had no prior discipline and expressed remorse.

In another recent case, *ODC v. Gerace*, 26 DB 2023 (Decided 2/15/2023)(RPC 3.1, 8.2(a) and 8.4(a))., the lawyer received a *public reprimand*. After summary judgment on the opposing party was granted, in his reconsideration motion he attacked the judge, alleging that the judge was not impartial and sided with a criminal organization and the lawyers who lie

to support that organization. On appeal, he continued to attack the judge as biased and alleged that the opponent lied and perpetrated a fraud on the court, but toned down his appellate brief. Gerace had no record of prior discipline.

In *ODC v Korey,* 130 DB 2022 (Decided 9/26/2022(RPC 3.4(c), 3.5(d), 8.2(a), 8.4(c) and 8.4(d)), a lawyer with no record of discipline received a *public reprimand* when in the course of criminal proceedings, he attacked individual judges and the judiciary as a whole. He alleged bias, collusion, corruption and coverup, police misconduct, prosecutorial misconduct and a judicial conspiracy. In addition, in a court proceeding he was hostile to the point of yelling in court such that the Judge admonished him and threatened to removed him from court. This behavior occurred at multiple hearings, resulting in one being adjourned. Ms. Johnson's opinions and tone were too harsh in her writings at times, but she was neither disrespectful nor disruptive during the zoom hearing.

Although cases of private discipline remain private, summaries are available on the Pennsylvania Disciplinary Board website. In a case disposed of on December 14, 2020, a lawyer and his co-counsel alleged that the judge tampered with a transcript to avoid recusal, but had no support for their allegations. The lawyer received a *private reprimand*.

Petitioner's cases in support of a lengthy suspension are distinguishable. In *ODC v. Thomas Peter Gannon*, 123 DB 2017, (D.Bd. Rpt. 9/21/18), Gannon received a two-year suspension for violations of RPC 1.1, 1.16(a)(1), 3.1, 3.3(a)(1), 8.4(c), 8.4(d) that arose over a period of eight years. Following conclusion of an underlying case, Gannon missed the deadline to file a post-trial motion. A preliminary objection was filed because of the late post-trial motion and sustained by the court. Gannon then filed a tardy appeal. After this, Gannon filed a series of appeals and petitions for reconsideration--nearly 4 dozen in all-- despite an admonishment that he could not challenge a judgment in perpetuity. He also failed to comply with multiple contempt orders. Gannon was unfamiliar with the rules and the appellate process. The court found his incompetence overshadowed the lack of disciplinary record. Ms. Johnson's conduct does not rise to this level.

In *ODC v. Robert J. Murphy*, 206 DB 2016 (Pa. 2019), Murphy received a five-year suspension for violations of RPC 3.1, 3.3(a)(1), 8.2(a), and 8.4(c), 8.4(d). He had no prior record of discipline. The underlying case was a workers' compensation case. During the course of the case, Murphy continually demanded that the judge recuse based on alleged *ex parte* communications, representing that the Judge admitted to misconduct, which the Judge had not. Murphy then sued the judge on the same basis. In his filings, he found the

Judge's conduct akin to fraud. When another judge started hearing the case (not because the first had actually engaged in the conduct alleged), Murphy also asked that judge to recuse claiming the judge was tainted by having reviewed the record. He also accused the second judge of bias, engaging in *ex parte* communications and removing items from the record. Murphy's attacks on the judiciary were unfounded and relentless. Murphy also was found to lack respect for the disciplinary system through attacks on ODC. Ms. Johnson's conduct does not arise to this level.

In *ODC v. Neil Werner Price*, 732 A. 2d 599 (Pa. 1999), Price was given a five-year suspension, having violated RPC 3.1, 3.3(a)(1), 8.2(b), 8.4(c), 8.4(d), and 4.1(a). In this case, the judge was a witness in a criminal proceeding against the lawyer. The lawyer alleged that the judge induced his illegal behavior or reported the behavior to curry favor with the state police and attorney general. Additional criminal charges were filed against the lawyer for another incident in the judge's office, leading Price to accuse the judge of fixing a citation. He also accused the judge of prosecutorial bias and sexual harassment. Price also accused an assistant district attorney of embezzlement. Adding to the severity, he forged medical record. There were no mitigating factors. There is simply no comparison between this lawyer's conduct and Ms. Johnson.

In *ODC v. Paul J. McArdle*, 39 DB 2015 (D.Bd. Rpt 9/21/2016)(S.Ct. Order 11/22/2016), McArdle was given a year and a day suspension for violations of RPC 3.1, 4.4(a), 8.4(d). There was no prior misconduct, however, McArdle engaged in an overall persistent distain of and contempt for the authority of the Court. McArdle initiated a complaint naming 30+ defendants that he accused of damaging his reputation and stealing files. The case was dismissed and affirmed on appeal. This lawyer filed essentially the same allegations against the same Defendants, both in state and federal court, six more times, even after he was barred from pursuing additional litigation. McArdle's conduct was more egregious, yet against Ms. Johnson, Petitioner seeks five times the amount of discipline.

In *ODC v. Bailey*, 11 DB 2011, Bailey was given a five-year suspension and sanctions for violations of RPC 3.1, 4.1(a), 8.2(a), 8.4(c), 8.4(d). Bailey had previously received a private reprimand for four separate matters, which included use of vulgar language, challenging the competence of the court and attacking the courts integrity. In the 2011 disciplinary proceeding, Bailey accused multiple judges of misconduct and bias against him in particular and accused the defendants of being in a pedophilic cult. Bailey refused to acknowledge the allegations as false, refused to accept responsibility for professional misconduct, would not accept adverse judicial decisions and

expressed no remorse. Ms. Johnson engaged in no such egregious conduct.

Finally, in *ODC v. Robert B. Surrick (Decided 3/24/2000)*, Surrick was received a five-year suspension for an egregious violation of RPC 8.4(c). The underlying case was a civil suit involving a mortgage foreclosure. Surrick became involved at the appellate stage and filed a recusal motion alleging a republican organization was attempting to fix the case, in coordination with a Supreme Court Justice. Also, he accused another judge of fixing a case involving the dissolution of his law practice. Given his continued unprovoked character assassination of judges, the suspension was imposed.

Ms. Johnson accused the system and the Judge of bias based the reality of the context present, but she did not allege wide-spread corruption, the fixing of cases or any other egregious accusations found in the cases where sanctions were imposed.

VI. CONCLUSION

In determining the proper measure of discipline, which is not intended to be punitive in nature, the Committee should "consider whether the discipline imposed will fulfill the primary purpose of the disciplinary process, which is the protection of the public, the preservation of the integrity of the courts, and the deterrence of unethical conduct." *ODC v. Pozonsky*, 177 A.3d 830, 838 (Pa. 2018).

The Hearing Committee is asked to consider preserving Ms. Johnson's license as she is a much needed resource and passionate advocate for those citizens of limited means who are suffering from water contamination and other serious environmental issues within our Commonwealth.

In balancing a concern for the public welfare, with Ms. Johnson's substantial interest in maintaining her livelihood, and in consideration of the substantial mitigation in this matter, her rehabilitation and consistent with precedent, it is submitted that Ms. Johnson's license should not in jeopardy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, hereby certify that a true and correct copy of the foregoing BRIEF AND PROPOSED FINDINGS OF **RESPONDENT** has been forwarded to the following, via: Email and (upon request) First Class, U.S. Mail, this 23rd day of April, 2024:

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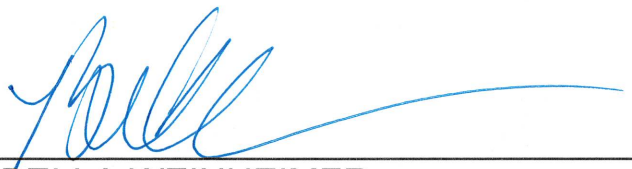
CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing of confidential information and documents differently than non-confidential information and documents.



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