

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 111 DB 2023

Petitioner :

:

v. :

:

: Attorney Registration No. 200101

LISA ANN JOHNSON, :

Respondent : (Allegheny County)

**BRIEF OF OFFICE OF DISCIPLINARY COUNSEL
TO HEARING COMMITTEE**

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METHOD OF CITATION USED

Numbers and letters in parentheses indicate documents and location as follows:

Ans. ___ indicates a page or pages of the Answer to Petition for Discipline and Request to Be Heard in Mitigation that Respondent filed, through counsel, on September 14, 2023;

N.T. I _____ indicates a page or pages of the notes of testimony from the disciplinary hearing on January 10, 2024;

N.T. II _____ indicates a page or pages of the notes of testimony from the disciplinary hearing on January 11, 2024;

ODC-_____ at _____ indicates a (numbered) exhibit of the Office of Disciplinary Counsel at Bates stamp pagination;

Pet. for Disc. _____ indicates a (numbered) paragraph of the Petition for Discipline filed with the Board Prothonotary on August 3, 2023;

R. Objections at _____ indicates a (numbered) paragraph of Respondent's Stipulation and Objections to Petitioner's Exhibit List that Respondent filed, through counsel, on December 8, 2023;

Respondent-_____ indicates a (numbered) exhibit of Respondent.

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I. STATEMENT OF THE CASE

This matter is before the Hearing Committee as a result of disciplinary proceedings instituted by the Office of Disciplinary Counsel (hereinafter “ODC”) by way of a Petition for Discipline filed on August 3, 2023, to No. 111 DB 2023. The Petition charged Respondent with violations of RPC 1.1, RPC 1.3, RPC 3.1, RPC 3.2, RPC 3.3(a)(1), RPC 3.5(d), RPC 4.1(a), RPC 4.4(a), RPC 8.2(a), RPC 8.4(c), RPC 8.4(d) and Pa.R.D.E. 402(c). Respondent, through counsel, filed an Answer to Petition for Discipline and Request to Be Heard in Mitigation on September 14, 2023. The Board Prothonotary appointed Hearing Committee Members Kathleen Patricia Dapper, Esquire, Chair; Phillip Ray Earnest, Esquire; and Elizabeth Farina Collura, Esquire. A prehearing conference was conducted on November 15, 2023, before Designated Member Dapper.

Disciplinary hearings were conducted on January 10, 2024, and January 11, 2024. ODC introduced exhibits ODC-1 through ODC-26, ODC-29 through ODC-53, ODC-55, ODC-56, ODC-59, ODC-61, ODC-64, ODC-66, ODC-72 through ODC-74, ODC-75A, ODC-76 and ODC-77 and presented the testimony of attorney Amy Barrette. N.T. I at 19-144; N.T. II at 312-313, 339. Respondent introduced exhibits Respondent-2 through Respondent-6, Respondent-8, Respondent-10 through Respondent-19, Respondent-21,

Respondent-23, Respondent-27, Respondent-28 and ODC-69, testified on her own behalf and presented the testimony of Tonya Stanley, Donna Goren-cel, attorney William Anthony Sala, Jr., attorney Steven Badger, Jane Cleary and attorney Michael Bruzzese. N.T. I at 95, 147-264; N.T. II at 268-404. Respondent conceded that she violated RPC 1.1. *Id.* at 301; Ans. at Request to Be Heard in Mitigation ¶¶ 26 (“her representation before the EHB ultimately fell short of the expectations of Rule 1.1”). The Hearing Committee granted ODC’s request to extend the word limitation set forth in Disciplinary Board Rules § 89.163(c) to fifteen thousand words. N.T. II at 413.

This brief is presented in support of ODC’s position that Respondent’s myriad factual misrepresentations and frivolous assertions before the Environmental Hearing Board and this Honorable Hearing Committee warrant a five-year suspension from the Bar of the Commonwealth of Pennsylvania.

II. PROPOSED FINDINGS OF FACT

1. ODC, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harris-burg, PA 17106-2485, is invested, pursuant to Pa.R.D.E. 207, with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and

to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules. Ans. at ¶ 1.

2. Respondent, Lisa Ann Johnson, was born in 1974. She was admitted to practice law in the Commonwealth of Pennsylvania on October 20, 2005. Respondent's attorney registration mailing address is 1800 Murray Avenue, #81728, Pittsburgh, Pennsylvania 15217. *Id.* at ¶ 2.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania. *Id.* at ¶ 3.

In the matter of Stanley et al. v. DEP
EHB Docket No. 2021-013-L

4. In January of 2020, Bonnie Dibble filed a complaint with the Department of Environmental Protection (hereinafter the "DEP") regarding the water supply at a property located in New Milford, Pennsylvania (hereinafter the "Dibble Property"). *Id.* at ¶ 4.

5. By letter to Ms. Dibble dated January 15, 2021, the DEP advised that, *inter alia*:

- (a) "the Department has determined that the Water Supply was not adversely affected by oil and gas activities"; and
- (b) "TEG was not detected in the samples collected by the Department."

ODC-2 at 000013-000014.

6. On February 15, 2021, Respondent filed a Notice of Appeal with the Environmental Hearing Board (hereinafter the “EHB”) regarding this letter on behalf of Tonya Stanley, Bonnie Dibble and Jeffrey Dibble. Ans. at ¶ 6; ODC-3.

7. Respondent failed to propound any formal discovery in connection with this matter. Ans. at ¶¶ 7-9; N.T. I at 238.

8. Respondent failed to conduct any depositions in connection with this matter. Ans. at ¶ 10.

9. On February 19, 2021, attorneys Amy Barrette and Robert Burns filed a Notice of Appearance on behalf of Cabot Oil and Gas Corporation, n/k/a Coterra Energy, Inc. (hereinafter “Cabot” or “Coterra”). *Id.* at ¶ 11; ODC-4.

10. On February 22, 2021, Respondent filed a Motion to Disqualify Counsel, seeking to disqualify Ms. Barrette and her firm “in order to, among other things, encourage open and forthright testimony from Appellants and similar witnesses as well as the free flow of information between the Appellants and Appellee.” Ans. at ¶ 12; ODC-5 at 000035 (¶ 7).

11. This Motion had no basis in fact or law that is not frivolous. N.T. I at 245 (“Q. Did you agree that you did not have sufficient legal support for

that motion? A. I needed to be more patient, yes. At that time, I did not have it.”); ODC-76 at 001714 (“This is the beginning of Johnson’s unrelenting harassment of opposing counsel.”).

12. Respondent failed to file a memorandum in support of this Motion, as required by 25 Pa. Code § 1021.95(d). Ans. at ¶ 15.

13. By letter to Respondent dated February 23, 2021, Mr. Burns, *inter alia*:

(a) demanded that Respondent withdraw the Motion set forth in paragraphs 10-12 *supra*; and

(b) stated that, “Appellants fail to allege any actionable basis for disqualification and instead attempt to disparage Attorney Barrette and obtain a disqualification by blatant misrepresentations to the Board.”

Id. at ¶ 16; ODC-6 at 000039.

14. On February 26, 2021, Respondent filed a Renewed Motion to Disqualify Counsel, in which she asserted that Mr. Burns’ February 23, 2021 letter amounted to “harassment and intimidation.” Ans. at ¶ 17; ODC-7 at 000043 (¶ 6).

15. This Motion had no basis in fact or law that is not frivolous. ODC-73 at 001078 (¶ 18) (“Ms. Johnson admits in hindsight that her legal authorities were not sufficiently on point so as to warrant the filing of such Motions.”); N.T. I at 41-43 (“She cites the same cases that we pointed out to her in the letter were inapplicable to the matter in front of the EHB.”).

16. Respondent failed to file a memorandum in support of this Motion, as required by 25 Pa. Code § 1021.95(d). Ans. at ¶ 20.

17. On March 8, 2021, Respondent filed an Amended Notice of Appeal. *Id.* at ¶ 21; ODC-8.

18. By Order dated March 26, 2021, *inter alia*, the Motions set forth in paragraphs 10-16 *supra* were denied. Ans. at ¶ 22; ODC-9.

19. By email to Respondent dated April 2, 2021, attorney Michael Braymer, Supervisory Counsel with the DEP, said:

Thanks for your e-mail. The intention of my conversation yesterday was not to offer a “new” investigation but to simply convey that the Department has not been able to substantiate the claim that TEG is present in the groundwater. While the Department is aware your clients’ lab has differing results, the Department believes its sample results are reliable and accurate. However, understanding all of this, the Department is willing to sample your clients water supply again and would even be willing to split samples with multiple labs if so desired.

Further, you had asked about whether Cabot used TEG on their respective well sites, and I indicated that the problem was that the Department has not been able to detect any TEG in the

groundwater. Thus, use of TEG at the well site was assumed, but the issue remaining at hand is that TEG is not appearing in any of the samples taken by the Department.

The Department in no way is trying to intimidate or silence anyone and welcomes the Board's review of this matter.

Ans. at ¶ 23; ODC-10 at 000059.

20. On April 7, 2021, Respondent filed an Appellant's Motion for Summary Judgment in which she represented that, *inter alia*, "[t]he Department advised Appellants and Appellants' counsel on April 2, 2021 for the first time that (a) TEG was being used at the well sites operated by Cabot during the period in question and while all respective water tests were performed."

Ans. at ¶ 24; ODC-11 at 000066 (¶ 4).

21. On April 7, 2021, Respondent filed a Brief in Support of Appellants' Motion for Summary Judgment in which she represented that, *inter alia*, "[a]ccording to the Department on April 2, 2021, TEG was being used at all of such well sites being operated by Cabot." Ans. at ¶ 25; ODC-11 at 000075.

22. The representations set forth in paragraphs 20-21 *supra* are false. As set forth in paragraph 19 *supra*, Mr. Braymer advised Respondent on April 2, 2021, that the DEP "has not been able to detect any TEG in the groundwater. Thus, use of TEG at the well site was assumed, but the issue

remaining at hand is that TEG is not appearing in any of the samples taken by the Department.”

23. On May 7, 2021, Mr. Braymer filed a Department’s Brief in Support of Its Response to Appellants’ Motion for Summary Judgment, stating that, *inter alia*:

The Department has not made any determination regarding whether Cabot used TEG on the nearby well sites and has not communicated to Appellants otherwise. Cabot’s use of TEG on the nearby well sites remains a disputed material fact.

Appellants attached to their Motion an email chain that includes several emails exchanged among counsel of record for the parties. The contents of this email exchange do not support Appellants’ claims and, in fact, directly contradict those claims...the Department’s April 2, 2021 email demonstrates that the Department’s counsel was simply advising Appellants’ counsel that the Department has been unable to substantiate that TEG is present in groundwater serving the Appellants’ Water Supply. Further, Department’s counsel indicated that even if Cabot’s use of TEG at the well sites was *assumed for the sake of argument*, use of TEG at the well sites would not resolve the fundamental issue that TEG was not detected in any of the Department samples. Appellants’ claim that this email was evidence that “the Department was aware that Cabot uses TEG in its well operations and that TEG was being used at the subject well sites” is false.

ODC-12 at 000084-000085 (emphasis in original, footnote omitted).

24. On May 21, 2021, Respondent filed Appellants’ Reply Brief in Support of Appellants’ Motion for Summary Judgment. Ans. at ¶ 28.

25. On May 28, 2021, Ms. Barrette and Mr. Burns filed Intervenor Cabot Oil & Gas Corporation's Motion to Strike Portions of Appellants' Reply on Appellants' Motion for Summary Judgment or in the Alternative, for Sur-Reply. *Id.* at ¶ 29.

26. On June 1, 2021, Ms. Stanley filed a disciplinary complaint against Ms. Barrette. *Id.* at ¶ 30; ODC-13.

27. On June 3, 2021, Respondent filed Appellants' Response in Opposition of Intervenor Cabot Oil & Gas Corporation's Motion to Strike Portions of Appellants' Reply on Appellants' Motion for Summary Judgment or in the Alternative, for Sur-Reply, in which she averred that, *inter alia*, "[w]ith respect to potential misconduct under the Rules of Professional Conduct, Appellants have filed ethics complaints with the Disciplinary Board of the Supreme Court of Pennsylvania so that this Board is able to focus on the matter at hand." Ans. at ¶ 31; ODC-14 at 000091 (¶ 7).

28. On June 11, 2021, the EHB issued an Opinion and Order on Motion for Summary Judgment that, *inter alia*:

- (a) denied the Motion set forth in paragraph 20 *supra*; and
- (b) noted that, "[m]uch of the problem is related to the fact that no discovery has been conducted yet by any party and we are working with a record in need of further development."

Ans. at ¶ 32; ODC-15 at 000099, 000101.

29. On June 22, 2021, Respondent issued several subpoenas commanding various individuals, including Ms. Barrette, United States Assistant Secretary of Health Dr. Rachel Levine and then-Governor Tom Wolf, to “attend a videoconference deposition.” Ans. at ¶ 33; N.T. I at 52; ODC-1 at 000003; ODC-76 at 001716-001717.

30. On July 1, 2021, Ms. Barrette and Mr. Burns filed Intervenor Cabot Oil & Gas Corporation’s Motion to Quash Subpoenas and for Protective Order. Ans. at ¶ 34.

31. On July 16, 2021, Respondent filed Appellants’ Memorandum of Opposition to Intervenor Cabot Oil & Gas Corporation’s Motion to Quash Subpoenas and for Protective Order, in which she averred that, *inter alia*, “Appellants have filed ethical complaints with the Supreme Court Disciplinary Committee attempting to shield themselves and other landowners from Attorney Barrette’s potential and egregious violations of the Rules of Professional Conduct.” *Id.* at ¶ 35; ODC-16 at 000106.

32. On July 21, 2021, the EHB issued an Opinion and Order on Motion to Quash Subpoenas and for Protective Order that, *inter alia*, granted the Motion set forth in paragraph 30 *supra*. Ans. at ¶ 36; ODC-17.

33. On August 9, 2021, Respondent filed a Motion to Extend Discovery in which she averred that, *inter alia*:

- (a) “[t]o date, the parties have not served any discovery”; and
- (b) “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.”

Ans. at ¶ 37; ODC-18 at 000118-000119 (¶¶ 1, 8).

34. Respondent failed to aver in this Motion the position of the non-moving party on the relief requested or otherwise state that, after a reasonable effort, she was unable to determine the position of such party, as required by 25 Pa. Code § 1021.92(c). ODC-76 at 001725. *See also, generally*, ODC-18.

35. This Motion had no basis in fact that is not frivolous. N.T. I at 23 (“there were no negotiations for consent a [*sic*] order and agreement with the department”); ODC-76 at 001725 (“This was, perhaps, the first indication that they were only interested in delay, harassment, and increasing the cost of litigation instead of going to a hearing, because they had conducted no discovery at that point.”).

36. The representation set forth in paragraph 33(b) *supra* is false. *Id.* (“This is also perhaps the first indication that Johnson did not intend to act

with candor toward the Board because there was no such consent order and agreement in the works. Also, no discovery was ‘continuing.’”). As set forth in paragraphs 37-38 *infra*, neither Respondent nor Cabot were negotiating the terms of a consent order and agreement with the DEP.

37. On August 19, 2021, Ms. Barrette and Mr. Burns filed Intervenor Cabot Oil & Gas Corporation’s Response to Appellants’ Motion to Extend Discovery Period, in which they “denie[d] that Appellants have been negotiating the terms of a ‘consent order and agreement with the Department.’” Ans. at ¶ 42; ODC-20 at 000191 (¶ 8).

38. On August 24, 2021, Mr. Braymer filed Department’s Response to Appellants’ Motion to Extend Discovery Period, in which he averred that, “there is no consent order and agreement being negotiated. The Department is not currently considering any consent order and agreement in this matter.” Ans. at ¶ 43; ODC-21 at 000197 (¶ 8).

39. By Order dated August 24, 2021, the Motion set forth in paragraphs 33-36 *supra* was denied “due to the Appellants’ failure to comply with the Board’s Rules requiring that procedural motions ‘shall contain a statement indicating the nonmoving party’s position on the relief requested or a statement that the moving party, after a reasonable effort, has been unable

to determine the nonmoving party's position.' 25 Pa. Code § 1021.92(c)."

Ans. at ¶ 44; ODC-22.

40. On September 14, 2021, Ms. Barrette and Mr. Burns filed Intervenor Cabot Oil & Gas Corporation's Motion for Summary Judgment and a Memorandum of Law in Support thereof, in which they averred that, *inter alia*:

Appellants conducted no discovery in this appeal and can offer no evidence to support their contention that the Department incorrectly concluded that Cabot's operations did not pollute Appellants' water supply with TEG.

...

Appellants bear the burden of proving that Cabot's activities caused their water supply to become polluted with TEG. The record contains zero evidence to support Appellants' claim that Cabot's activities caused Appellants' water supply to become polluted with TEG. The sample results of Appellants' water supply do not demonstrate TEG pollution and, even if they did, Cabot did not and does not use TEG in its operations on the Abbott D and Abbott M well pads.

...

Appellants' Eurofins Analysis Report dated February 4, 2020, reported TEG at 28 mg/L, with a "B" data qualifier. The data qualifier "B" denotes that Eurofins detected TEG in the method blank. The detection of TEG in the method blank is indicative of laboratory or instrument contamination, as noted in the March 16, 2020 email which Attorney Johnson represented reflected Eurofins' explanation of the analysis.

The presence of a substance in the method blank indicates that the substance was introduced through the lab's testing process. In fact, Eurofins analyzed Appellants' January 20, 2020 sample three times. The first and second trial reported TEG in

both the method blank and the water sample. The third trial did not identify TEG in either the method blank or the sample. The absence of TEG in the third trial supports that the findings of TEG in trials one and two were the result of lab or instrument contamination. Thus, Appellants' premise of TEG pollution was based on Appellants' counsel's flawed interpretation of Appellants' Eurofins Analysis Report, dated February 4, 2020.

...

Appellants cannot point to any evidence in the record to support their claim that Cabot used TEG because Cabot did not and does not use TEG in its operations at the Abbott D or Abbott M well pads. This fact is not in dispute.

Appellants did not conduct any discovery on this point. This lack of discovery is not surprising given that Appellants were advised on multiple occasions, as early as February 27, 2020, that Cabot did not use TEG in its hydraulic fracturing operations. Moreover, information related to the constituents used by Cabot in its hydraulic fracturing operations on the Abbott D and Abbott M well pads is publicly available to Appellants.

...

The constituents used in Cabot's hydraulic fracturing operations are publicly located at <https://www.fracfocus.org>. As a result, Appellants always have had the ability to confirm whether or not Cabot used TEG in its hydraulic fracturing operations. Had Appellants elected to actually conducted [*sic*] discovery in this appeal, they would have learned that Cabot did not and does not use TEG in any of its operations on the Abbott D or Abbott M well pads.

ODC-23 at 000211-000212, 000215-000216, 000219-000220 (internal citations omitted).

41. By letter to Ms. Stanley dated September 15, 2021, the Office of Disciplinary Counsel dismissed the disciplinary complaint set forth in paragraph 26 *supra*. ODC-24; N.T. I at 37.

(a) Respondent was copied on this letter. ODC-24 at 000225; N.T. I at 38.

42. On September 17, 2021, Respondent filed Appellants' Motion to Strike, for Sanctions for Spoliation of Evidence and Under Rule 4005. Ans. at ¶ 50; ODC-26.

43. Despite averring in this Motion that “the Board denied Appellants’ motion to extend discovery on August 24, 2021 due to the Board’s finding of material non-compliance with 1021.92(c),” *Id.* at 000256 (¶ 12), Respondent failed to aver in this Motion the position of the nonmoving party on the relief requested or otherwise state that, after a reasonable effort, she was unable to determine the position of such party, as required by 25 Pa. Code § 1021.92(c). ODC-76 at 001728. *See also, generally*, ODC-26.

44. Respondent failed to include a memorandum of law in support of this Motion, as required by 25 Pa. Code § 1021.94(a) and 25 Pa. Code § 1021.95(d). Ans. at ¶ 52.

45. By Order dated October 5, 2021, the EHB:

- (a) denied the Motion set forth in paragraphs 42-44 *supra* “due to the Appellants’ failure to comply with the Board’s rules at 25 Pa. Code §§ 1021.93, 1021.94, and/or 1021.95”; and
- (b) “warned that a continuing failure to comply with the Board’s rules may result in the imposition of sanctions, including but not limited to a dismissal of the appeal and/or the award of attorneys’ fees to the opposing parties.”

Id. at ¶ 55; N.T. I at 62 (“It was denied for failure to comply with multiple board rules, 1021.93, 1021.94, 1021.95.”); ODC-29.

46. By Order dated November 23, 2021, Respondent was directed to file a pre-hearing memorandum on or before December 30, 2021, containing, *inter alia*:

- (a) “[a] list of all expert witnesses”;
- (b) “[a] summary of the testimony of each expert witness or a report of the expert as an attachment”;
- (c) “[a] list of the exhibits the party seeks to introduce into evidence”; and
- (d) “[c]opies of these exhibits.”

Ans. at ¶ 56; ODC-30 at 000269-000270 (¶¶ 1(D)(E)(H)).

47. This Order further noted that, *inter alia*:

Any party desiring to respond to a petition or motion must do so within the time set forth in 25 Pa. Code §§ 1021.91 – 1021.95, unless otherwise ordered. A party will be deemed to have waived the right to contest any motion or petition to which a timely response has not been filed. The Board will not notify the parties that a response may be due.

Ans. at ¶ 57; ODC-30 at 000270 (¶ 8) (emphasis in original).

48. Respondent failed to file a pre-hearing memorandum on or before December 30, 2021. N.T. I at 63-64; ODC-76 at 001735; ODC-31 at 000272 (“in consideration of the Appellant’s failure to comply with the Board’s November 23, 2021 Order by not filing their pre-hearing memorandum...”).

49. By Rule dated January 3, 2022, the EHB:

- (a) directed Respondent to “show cause why the Board should not impose sanctions pursuant to 25 Pa. Code § 1021.161 for failing to file a pre-hearing memorandum”; and
- (b) noted that, “[r]eceipt of the pre-hearing memorandum on or before January 10, 2022 will constitute a discharge of this Rule”

Ans. at ¶ 59; ODC-31 at 000272 (emphasis removed).

50. On January 7, 2022, Respondent filed Appellants’ Motion to Stay Proceedings, or in the Alternative, Extend Time for Appellants to File Pre-Hearing Brief, in which she requested, *inter alia*, that the EHB “[e]xtend the

time period for a short period for Appellants to file its pre-hearing brief on January 19, 2020.” Ans. at ¶ 60; ODC-32 at 000275 (¶ 2).

51. By Order dated January 7, 2022, the EHB, *inter alia*, granted Respondent’s request for an extension until January 19, 2022, to file the pre-hearing memorandum set forth in paragraph 46 *supra*. Ans. at ¶ 61; ODC-33 at 000280 (¶ 1).

52. On January 19, 2022, Respondent filed Landowners’ Pre-Hearing Memorandum, which listed the following among the “facts likely in dispute”:

- (a) “Landowners’ Water Supply was and continues to be contaminated by oil and gas operations”; and
- (b) “Coterra’s oil and gas operations caused and continues [*sic*] to cause, among other things, such contamination.”

Ans. at ¶¶ 62-63; ODC-34 at 000285 (¶¶ 10-11).

53. Respondent averred in this Landowners’ Pre-Hearing Memorandum that, *inter alia*:

In a case involving expert witnesses, the exchange of expert reports or answers to expert interrogatories is required. Any party, including the Department, who wishes to present expert testimony must identify the expert and submit either an expert report or answers to expert interrogatories, even if not required to do so by Pa.R.C.P. No. 4003.5. This also applies to experts that may be called in rebuttal.

The Department and Coterra, in a clear waiver, failed to include the use of experts as such testimony is not required to prove pollution from oil and gas operations, particularly in the instant matter. At any rate, the burden to engage and utilize expert testimony is on the Department, however, such expert reports are a significant waste of taxpayer dollars. Moreover, Landowners requested that the discovery period be extended on August 7, 2021 and each of the Department and Coterra opposed such extension.

The notion that an “expert” could make any definitive finding without having all critical information, such as each of the chemicals used by an operator or the impact that prior and current drilling has on the subterranean landscape, is not credible. Further, the use of an expert without taking effects of the subject fracking in relation to the past fracking, including from adjacent wells, particularly given the length that horizontal laterals are drilled [*sic*].

Id. at 000289-000290 (internal citations omitted).

54. This Landowners’ Pre-Hearing Memorandum failed to identify any expert witnesses that Respondent intended to call at the impending evidentiary hearing or identify and attach any exhibits that Respondent intended to introduce. *See, generally*, ODC-34. *See also* ODC-47 at 000406 (“The appellants’ pre-hearing memorandum did not identify any scientific tests, list or attach any exhibits, or name any expert witnesses.”); ODC-55 at 000601; ODC-76 at 001738 (“It is, of course, nearly inconceivable that an appellant could prove a claim of water contamination without any sample results to back up the claim.”) (footnote omitted).

55. Between January 27, 2022, and February 2, 2022, Ms. Barrette and Mr. Burns filed four Motions *in Limine* seeking to preclude Respondent from offering, *inter alia*, expert witness testimony at the impending evidentiary hearing due to deficiencies in Respondent's pre-hearing memorandum. Ans. at ¶¶ 67-70; ODC-35-ODC-38.

56. By email to representatives of the Environmental Protection Agency and the Pennsylvania Office of Attorney General dated February 2, 2022, Respondent provided copies of these Motions. Ans. at ¶ 71; ODC-39 at 000336; ODC-40 at 000344.

57. Respondent copied Ms. Barrette and Mr. Burns on this email. Ans. at ¶ 72; ODC-39 at 000336.

58. Ms. Barrette replied all to this email on February 2, 2022, indicating that:

There is no need to copy me or Attorney Burns on your emails to the Attorney General's Office, the EPA, or to your clients. 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.

Ans. at ¶ 73; ODC-39 at 000335.

59. On February 3, 2022, Respondent filed Appellants' Motion to Stay Proceedings representing that, *inter alia*, "[t]he 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 at 000339 (¶ 5).

60. This Motion had no basis in law or fact that is not frivolous. ODC-55 at 000602 ("In reality, no conversations were scheduled to occur and there was no factual basis for the motion"); ODC-76 at 001754 ("There were no grounds to file the motion to stay, to assert that conversations were occurring between Buchanan and anyone from EPA or the Attorney General's Office, or to claim that those conversations, even if they were occurring, which they were not, would have any bearing on this appeal or warrant any stay of our proceedings.").

61. Respondent's representation that Attorney Barrette would have "conversations" with the Pennsylvania Office of Attorney General and the Environmental Protection Agency that "have a direct bearing on this matter" is false. *Id.* ("The claim is reminiscent of Johnson's earlier untrue claim that a consent order and agreement was being negotiated."); N.T. I at 29, 69

(“there were no conversations scheduled between the AG’s office -- with me and the AG’s office or me and the EPA...”).

62. Respondent failed to aver in this motion the position of the non-moving party on the relief requested or otherwise state that, after a reasonable effort, she was unable to determine the position of such party, as required by 25 Pa. Code § 1021.92(c). Ans. at ¶ 77; ODC-76 at 001740. See *also, generally*, ODC-40.

63. By email to Ms. Barrette and Mr. Burns dated February 7, 2022, Respondent said, *inter alia*:

Tonya, Bonnie and Jeff are rightly disgusted that we have to keep dealing with you. As such, my clients will give you until Wednesday to withdraw your four motions in limine, which were filed for the sole purpose of abusing the legal process and harassing and intimidating my clients and me. You also have until Wednesday to substitute counsel; however, **we would oppose until Coterra pays my legal fees and costs on or before Friday. We all know that Coterra can put a wire together that quickly. The amount that should be paid for attorneys’ fees should be the amount equal to that Coterra has paid for its legal fees and costs.**

Ans. at ¶ 78; ODC-39 at 000334 (emphasis supplied).

64. On February 7, 2022, Ms. Barrette and Mr. Burns filed Intervenor Coterra Energy, Inc.’s Opposition to Motion to Stay Proceedings, averring that, *inter alia*:

Since February 2, 2022, Appellants' counsel has copied Coterra's counsel on multiple emails to the AG's office and the EPA, and has copied those agencies on emails to Coterra's counsel. Appellants' counsel has demanded that Coterra's counsel withdraw its motions in limine, withdraw from the case, and further demanded that Coterra wire-transfer money to Appellants' counsel, in an amount equal to the attorney fees Coterra has incurred in this matter. Appellants' counsel's monetary demand, combined with the threat of criminal prosecution, on its face, rises to the level of extortion.

...

Coterra respectfully requests that the Board deny Appellants' frivolous Motion and award Coterra its legal fees incurred in connection with preparing this opposition.

ODC-41 at 000350 (internal citation omitted).

65. On February 9, 2022, Ms. Barrette and Mr. Burns filed Coterra Energy, Inc.'s Motion *in Limine* to Exclude the Introduction of Exhibits and Scientific Tests Not Identified in Appellants' Pre-Hearing Memorandum. Ans. at ¶ 80; ODC-42.

66. On February 9, 2022, Mr. Braymer filed the Department's Response in Opposition to Appellants' Motion to Stay Proceedings, averring that, *inter alia*, "it is specifically denied that any conversation that either the AG's Office or the EPA may or may not have with any party to this appeal will have any effect whatsoever on the present appeal." ODC-43 at 000384 (¶ 5).

67. By Order dated February 9, 2022, the Motion to Stay Proceedings set forth in paragraphs 59-62 *supra* was denied. Ans. at ¶ 82; ODC-44.

68. By letter to EHB Judge Bernard A. Labuskes, Jr., dated February 11, 2022, Respondent advised that, *inter alia*:

- (a) “Landowners will not be filing separate responses to [the Motions set forth in paragraphs 55 and 65 *supra*] but rather, objects [*sic*] to the Coterra Motions to limit evidence”; and
- (b) “Landowners will be the only witnesses called at the hearing; all other witnesses in Landowners’ pre-hearing memorandum will not be called by Landowners.”

Ans. at ¶ 83; ODC-45. See *also* ODC-76 at 001738-001739 (“The Appellants did not file a response to Coterra’s motions.”); N.T. I at 26.

69. On February 15, 2022, Ms. Barrette and Mr. Burns filed Intervenor’s Motion for Sanctions in the Form of Legal Fees, averring that, *inter alia*:

- (a) “[o]n February 3, 2022, Appellants’ counsel filed a meritless, frivolous motion to stay the proceedings, and made false claims that some sort of conversations were scheduled between the AG’s office, the EPA, and Coterra’s counsel”; and
- (b) “[o]n February 7, 2022, Appellants’ counsel sent Coterra’s counsel an email demanding that Coterra’s counsel withdraw

Coterra’s motions *in limine*, withdraw as counsel in this appeal, and demanded that Coterra wire-transfer money to Appellants’ counsel in an amount equal to what Coterra has paid for legal fees to date in this appeal.”

ODC-46 at 000399-000400 (¶¶ 55, 59) (internal citations omitted).

70. By Opinion and Order dated February 17, 2022, the EHB, *inter alia*, granted two of the Motions set forth in paragraph 55 *supra*, as well as the Motion set forth in paragraph 65 *supra*, and precluded Ms. Stanley and the Dibbles “from utilizing scientific tests, offering or introducing exhibits, and relying on expert testimony in their case-in-chief at the upcoming hearing on the merits.” Ans. at ¶ 85; ODC-47 at 000406.

71. On February 21, 2022, Respondent filed Appellants’ Response in Opposition to Intervenor’s Motion for Sanctions in the Form of Legal Fees, in which she, *inter alia*:

- (a) represented that, “the Department advised Appellants and Appellants’ counsel on April 2, 2021 for the first time that (a) TEG was being used at the well sites operated by Cabot during the period in question and while all respective water tests were performed”;

- (b) represented that, “to this date, Landowners have not made any monetary demands to Coterra”;
- (c) represented that, “Landowners have yet to make a monetary demand to Coterra”;
- (d) represented that the EHB “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”;
- (e) represented that the EHB’s issuance of the Rule set forth in paragraph 49 *supra* “is another display of the Board’s biases against Landowners and Landowners counsel”; and
- (f) stated that, “for Attorney Barrette to continue representation of Coterra after Landowners filed their Motion to Disqualify and ethics complaints in good faith, much less after Chief Justice Castille made it clear that Attorney Barrette was unprofessional, unreasonable and took inappropriate actions in furtherance of Coterra’s illegal attacks on poor people, people living with disabilities and the elderly [*sic*].”

Ans. at ¶ 86; ODC-48 at 000421, 000425-000426, 000431-000432, 000436 (¶¶ 1, 3(b)(d), 42, 47, 60) (internal citations omitted). See *also* ODC-76 at

001746 (“The Appellants do not so much address the merits of Coterra’s motion regarding the basis for filing their previous motion for a stay, but instead their response contains a broad screed of grievances against, among others, Governor Tom Wolf, Lieutenant Governor John Fetterman, Former Department Deputy Secretary Scott Perry, Coterra, Coterra’s counsel, and the Board.”).

72. The representation set forth in paragraph 71(a) *supra* is false. As set forth in paragraph 23 *supra*, Mr. Braymer advised explicitly in a public filing submitted in May of 2021 that Respondent’s characterization of his April 2, 2021 email is “false.”

73. The representations set forth in paragraphs 71(d)(e) *supra* are false. The EHB was not “discriminatory,” “hostile” or “biased” against Respondent, Ms. Stanley or the Dibbles. See, e.g., ODC-76 at 001735-001736 (“In reality, our Rule to Show Cause was issued because the Appellants failed to comply with our Pre-Hearing Order No. 2, failed to file their pre-hearing memorandum on the due date, and failed to explain why our proceedings should be automatically stayed by way of a filing to the Commonwealth Court.”). See *a/so* N.T. I at 64 (Judge Labuskes “was giving her time to actually file a pre-hearing memorandum, because his prior order that we had just discussed stated that her failure to comply with the rules could lead

to sanctions or dismissal of the appeal, so I thought that he was being very lenient in giving her an opportunity to even proceed with the appeal”).

74. On February 21, 2022, Respondent filed Landowners’ Memorandum of Law in Opposition to Intervenor’s Motion for Sanctions in the Form of Legal Fees, in which she, *inter alia*:

(a) stated that, “Coterra and Attorney Barrette remain aware of the pending criminal charges against Coterra and the pending ethical complaints”; and

(b) represented that, “to this date, Landowners have not made any monetary demands to Coterra.”

Ans. at ¶ 89; ODC-49 at 000443, 000445. See also ODC-76 at 001748 (“The Appellants also filed a six-page memorandum of law, which similarly fails to make a substantive response to the motion for sanctions”).

75. Respondent’s representation that there were “pending ethical complaints” against Ms. Barrette is false. As set forth in paragraph 41 *supra*, ODC notified Ms. Stanley and Respondent in September of 2021 that such “ethical complaints” had been dismissed.

76. On February 22, 2022, an evidentiary hearing was convened at which time, *inter alia*:

- (a) Respondent presented no documentary or testimonial evidence, *See, generally*, ODC-50;
- (b) Respondent represented that, “[m]y clients never even made a monetary demand upon Coterra,” *Id.* at 000467;
- (c) Ms. Barrette moved for a compulsory nonsuit, *Id.* at 000475;
and
- (d) the DEP joined in Coterra’s motion for a compulsory nonsuit,
Id.

Ans. at ¶ 91.

77. The representations set forth in paragraphs 71(b)(c), 74(b) and 76(b) *supra* are false. As set forth in paragraph 63 *supra*, Respondent demanded on February 7, 2022, that Coterra “pay[] [Respondent’s] legal fees and costs on or before Friday” in an amount “equal to that Coterra has paid for its legal fees and costs.” See N.T. I at 129-130 (“Q. And can you tell the Panel what the basis of that demand was. A. I have no idea. I can’t see any basis in that demand...”).

78. On May 9, 2022, Respondent filed Landowners’ Reply Brief in Opposition to the Joint Motion of the Department of Environmental Protection and Coterra Energy Corporation for Nonsuit, in which she stated that, *inter alia*:

The history of ongoing constitutional violations against Landowners by the DEP and the Board in this matter for having the audacity to ask for clean drinking water and medical care includes this Board's punishment of Landowners' free speech against the government by deleting Landowners' filings, claims, and evidence from the docket without notice or an opportunity to be heard on top of not providing Landowners with a fair hearing.

Judge Labuskes violated Landowners' First Amendment rights by both removing and refusing to file Landowners' evidence of the Board's misconduct and the Department's patterns and practices in concert with the oil and gas industry relevant to this matter from the docket without notice or an opportunity to be heard. The Department and the Board's repeated and ongoing violations of Landowners' due process rights have not been sufficient to silence Landowners, and Landowners will especially not sit silently while their evidence is deleted from the docket by a biased judge in retaliation for speaking out against such actions.

...

Landowners have yet to make a monetary demand to Coterra and the Board has yet to protect Landowners from these SLAPP tactics.

...

the Board's issuance of its Rule to Show Cause on January 23, 2022 [*sic*] *sua sponte* was, among other things, an improper use of the Board's authority and discretion and now, looking back, indicative of Judge Labuskes' biases against either Landowners, Landowners' counsel or both.

...

Judge Labuskes made his bias clear during the hearing when he stated that Landowners had presented "no case at all," notwithstanding the reality of the evidence before him, necessitating his immediate recusal from this matter under the Rules of Judicial Misconduct [*sic*], specifically including Preamble (3), Rules 1.2, 2.2, 2.6, 2.8, and 2.11.

...

Landowners have not made one monetary demand to Coterra to date and any claims of attempted extortion on the part of Landowners and Landowners' counsel are documented examples of SLAPP tactics used against Landowners and Landowners' counsel.

...

Landowners are the sole party to produce evidence relevant to this matter, from water testing, well information, copies of violations, credible victims/witnesses, and other supporting evidence to the Board, the sum of which is clearly sufficient to surpass the preponderance of the evidence standard proving that the Department's actions were unlawful, unreasonable, and arbitrary and that the Department committed a taking of Landowners real property and personal interests.

Ans. at ¶ 93; ODC-51 at 000487, 000500-000501, 000504, 000506-000507 (¶¶ 49, 53, 66, 70, 81) (internal citation omitted).

79. Respondent's representation that the EHB "punish[ed]" Ms. Stanley and the Dibbles "by deleting Landowners' filings, claims and evidence from the docket without notice or an opportunity to be heard" is false and has no basis in law or fact that is not frivolous.

80. Respondent's representation that the EHB did not provide Ms. Stanley and the Dibbles with "a fair hearing" is false and has no basis in law or fact that is not frivolous.

81. Respondent's representation that Judge Labuskes is "biased" is false and has no basis in law or fact that is not frivolous.

82. Respondent's representations that "Landowners have yet to make a monetary demand to Coterra" and "Landowners have not made one monetary demand to Coterra" are false. As set forth in paragraph 63 *supra*, Respondent demanded on February 7, 2022, that Coterra "pay[] [Respondent's] legal fees and costs on or before Friday" in an amount "equal to that Coterra has paid for its legal fees and costs."

83. Respondent's representation that the Rule set forth in paragraph 49 *supra* is "indicative of Judge Labuskes' biases against either Landowners, Landowners' counsel or both" is false. See N.T. I at 64.

84. Respondent's representation that "Landowners are the sole party to produce evidence relevant to this matter" is false. As set forth in paragraph 76(a) *supra*, Respondent failed to present any documentary or testimonial evidence during the February 2022 evidentiary hearing.

85. By email dated May 9, 2022, the EHB said "Judge Labuskes would like to hold oral argument via telephone on Coterra's pending motion for sanctions. Please reply all and provide your availability for the afternoon of May 25, 2022." Ans. at ¶ 106; ODC-52.

86. On May 10, 2022, Respondent filed Landowners' Demand for the Board's Removal of Judge Labuskes, in which she stated that, *inter alia*:

Judge Labuskes' documented history and violations of Landowners' free speech and due process rights are the most serious violations of constitutional rights in this country and have no room in an American tribunal. Judge Labuskes' ongoing retaliatory misconduct reveals, among other things, that Judge Labuskes is punishing Landowners for exercising their First Amendment rights of free speech against the Department of Environmental Protection and the Environmental Hearing Board.

...

Judge Labuskes' sudden and urgent desire to hold oral arguments over a phone call regarding Coterra's SLAPP Motion that was filed three months ago within hours of Landowners' filing of the Brief is clearly meant to punish Landowners' *[sic]* and Landowners' counsel for exercising their free speech rights against the DEP and for continuing to seek Judge Labuskes' recusal. Landowners and I will not tolerate it. Oral arguments are not necessary for an impartial fact finder to determine that Coterra's SLAPP Motion was an improper use of these proceedings in an attempt to intimidate and deter Landowners and Landowners' counsel from pursuing this matter in accordance with the patterns and practices of the oil and gas industry to silence victims. In this matter, the government has joined those efforts to silence Landowners.

...

Landowners repeat their demand that Judge Labuskes file on this docket a copy of his statement of financial interests, together with any interests that Judge Labuskes holds in oil and gas investments, shared positions on charitable boards, or any other interest that could impair Judge Labuskes' obligations to be fair and impartial. This demand is appropriate under the Ethics Act, the Rules of Professional Conduct, the Rules of Judicial Conduct and in equity. Any further communications from Judge Labuskes to Landowners' counsel shall be made publicly through the Board's electronic filing system.

This latest attack on Landowners' free speech rights by Judge Labuskes does not just endanger Landowners' rights and,

in fact their lives, it sets an extremely dangerous precedent going forward that Judge Labuskes can call for improper proceedings or remove any pleading or evidence from the docket on a whim. Judge Labuskes does not have the temperament to hold such a sacred position in an American justice system and, as he has not properly recused himself, Judge Labuskes should be removed from this matter. The Board belongs to the people where they can be safe to exercise their First Amendment rights to free speech against the government.

Ans. at ¶ 107; ODC-53 at 000519-000520.

87. Respondent's representation that "Judge Labuskes is punishing Landowners for exercising their First Amendment rights" is false and has no basis in law or fact that is not frivolous.

88. By Opinion and Order dated June 7, 2022, the EHB granted the Motion for Sanctions set forth in paragraph 69 *supra* and noted that, *inter alia*:

counsel for the Appellants, Lisa Johnson's, egregious behavior unmistakably evincing bad faith, harassment, unwarranted delaying tactics, and outright lying to the Board and opposing counsel, not to mention highly disrespectful, unprofessional conduct in general, compels us to impose a sanction in this case.

...

Coterra points out that the Appellants claimed that counsel for Coterra was going to have "conversations" with people from the Environmental Protection Agency ("EPA") and the Pennsylvania Office of Attorney General, and those "conversations" necessitated a stay of our proceedings. In reality, Johnson subsequently conceded that there were no such "conversations" scheduled and, in fact, none have ever taken place.

...

the motion for a stay was merely the latest iteration in a series of filings from Lisa Johnson and the Appellants that appeared to have no purpose other than to delay our proceedings, increase litigation costs on the Department and Coterra, and avoid in any way possible going to the scheduled hearing on the merits. This appeal should have been a relatively straightforward water loss and contamination case. **Whether the case had any merit will never be known because Johnson's conduct has precluded us from ever coming close to a decision on the merits, which is extremely unfortunate for her clients.**

...

On August 9, 2021, the Appellants filed a motion to extend discovery. This was, perhaps, the first indication that they were only interested in delay, harassment, and increasing the cost of litigation instead of going to a hearing, because they had conducted no discovery at that point. Indeed, in their motion they acknowledge, "To date, the parties have not served any discovery." The Appellants said that "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." This is also perhaps the first indication that Johnson did not intend to act with candor toward the Board because there was no such consent order and agreement in the works. Also, no discovery was "continuing." The Appellants requested an extension of the discovery period for 90 days. The Appellants' motion did not comply with our Rules in that the procedural motion did not "contain a statement indicating the nonmoving party's position on the relief requested or a statement that the moving party, after a reasonable effort, has been unable to determine the nonmoving party's position." As previously noted, Johnson simply refused to comply with our rule to confer.

...

On January 19, the Appellants filed their pre-hearing memorandum. Their memo did not identify or attach any exhibits. For example, no sample results from the Appellants' water supply

were attached. It is, of course, nearly inconceivable that an appellant could prove a claim of water contamination without any sample results to back up the claim. The memo listed several fact witnesses, but no expert witnesses. With respect to expert witnesses, the Appellants asserted experts were not necessary

...

In response to the Appellants' pre-hearing memo, Coterra filed several motions in limine seeking orders from the Board (1) precluding the Appellants from calling any expert witnesses, (2) limiting the Appellants' fact witnesses to those listed in their memorandum, (3) preventing the Appellants from introducing evidence and testimony on issues that were not raised in their notice of appeal or amended notice of appeal, and (4) precluding the Appellants from introducing any exhibits or scientific tests since none were identified in their prehearing memorandum. The Appellants did not file a response to Coterra's motions. Instead, the Appellants filed a letter saying they would not be filing a formal response to the motions. In this letter and in another letter filed a few days later, the Appellants retracted their witness list and instead advised that only the Appellants themselves would be called to testify at the hearing. We issued an Opinion and Order granting three of the motions in limine regarding fact and expert witnesses and exhibits and scientific tests.

All of that brings us to the Appellants' motion to stay proceedings, which is the impetus for Coterra's motion for sanctions...The motion once again did not comply with our Rules on procedural motions, which require that "[p]rocedural motions shall contain a statement indicating the nonmoving party's position on the relief requested or a statement that the moving party, after a reasonable effort, has been unable to determine the non-moving party's position."

...

Late in the day on February 21, the day before the merits hearing, the Appellants filed their response in opposition to Coterra's motion for sanctions. The response includes 11 exhibits that for the most part appear to have little relevance to the motion

for sanctions. The exhibits include: a letter from former Pennsylvania Supreme Court Justice Ronald Castille apparently pertaining to a matter in the Court of Common Pleas of Susquehanna County⁶; an Order in that matter where Judge Jason Legg ultimately recused himself; an Associated Press article regarding an unrelated contaminated water supply in Dimock, PA; an Opinion and Order from the Board in a different case, not involving Coterra, where Lisa Johnson was counsel; water sample results from an apparently unrelated property; a filing by Johnson in the Commonwealth Court related to a different Board appeal where Johnson was counsel; a Right to Know Law request form submitted by Johnson to the Lieutenant Governor's office; and a letter from the Department regarding a water supply investigation in a different matter.

The Appellants do not so much address the merits of Coterra's motion regarding the basis for filing their previous motion for a stay, but instead their response contains a broad screed of grievances against, among others, Governor Tom Wolf, Lieutenant Governor John Fetterman, Former Department Deputy Secretary Scott Perry, Coterra, Coterra's counsel, and the Board.

...

In one of the few moments addressing the merits of the motion for sanctions, the Appellants actually admit that their motion to stay was not filed for the alleged "conversations" to occur between counsel for Coterra and the EPA or Attorney General, but instead, "Landowners filed its Motion to Stay in order to protect Landowners from the relentless abuses by Coterra, Attorney Barrette, and the Department." Thus, Johnson admits that she did not speak truthfully to the Board. She admits the obvious, which is there have never been any "conversations" as alleged.

...

Lisa Johnson on behalf of the Appellants filed a "demand for the Board's removal of Judge Labsukes." Notably, the filing was not a motion that would move the Board to act. Despite this demand, and other similar threats to file "a motion demanding the recusal of Judge Labuskes," no such motion for removal or recusal has ever been filed by the Appellants or Lisa Johnson.

...

We conclude that the motion to stay was not submitted in good faith. There were no grounds to file the motion to stay, to assert that conversations were occurring between Buchanan and anyone from EPA or the Attorney General's Office, or to claim that those conversations, even if they were occurring, which they were not, would have any bearing on this appeal or warrant any stay of our proceedings. Further, as noted above, Johnson and the Appellants *admitted* that they filed the motion to stay not for its stated purpose of these "conversations," but "to protect Land-owners from" so-called "relentless abuses by Coterra, Attorney Barrette, and the Department." The claim is reminiscent of Johnson's earlier untrue claim that a consent order and agreement was being negotiated. It is also in line with the various other inconsistencies in her filings as discussed above. Such falsehoods from an officer of the court simply cannot be tolerated or excused.

It is unclear whether the Appellants ever intended to actually proceed to a hearing on the merits. When viewed in conjunction with Johnson's actions over the course of this appeal—conducting no discovery, filing motions for summary judgment with no record support, failing to file a pre-hearing memorandum on time, baselessly claiming our appeal was stayed by reason of a filing to the Commonwealth Court, moving the Commonwealth Court to stay our proceedings (where the motion and attempted appeal were immediately denied), filing a pre-hearing memorandum (as supplemented) with no substance, failing to file an appropriate response to Coterra's motions in limine, and refusing to put on any evidence or testimony at the hearing on the merits—it seems obvious that the motion to stay was filed to avoid having to go to a hearing and thus to cause unnecessary delay in our proceedings.

We also believe that the motion was filed to cause a needless increase in the cost of litigation. The motion was filed just weeks before the hearing was to commence while the Department and Coterra were undoubtedly busy preparing for the hearing. They filed their pre-hearing memoranda on February 8, just

days after the motion. The Department's pre-hearing memorandum complied with our Rules, identified fact and expert witnesses, and attached 20 exhibits. Coterra's memorandum likewise complied with our Rules, identified fact and expert witnesses, and attached 32 exhibits and an expert report. The Department and Coterra had to pivot away from hearing preparation to address a motion with no grounding in reality. Then, having undertaken the necessary preparation and accompanying expense of that preparation, they appeared at a hearing where the Appellants refused to put on any case-in-chief.

The Appellants' motion was not an isolated incident. Rather, it was merely the latest in a series of actions unquestionably designed in bad faith to harass, attempt to cause unnecessary delay, and needlessly increase the cost of litigation. By her words and deeds, Johnson's bad faith is palpable. Accordingly, we are compelled to find that Lisa Johnson's motion to stay was filed "for an improper purpose" to "cause unnecessary delay or needless increase in the cost of litigation" and she therefore committed a "bad faith violation" of 25 Pa. Code § 1021.31(b) that warrants the imposition of appropriate sanctions. Coterra's request for reasonable fees that are a result of having to respond to the improper motion is an appropriate sanction.

We want to dissuade any implication that the sanctions here are being imposed for an ordinary motion to stay our proceedings. There is certainly ample room in Board proceedings for zealous advocacy, creative legal theories, and spirited litigation. But there is no room for baseless filings, dishonesty toward the Board, and behavior that is clearly designed to unnecessarily delay our proceedings and increase the costs for opposing parties. Awarding sanctions in the form of attorney's fees is warranted here to deter ongoing and future bad faith filings from Lisa Johnson and Lisa Johnson & Associates, and to preserve the integrity of proceedings before the Board for all litigants who practice before us.

⁶ The letter from former Justice Castille was prepared in relation to a case before the Court of Common Pleas of Susquehanna County, *Cabot Oil & Gas Corporation et. al. v. Charles F. Speer, et. al.*, Case No: 2017-936 C.P. Justice Castille was apparently

seeking to be retained as an expert by the defendants to offer an opinion in support of a motion for recusal filed by the defendants seeking the recusal of Judge Jason Legg. The Court of Common Pleas determined that the advisory legal opinion was not admissible since the question of recusal is a question of law. The letter appears to offer some commentary on a response to the motion for recusal filed by Buchanan and Amy Barrette on behalf of Cabot. **The letter has no connection of any kind with the case before us.**

ODC-76 at 001711-001713, 001725, 001738-001740, 001745-001746, 001748-001749, 001751-001752, 001754-001756 (some emphasis supplied, footnote and internal citations omitted).

89. By Opinion and Order dated June 15, 2022, the EHB granted the motion for compulsory nonsuit set forth in paragraphs 76(c)(d) *supra* and noted that, *inter alia*:

The Appellants bear the burden of proof in this appeal. In order to prevail they needed to prove by a preponderance of the evidence that the Department erred when it determined that Coterra's operations did not contaminate their water supply. In order to do that, they needed to show that contaminants entered their water supply as a result of Coterra's operations by way of, for example, a hydrogeologic connection between the gas wells and their water supply. Essentially, the Appellants needed to provide evidence of causation in order to prevail.

The hearing on the merits in this matter was scheduled to begin on February 22, 2022. The hearing was originally scheduled to commence on February 8, 2022. However, the hearing was postponed following the Appellants' failure to file their pre-hearing memorandum by the due date. When the Appellants did file their pre-hearing memorandum, it did not identify or attach any exhibits. For example, even though this is an appeal involving alleged water supply contamination, the Appellants did not

reference or attach any water sample results. Although the pre-hearing memorandum listed several potential fact witnesses, the Appellants subsequently in letters to the Board narrowed down their witness list to just the Appellants themselves: Tonya Stanley, Jeffrey Dibble and Bonnie Dibble. The pre-hearing memorandum did not identify any expert witnesses, so it was unclear how the Appellants intended to prove that there was causal link *[sic]* between Coterra's operations and their water supply.

...

On February 22, we held the hearing on the merits by videoconference via WebEx. At the outset of the hearing, in lieu of proceeding with an opening statement, counsel for the Appellants requested that the Board rule on Coterra's motion for sanctions. Counsel for the Appellants stated that Coterra's motion for sanctions intimidated her clients and they would not be able to testify and be subject to cross-examination by counsel for Coterra before the motion for sanctions was resolved. Appellants' counsel made an oral motion to recess the hearing so that the Board could rule on the motion for sanctions. The presiding judge denied the Appellants' motion, reasoning that the motion for sanctions was separate and would be decided in due course, and elected to proceed with hearing the merits of the appeal. Counsel for the Appellants then asked for a 15-minute recess to confer with her clients. Upon returning from the break, counsel stated that her clients would not proceed with the hearing until the motion for sanctions was resolved and that under no circumstances would she allow her clients to be cross-examined by Coterra's counsel.

The presiding judge then asked counsel for the Appellants if it was only the motion for sanctions to recover fees that was preventing the Appellants from being subject to cross-examination. Counsel responded that, no, it was "the entire conduct of Coterra and the Department," and that the Appellants would "not subject themselves to cross examination or the representation by counsel who have been harassing them and calling them liars and extortionists, abusing civil proceedings for two years." The presiding judge asked counsel for the Appellants to confirm that,

even if Coterra's motion for sanctions were withdrawn, the Appellants would still not testify and be subject to cross-examination. Counsel confirmed that was the case and suggested that Coterra could obtain different representation and her clients might then sit for cross-examination. The presiding judge ruled that the Appellants' witnesses could not be permitted to testify on direct since they refused to testify on cross-examination. The Appellants refused to put on any other case.

...

Here, there is no evidence to review because the Appellants did not put on a case-in-chief. The Appellants offered no evidence that their water supply was contaminated, let alone contaminated as a result of anything associated with Coterra's operations. The Appellants simply did not put on any evidence at the hearing that they themselves had asked for by filing this appeal. Because they failed to make out a *prima facie* case, nonsuit is warranted.

...

The Appellants did not present *anything* at the merits hearing. It is not clear what documents the Appellants are referring to. It may be that they are referring to documents that were submitted earlier on in the proceedings in support of, for example, their earlier motions for summary judgment, but those documents are obviously not part of the record upon which we must base our Adjudication in the appeal.

...

Rather than putting on a case-in-chief, the Appellants instead complained of phantom "harassment" and "intimidation." Interestingly, there is not even any evidence of that, unless we consider Coterra's well-justified motion for sanctions, which was pending at the time. Although Appellants' counsel initially attempted to use Coterra's pending motion for sanctions as an excuse for refusing to put on a case at the hearing, when pressed, she conceded that her only witnesses—the Appellants themselves—refused to testify under any circumstances if it meant they would be subject to cross-examination by Coterra's counsel. They offered that they might be willing to testify if Coterra hired

new counsel, and they said the presiding judge could ask some questions, but under no circumstances would they submit to cross-examination by Coterra’s counsel.

...

To have allowed the Appellants to testify without being subject to cross-examination, assuming that was a sincere offer, would have, of course, violated Coterra’s procedural due process rights, which generally require the confrontation and cross-examination of parties...Appellants’ suggestion that they could be permitted to testify without being cross-examined is, in a word, absurd.

In light of the fact that the Appellants elected to put on no case at all, let alone a *prima facie* case, we have no choice but to grant the motion for nonsuit.

...

Despite the excuses of Appellants’ counsel, when it came down to proving their case on the merits, the Appellants flatly refused. We have no choice but to grant the joint motion for a nonsuit.

ODC-55 at 000601-000606, 000608 (emphasis in original, footnotes and internal citations omitted). See *a/so*, N.T. I at 20 (“appellants failed to present any evidence at the hearing”).

90. On June 17, 2022, Respondent filed Appellants’ Petition to Amend the Board’s Interlocutory Order Granting Intervenor’s Motion for Sanctions in the Form of Legal Fees, in which she stated that, *inter alia*:

1. **The Order is Illegitimate, Unenforceable and Violates Landowners’ Constitutional Rights.** The legitimacy of any Order being premised on a full and fair docket by an impartial forum fails on its face. Landowners continue to document and object to Judge Labuskes’ unlawful removal, rejection, or denial of

Landowners' proper filings made with the Board. These improper actions violate Landowners and Landowners' counsel's constitutional rights, including 1st Amendment free speech against the government and gross due process violations. Judge Labuskes' actions have rendered the docket illegitimate and the Order therefore unenforceable, as it cannot be supported by an unlawful docket.

...

3. **Punishment of First Amendment Speech Against the Government**. The Order is punishment of Landowners and Landowners counsel's right to free speech against the government, including for the following reasons:

a. The Order identifies the likely beginning of Judge Labuskes' bias towards Landowners and Landowners' counsel when Landowners sought to depose officials in this administration. The subsequent actions taken by Judge Labuskes to deter Landowners from a full and fair process are evident by the filings on the docket, including the deletion, rejection, or improper denial of Landowners' proper filings.

...

4. **Retaliation**. Judge Labuskes, in addition to the bias against Landowners (made clear by the extra effort that was made to sanction them and punitively and improperly impugn their and their counsel's characters) and Landowners' counsel, Judge Labuskes has retaliated against Landowners for rightfully questioning his actions in this matter and Landowners' counsel's other matter, *Glahn* as described above. In addition, Landowners' counsel represents the appellants in *Glahn, et. al v. DEP*, 2021 EHB 126. Judge Labuskes similarly acted improperly by deleting, rejecting, or improperly denying appellants' filings on this docket as well.

Ans. at ¶ 113; ODC-56 at 000612-000613, 000615 (emphasis in original, footnote and internal citation omitted).

91. Respondent's representation that Judge Labuskes unlawfully removed, rejected or denied Ms. Stanley's and the Dibbles' filings is false and has no basis in law or fact that is not frivolous.

92. Respondent's representation that the Order set forth in paragraph 88 *supra* "is punishment of Landowners and Landowners counsel's right to free speech against the government" is false and has no basis in fact or law that is not frivolous.

93. Respondent's representation that Judge Labuskes is "bias[ed] towards Landowners and Landowners' counsel" is false and has no basis in law or fact that is not frivolous.

In the matter of Glahn and Gorencel v. DEP
EHB Docket No. 2021-049-L

94. In July of 2020, Roger Glahn filed a complaint with the DEP regarding the water supply at a property located in Mehoopany, Pennsylvania. Ans. at ¶ 123.

95. On May 10, 2021, Respondent filed a Notice of Appeal in the EHB against the DEP on behalf of Mr. Glahn and Donna Gorecel, asserting that, *inter alia*, "it has been 238 days since the request for an investigation, the Department has not issued a determination letter." Ans. at ¶ 124.

96. On August 27, 2021, the DEP, through counsel, filed a Commonwealth of Pennsylvania, Department of Environmental Protection’s Motion to Dismiss, averring that, *inter alia*, “Appellants have not identified any Department action in their Notice of Appeal to which the Board’s jurisdiction may attach.” *Id.* at ¶ 125; ODC-59 at 000637 (¶ 25).

97. On September 24, 2021, Respondent filed a Response in Opposition to the Pennsylvania Department of Environmental Protection’s Motion to Dismiss Appeal, averring that, *inter alia*, “the Commonwealth committed an unconstitutional taking because, among other things, the Department failed in its obligations as trustee under PEDF III, the effects of which have placed all Pennsylvanians in harm’s way from drinking polluted water to being killed by facilities used in oil and gas operations.” *Ans.* at ¶ 126.

98. On November 12, 2021, the EHB issued an Opinion and Order on Motion to Dismiss, which granted the Motion set forth in paragraph 96 *supra* and noted that, *inter alia*, “we can evaluate a takings [*sic*] in the context of a Department action, but here all we have is inaction from the Department.” *Id.* at ¶ 127; ODC-61 at 000672 (footnote and internal citations omitted).

99. On November 22, 2021, Respondent filed an Appellants' Petition for Reconsideration of the Board's Order on the Department's Motion to Dismiss, in which she asserted that, *inter alia*, "[t]he Board stalled the matter for six months on its docket and the Board's own inaction constitutes additional takings claim *[sic]*." Ans. at ¶ 128.

100. This Petition for Reconsideration failed to address any of the criteria for reconsideration of EHB decisions set forth in 25 Pa. Code § 1021.152. *Id.* at ¶ 129.

101. Respondent's assertion that "the Board's own inaction constitutes additional takings claim *[sic]*" has no basis in fact or law that is not frivolous.

102. On December 9, 2021, the EHB issued an Opinion and Order on Petition for Reconsideration, which denied the Petition set forth in paragraph 99 *supra* and noted that, *inter alia*:

- (a) "[n]one of the Appellants' arguments in their petition address the criteria for granting reconsideration laid out in our rules";
and
- (b) "despite the fact that our ruling hinged on jurisdiction or the lack thereof, the Appellants do not cite any law or otherwise even

argue that this Board should have jurisdiction over Departmental inaction or that we missed some body of law that would support our jurisdiction over this appeal.”

Id. at ¶ 132.

103. Respondent did not seek the EHB’s recusal at any time while this matter was pending. *Id.* at ¶ 133.

104. On December 21, 2021, Respondent sent a Notice of Intent to Sue to then Governor Tom Wolf in which she referenced the matters set forth in paragraphs 4-103 *supra* and stated that, *inter alia*:

This Notice of Intent to Sue the Pennsylvania Environmental Hearing Board is being sent to you pursuant to applicable laws, rules and regulations, including 42 Pa.C.S.A. § 5522, 42 Pa.C.S.A. § 8522(b)(10) (relating to exceptions to sovereign immunity) and 42 Pa.C.S.A. § 8542(b)(9) (relating to exceptions to governmental immunity).

Id. at ¶ 134; ODC-64 at 000702.

105. 42 Pa.C.S. § 8522(b)(10) and 42 Pa.C.S. § 8542(b)(9) allow for the imposition of liability upon Commonwealth parties for negligence resulting in sexual abuse and, accordingly, are inapplicable to Respondent’s dispute with the EHB. *Ans.* at ¶ 135.

106. Ms. Barrette’s testimony was credible. N.T. I at 19-144.

107. Respondent's verified Answer and her sworn testimony at the disciplinary hearings, like her various filings before the EHB, were riddled with factual misrepresentations and frivolous assertions. See Section IV(B)(C) *infra*.

III. PROPOSED CONCLUSIONS OF LAW

Respondent violated RPC 1.1, RPC 1.3, RPC 3.1, RPC 3.2, RPC 3.3(a)(1), RPC 3.5(d), RPC 4.1(a), RPC 4.4(a), RPC 8.2(a), RPC 8.4(c), RPC 8.4(d) and Pa.R.D.E. 402(c).

IV. ARGUMENT

A. RESPONDENT'S REPRESENTATION BEFORE THE ENVIRONMENTAL HEARING BOARD WAS NEITHER COMPETENT NOR DILIGENT.

As Respondent readily conceded in her verified Statement of Position, "her representation before the EHB fell short of the expectations of [RPC] 1.1." ODC-73 at 001115. Indeed, these matters are replete with examples of Respondent's incompetence. Respondent failed to conduct *any* formal discovery in *Stanley et al. v. DEP*. Ans. at ¶¶ 7-10. She repeatedly failed to comply with the EHB's procedural rules, See, e.g., *Id.* at ¶¶ 15, 20, 38, 51-52, 77—even after the EHB explicitly denied her August 2021 Motion to Extend Discovery because of such failures, Compare, ODC-22 at 000200 ("the motion is denied due to the Appellants' failure to comply with the Board's

Rules...”) *with, e.g.*, Ans. at ¶¶ 51-52, 77. *See also, e.g.*, ODC-47 at 000409 (“Although the Appellants have **once again** submitted a filing that does not comport with our Rules, we will nevertheless address Coterra’s motions on the merits”) (emphasis supplied).

Respondent failed to timely file a Pre-hearing Memorandum in *Stanley et al. v. DEP*. Ans. at ¶ 58. Thereafter, the EHB graciously granted Respondent multiple extensions in which to do so, *Id.* at ¶¶ 59-61, but she, nonetheless, failed to identify any expert witnesses or exhibits, *Id.* at ¶¶ 65-66; ODC-47 at 000406. Respondent then failed to respond to Coterra’s various Motions *in Limine*, leaving the EHB no alternative but to preclude her from presenting any meaningful evidence in support of her client’s claims. Ans. at ¶¶ 83(a), 85. *See also, generally*, ODC-47. When the EHB convened an evidentiary hearing in *Stanley et al. v. DEP*—at which Respondent’s clients bore the burden of proof, 25 Pa. Code § 1021.122(a); ODC-55 at 000601—Respondent “flatly refused” to present any evidence, *Id.* at 000608, compelling the EHB to grant a compulsory nonsuit against Respondent’s clients. Ans. at ¶ 112; ODC-55 at 000606 (“In light of the fact that the Appellants elected to put on no case at all, let alone a *prima facie* case, we have no choice but to grant the motion for nonsuit.”). In *Glahn et al. v. DEP*, Respondent filed a Petition for Reconsideration that failed to address any of the

criteria for reconsideration of EHB decisions set forth in 25 Pa. Code § 1021.152. Ans. at ¶¶ 128-129. This unbridled incompetence cannot be simply explained away by Respondent’s lack of prior experience with litigation. N.T. I at 207 (“I’m not a litigator.”) Indeed, the EHB repeatedly provided Respondent with explicit guidance that she chose to disregard. See, e.g., ODC-15 at 000101 (“[m]uch of the problem is related to the fact that no discovery has been conducted yet by any party”); ODC-29 (“The Appellants are hereby warned that a continuing failure to comply with the Board’s rules may result in the imposition of sanctions, including but not limited to a dismissal of the appeal and/or the award of attorneys’ fees to the opposing parties”); ODC-47 at 000409 (“Our Pre-Hearing Order No. 2...essentially repeats [the requirements of 25 Pa. Code § 1021.104]”).

Respondent’s failure to properly identify expert witnesses or exhibits in *Stanley et al. v. DEP*—as ordered by the EHB and specifically required by the EHB’s procedural rules, ODC-30 at 000269-000270; ODC-47 at 000409 (“Our Rules plainly detail the required contents of a party’s pre-hearing memorandum. 25 Pa. Code § 1021.104”)—and her failure to respond to Coterra’s various Motions *in Limine* violated RPC 1.3 and RPC 3.2. Such failures prejudiced Respondent’s clients in that they prohibited them from presenting any meaningful evidence in support of claims on which they bore the burden of

proof. ODC-76 at 001713 (“Whether the case had any merit will never be known because Johnson’s conduct has precluded us from ever coming close to a decision on the merits, which is extremely unfortunate for her clients.”). See also, generally, ODC-47.

B. RESPONDENT’S FILINGS WITH THE ENVIRONMENTAL HEARING BOARD WERE RIDDLED WITH FACTUAL MISREPRESENTATIONS AND FRIVOLOUS ASSERTIONS.

“Dishonesty cannot be excused, nor remedied by a public censure or probation.” *Office of Disciplinary Counsel v. James D. Hayward, Jr.*, 123 DB 2009 (D. Bd. Rpt. 9/27/2010) (S. Ct. Order 1/19/2011) at 17. That is particularly true in this matter, where Respondent submitted several filings with the EHB that were riddled with factual misrepresentations and frivolous assertions, in violation of RPC 3.1, RPC 3.3(a)(1), RPC 4.1(a), RPC 8.4(c) and RPC 8.4(d), and then offered explanations for such factual misrepresentations and frivolous assertions throughout these disciplinary proceedings that are, themselves, false and frivolous.

1. MR. BRAYMER’S APRIL 2021 EMAIL

Respondent repeatedly misrepresented that Mr. Braymer’s April 2, 2021 email indicated that Coterra used TEG at the well sites in question. ODC-11 at 000066 (¶ 4); ODC-48 at 000421; ODC-51 at 000497 (¶ 45(E)).

Respondent claims now that “she may have misinterpreted” Mr. Braymer’s April 2, 2021 email, Ans. at ¶ 26; N.T. II at 316, but this claim is belied by Mr. Braymer’s May 2021 Response to Appellants’ Motion for Summary Judgment, which plainly labels Respondent’s characterization of his April 2021 email as “false” and unequivocally proclaims that this email “do[es] not support Appellants’ claims and, in fact, directly contradict[s] those claims.” ODC-12 at 000084-000085 (“Appellants’ claim that this email was evidence that ‘the Department was aware that Cabot uses TEG in its well operations and that TEG was being used at the subject well sites’ ***is false.***”) (emphasis supplied). Incredibly—and despite replying to this filing on May 21, 2021, Ans. at ¶ 28—Respondent ***repeated*** these factual misrepresentations in filings she submitted in February of 2022 and May of 2022. ODC-48 at 000421; ODC-51 at 000497 (¶ 45(E)). As demonstrated by Respondent’s repetition of this mischaracterization after its falsity was laid bare by the DEP in a public filing, Respondent’s claim to have “misinterpreted” Mr. Braymer’s email is clearly false, or at the very least, Respondent’s repetition of such mischaracterization was reckless, *See Office of Disciplinary Counsel v. Anonymous Attorney A*, 714 A.2d 402, 403 (Pa. 1998) (“a prima facie violation of Rule 8.4(c) is shown where the record establishes that the misrepresentation was

knowingly made, or made with reckless ignorance of the truth or falsity of the representation”).

2. RESPONDENT’S FRIVOLOUS MOTION TO EXTEND DISCOVERY

Respondent’s repeated mischaracterization of Mr. Braymer’s April 2021 email is far from the only factual misrepresentation contained in Respondent’s EHB filings. Respondent’s August 2021 Motion to Extend Discovery misrepresented that the DEP was negotiating the terms of a Consent Order and Agreement with Coterra. ODC-76 at 001725 (“This is also perhaps the first indication that Johnson did not intend to act with candor toward the Board because there was no such consent order and agreement in the works. Also, no discovery was ‘continuing.’”). Unsurprisingly, the DEP and Coterra promptly dispelled this false claim. *Compare* ODC-18 at 000119 (¶ 8) *with* ODC-20 at 000191 (¶ 8) and ODC-21 at 000197 (¶ 8). Respondent now incredibly claims that she was actually referring in this averment to discussions that she was having with the Office of Attorney General, Ans. at ¶ 39, but her sworn testimony at the disciplinary hearing made clear that this explanation is also false:

Q. Okay. Bates Page 119, Averment No. 8, you say, “Appellant’ *[sic]* 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.”

Did I read that correctly?

A. That's correct.

Q. You said earlier in your testimony that when you refer to the department in your filings, that refers to the Department of Environmental Protection, correct?

A. That's correct.

Q. And, in fact, in this same document, Bates Page 118, Averment No. 3, you refer specifically to the department as rejecting your proposal?

A. Yes.

Q. And just to reiterate, you don't use department to refer to the Office of Attorney General?

A. No, sir.

N.T. II at 339-340 (emphasis supplied).

3. RESPONDENT'S FRIVOLOUS MOTION TO STAY

Respondent's February 2022 Motion to Stay was premised entirely upon nonexistent "conversations" between Ms. Barrette and the Environmental Protection Agency and the Office of Attorney General. ODC-76 at 001712 ("In reality, Johnson subsequently conceded that there were no such 'conversations' scheduled and, in fact, none have ever taken place"). As the

EHB explained in its June 7, 2022 Opinion, Respondent submitted this Motion, and several other filings, for improper purposes. ODC-76 at 001713 (“the motion for a stay was merely the latest iteration in a series of filings from Lisa Johnson and the Appellants that appeared to have no purpose other than to delay our proceedings, increase litigation costs on the Department and Coterra, and avoid in any way possible going to the scheduled hearing on the merits”). Respondent’s submission of such filings for these various improper purposes violated RPC 3.2, RPC 3.5(d), RPC 4.4(a) and RPC 8.4(d).

4. RESPONDENT’S FALSE AND RECKLESS ALLEGATIONS IMPUGNING THE INTEGRITY OF THE ENVIRONMENTAL HEARING BOARD AND JUDGE LABUSKES

Four days after the EHB issued its February 17, 2022 Opinion and Order—which precluded Respondent from presenting any meaningful evidence in support of Ms. Stanley and the Dibbles’ claims, ODC-47—Respondent began making reckless and false allegations that impugned the integrity of the EHB in general and Judge Labuskes in particular, in violation of RPC 3.1, RPC 3.3(a)(1), RPC 8.2(a), RPC 8.4(c) and RPC 8.4(d). ODC-48 at 000431 (“The Board has been nothing but a discriminatory and hostile forum for Landowners and Landowners’ counsel”). *Compare also Id.* at 000432 (“The

Board's issuance of its Rule to Show Cause is another display of the Board's biases against Landowners and Landowners counsel.") *with* N.T. I at 64 ("his prior order that we had just discussed stated that her failure to comply with the rules could lead to sanctions or dismissal of the appeal, so I thought that he was being very lenient in giving her an opportunity to even proceed with the appeal"). These reckless and false allegations that Respondent made in February 2022 were, of course, just the beginning of her relentless attacks on the integrity of the EHB and Judge Labuskes. *See, e.g.*, ODC-51 at 000501, 000504 (¶¶ 53, 66); ODC-53; ODC-56 at 000613, 000615 (¶¶ 3(a), 4). ODC-64 at 000702. Respondent now expects this Honorable Hearing Committee to believe that these absurd allegations were prompted by Judge Labuskes' determination in March of 2022 to strike some of Respondent's salacious filings from the EHB's public docket, N.T. I at 294-296; *See, e.g.*, Ans. at ¶ 142, and the EHB's determination in June of 2022 to impose sanctions upon Ms. Stanley and the Dibbles, in addition to Respondent, *Id.* at ¶ 97. This is simply not possible, however, because Respondent's reckless and false allegations impugning the integrity of the EHB and Judge Labuskes predate these events:

Q. You also didn't know in February of 2022, when you filed [ODC-48], that the Environmental Hearing Board was going to sanction your clients; correct? That didn't happen till June?

A. Well, it's *[sic]* depends on what you mean by sanction. If they sanction a client's attorney, they're essentially silencing that client, so the -- the sanctions run downhill, whether it's just with the attorney, so I was concerned about their rights in connection with the motion for sanctions and the pending order.

Q. Ma'am, the question was about timing.

At the time you filed [ODC-48] in February of 2022, were your clients sanctioned by the Environmental Hearing Board?

A. Oh, no, no, not yet.

Q. That didn't happen till June?

A. Correct.

Q. Were you sanctioned by the Environmental Hearing Board at that time?

A. Yes, at the same time.

Q. In June?

A. Yes, sir.

Q. Not before? Okay.

And, in fact, four days before you filed this document, ODC-48, the board issued ODC-47; correct?

A. Yes.

Q. The opinion and order granting Coterra's motions in limine --

A. Yes.

Q. -- precluding you from presenting any meaningful evidence in support of your clients' claims?

A. That's right.

N.T. II at 346-347. This sequence of events makes abundantly clear that it was the EHB's exceedingly appropriate determination to preclude Respondent from presenting any meaningful evidence—and not, as Respondent claims, events that occurred *after* she began impugning the integrity of the EHB and Judge Labuskes—that prompted Respondent's reckless and false allegations. The Disciplinary Board has confronted these circumstances before, in a matter that, like these disciplinary proceedings, warranted a five-year suspension. *Office of Disciplinary Counsel v. Donald A. Bailey*, 11 DB 2011 (D. Bd. Rpt. 5/1/2013) (S. Ct. Order 10/2/2013) at 15 (“Such dissatisfaction should not and does not in this particular matter imply impropriety on the part of the jurist rendering the adverse decision, and does not justify the accusations of judicial misconduct.”).

5. RESPONDENT'S FALSE CLAIMS THAT HER CLIENTS MADE “NO MONETARY DEMANDS” AND WERE “THE SOLE PARTY TO PRODUCE EVIDENCE RELEVANT TO THIS MATTER”

Respondent repeatedly claimed, including on the record at the February 2022 evidentiary hearing in *Stanley et al. v. DEP*, that her clients had made “no monetary demands” to Coterra, despite demanding in a February

7, 2022 email that Coterra “pay my legal fees and costs on or before Friday,” in an amount “equal to that Coterra has paid for its legal fees and costs.” Compare ODC-39 at 000334 with ODC-48 at 000425-000426 (¶¶ 3(b)(d)), ODC-49 at 000445 and ODC-50 at 000467.

After presenting no evidence whatsoever at the February 2022 evidentiary hearing—a fact Respondent does not now contest, Ans. at ¶¶ 91, 105—Respondent remarkably claimed that her clients were “the sole party to produce evidence relevant to this matter.” ODC-51 at 000506 (¶ 81) (emphasis supplied). Respondent now incredibly claims that she was “referring more generally to her previous filings in the matter,” Ans. at ¶ 105, but her sworn testimony at the disciplinary hearing made clear that this explanation is also false:

Is it your testimony today that Coterra and the DEP had not also submitted filings that had exhibits attached to them?

A. Yes, of course they did.

Q. Okay. Let me take you to ODC Exhibit 76. It’s outside of the binders, or it was, at least.

A. Okay.

Q. This is the opinion granting sanctions against you and your clients?

A. That’s correct.

Q. Here, in the first full paragraph, can you tell me if I read this correctly, the fourth line down, “The department’s pre-hearing memorandum complied with our rules, identified fact and expert witnesses, and attached 20 exhibits, Docket Entry No. 107.”

Did I read that correctly?

A. Yes.

Q. “Coterra’s memorandum, likewise, complied with our rules, identified fact and expert witnesses and attached 32 exhibits and an expert report.”

Did I read that correctly?

A. Yes.

N.T. II at 337. See *also*, e.g., ODC-1 at 000002, 000006 (Docket Nos. 19, 78, 107) (filings by Coterra and the DEP that included attached exhibits).

6. RESPONDENT’S FALSE CLAIM THAT THERE WERE “PENDING ETHICAL COMPLAINTS” AGAINST MS. BARRETTE

Respondent violated Pa.R.D.E. 402(c) by repeatedly revealing in public filings the confidential disciplinary complaint that Ms. Stanley submitted against Ms. Barrette. ODC-14 at 000091; ODC-16 at 000106; ODC-48 at 000436; ODC-49 at 000443. See *also* ODC-73 at 001115 (“Ms. Johnson acknowledges that she did not maintain confidentiality”). Moreover, Respondent’s description of this confidential disciplinary complaint as “pending” in her February 2022 Memorandum of Law regarding Coterra’s Motion for

Sanctions is simply false. ODC-49 at 000443 (“the pending ethical complaints”). ODC had advised Ms. Stanley and Respondent in September of 2021 that such complaint had been dismissed. ODC-24 at 000225 (“cc: Lisa Johnson, Esquire”).

C. RESPONDENT’S MISCONDUCT WARRANTS A FIVE-YEAR SUSPENSION FROM THE BAR OF THE COMMONWEALTH OF PENNSYLVANIA.

Lengthy suspensions are often imposed in matters involving frivolous litigation, particularly when combined with false and frivolous accusations that impugn the integrity of a judge. *See, e.g., Office of Disciplinary Counsel v. Robert J. Murphy*, 206 DB 2016 (Pa. 2019) (five-year-suspension); *Office of Disciplinary Counsel v. Thomas Peter Gannon*, 123 DB 2017 (D. Bd. Rpt. 9/21/18) (S. Ct. Order 12/21/2018) (two-year suspension); *Office of Disciplinary Counsel v. Paul J. McArdle*, 39 DB 2015 (D. Bd. Rpt. 9/21/2016) (S. Ct. Order 11/22/2016) (year and a day suspension); *Bailey*, 11 DB 2011 (five-year suspension); *Office of Disciplinary Counsel v. Robert B. Surrick*, 749 A.2d 441, 449 (Pa. 2000) (five-year suspension); *Office of Disciplinary Counsel v. Neil Werner Price*, 732 A. 2d 599 (Pa. 1999) (five-year suspension). Such a sanction is uniquely necessary in this matter, where striking similarities between Respondent’s underlying misconduct and her handling of these

disciplinary proceedings make plain that Respondent remains unfit to practice law. *Surrick*, 749 A.2d at 449 (“[Surrick’s] defense of this conduct does not allay our concerns with his fitness to practice law; rather, it arouses them.”). Indeed, as she did with the EHB, Respondent has inundated this Honorable Hearing Committee with factual misrepresentations and frivolous assertions.

Most notably, and as set forth in Section IV(B) *supra*—having apparently learned nothing from the sanction imposed upon her by the EHB for, *inter alia*, “baseless filings” and “dishonesty toward the Board,” ODC-76 at 001755—in both her sworn testimony and her verified Answer in this matter, Respondent offered explanations for such “baseless filings” and “dishonesty” that are, themselves, baseless and dishonest. In addition to the various false and frivolous contentions set forth at length in Section IV(B) *supra*, Respondent also contended in her verified Answer that, “[Respondent]’s legal position on behalf of her clients was that the burden of proof shifted, **primarily because the DEP did not comply with its statutory duty to issue a Determination letter within 45 days as required by the Oil and Gas Act. 58 Pa.C.S. § 3218.**” Ans. at ¶ 45¹ (emphasis supplied). Respondent, however,

¹ Respondent’s verified Answer contains two averments numbered “45.” The quote herein is from the first such averment.

was unable to direct this Honorable Hearing Committee to any document in which she claimed that the DEP’s failure to timely issue a determination letter caused the burden of proof to shift from her clients to the DEP. *Id.* at 327-331. Indeed, Respondent did not make such argument at the February 2022 evidentiary hearing after Coterra moved for a compulsory nonsuit, nor did she do so in her written response to Coterra’s motion for nonsuit. *See, generally*, ODC-50 and ODC-51. Moreover, Respondent readily conceded that 58 Pa.C.S. § 3218 does not provide for any such burden-shifting and was unable to provide this Honorable Hearing Committee with any authority for this proposition. N.T. II at 324-327. This is likely because—as *Respondent knows from her own litigation of the Glahn matter before the Commonwealth Court*, N.T. II at 333-334—there is no consequence for the DEP’s failure to timely issue a determination letter. *Glahn v. Dep’t of Environmental Protection*, 298 A.3d 455, 465 (Pa. Commw. Ct. 2023) (Wallace, J., dissenting)² (“The Act, however, ‘does not dictate any sanction or consequence’ for the Department’s failure to issue a determination within 45 days. *See JPay, Inc.*, 89 A.3d at 763.”). Therefore, Respondent’s contention that the burden had

² Respondent proposed this opinion as exhibit Respondent-44.

shifted to the DEP would amount only to yet another assertion that lacks nonfrivolous bases in law.

This, of course, was not the extent of Respondent's frivolous assertions in these disciplinary proceedings, nor was it the extent of Respondent's lack of candor during her sworn testimony before this Honorable Hearing Committee. Respondent also, among other things, made an oral motion to dismiss at the close of ODC's case-in-chief that is specifically foreclosed by the Disciplinary Board Rules, *Compare* N.T. I at 144 *with* D. Bd. Rules § 89.2(c), and raised a pretrial evidentiary objection to ODC's Exhibit List, R. Objections at ¶ 2. When testifying about her DUI arrest, Respondent conveniently omitted that this arrest resulted in convictions on six criminal counts, including two counts of endangering the welfare of children. *Compare* N.T. II at 303-305 ("And I said, 'Well, is it okay if I feed my kids dinner before we go,' and we went up, and he waited") *with* *Id.* at 313 and ODC-75A at 001701. Respondent similarly concealed these convictions from all but one of her character witnesses. N.T. II at 371, 387, 403. Respondent's lack of candor before this Honorable Hearing Committee aggravates the sanction to be imposed herein. *See, e.g., Office of Disciplinary Counsel v. Paula C. Scharff*, 53 DB 2006 (D. Bd. Rpt. 11/5/2007) (S. Ct. Order

3/31/2008) at 16 (“[Scharff] aggravated her misconduct by rejecting her fundamental responsibility to be truthful in disciplinary proceedings, thus elevating her sanction...”). In these particular disciplinary proceedings, where Respondent faces professional discipline for, *inter alia*, her lack of candor to a tribunal, the aggravation created by Respondent’s lack of candor before this Honorable Hearing Committee is substantial.

V. CONCLUSION

ODC respectfully requests that this Honorable Hearing Committee recommend to the Disciplinary Board that Respondent be suspended from the Bar of the Commonwealth of Pennsylvania for five years.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Thomas J. Farrell
Chief Disciplinary Counsel



By

Daniel S. White
Disciplinary Counsel

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 111 DB 2023

Petitioner :

:

:

v. :

: Attorney Registration No. 200101

LISA ANN JOHNSON, :

:

Respondent : (Allegheny County)

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing documents upon all parties of record in this proceeding in accordance with the requirements of 204 Pa.C.S. § 89.22 (relating to service by a participant).

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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 confidential information and documents differently than non-confidential information and documents.

Submitted by: Office of Disciplinary Counsel

Signature:  _____

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