BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 111 DB 2023
v.	:	Attorney Registration No. 200101
LISA ANN JOHNSON, Respondent	:	(Allegheny County)

REPORT AND RECOMMENDATION OF THE HEARING COMMITTEE

I. SUMMARY OF THE CASE

This matter arises out of Respondent's representation of three clients in interrelated proceedings before the Pennsylvania Environmental Hearing Board ("EHB"). In each of those matters, Respondent sought relief in the form of clean water for clients who claimed that the water source supplying their homes had been contaminated by fracking operations. Respondent had no experience litigating before the EHB and did not avail herself of sufficient resources to competently represent her clients in that forum. When faced with various challenges in the course of the litigation, Respondent doubled down, became combative, and leveled accusations at the other parties and the Judge. While Respondent credibly appears to have believed that she was fighting the "good fight" on behalf of people with limited means in desperate circumstances, she lost sight of her professional responsibilities in the heat of the dispute. Respondent appears to have learned and grown from this experience and has taken active steps to secure appropriate mentorship to practice appropriately moving forward. Due to the number of Rules implicated by Respondent's Conduct, and the underlying events taken as a whole, the

Hearing Committee recommends suspension for a period of one year as appropriate discipline.

II. STATEMENT OF THE CASE

On August 3, 2023, the Office of Disciplinary Counsel ("ODC") filed its Petition for Discipline against Respondent at No. 111 DB 2023. The Petition alleged Respondent violated her professional responsibilities, pursuant to the following Rules of Professional Conduct and Disciplinary Enforcement:

> **RPC 1.1:** A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
>
> **RPC 1.3** A lawyer shall act with reasonable diligence and promptness in representing a client.
>
> **RPC 3.1** A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.
>
> **RPC 3.2** A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.
>
> **RPC 3.3(a)(1)** (a) A lawyer shall not knowingly:
>
> (1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
>
> **RPC 3.5(d)** A lawyer shall not: (d) engage in conduct intended to disrupt a tribunal.
>
> **RPC 4.1(a)** In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person.
>
> **RPC 4.4(a)** In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third

person, or use methods of obtaining evidence that violate the legal rights of such a person.

RPC 8.2(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer, or public legal officer, or of a candidate for election or appointment to judicial or legal office.

RPC 8.4(c) It is professional misconduct for a lawyer to: (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that a lawyer may advise, direct, or supervise others, including clients, law enforcement officers, and investigators, who participate in lawful investigative activities;

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

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

Respondent filed her Answer to the 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; Philip Ray Earnest, Esquire, and Elizabeth Farina Collura, Esquire. A prehearing conference was conducted on November 15, 2023, before Designated Member Dapper.

On December 15, 2023, Respondent filed a Motion in Limine seeking the exclusion of ODC-54[1], the Opinion and Order dated June 7, 2022 in which the Environmental Hearing Board granted a Motion for Sanctions against Respondent. (ODC-54, ODC-76). On December 19, 2023, the ODC filed its Answer, opposing the Motion in Limine.

[1] ODC-54 and ODC-76 were the same document. Ultimately the ODC introduced Exhibit ODC-76 into evidence, which was admitted. T. 33-34.

Disciplinary hearings were conducted on January 10, 2024 and January 11, 2024. Prior to the commencement of testimony, Designated Member Dapper ruled on the Motion in Limine, denying it. (T. 33-34).

III. RULINGS ON ADMISSION OF EVIDENCE

In the course of the hearing, ODC introduced exhibits ODC-1 through ODC-26, ODC-29 through ODC-56, ODC-59, ODC-61, ODC-64, ODC-66, ODC-72 through ODC-74, ODC-75A, ODC-76 and ODC-77.

Respondent objected to the following ODC exhibits, to which Designated Member Dapper ruled as follows:

Exhibit	Objection	Ruling	Transcript
ODC-76	Set forth within Repondent's Motion in Limine	Overruled	T. 33-34
ODC-10	Hearsay Lack of Foundation	Overruled	T. 46-47
ODC-12	Hearsay Lack of Foundation	Overruled	T. 48-50
ODC-21	Hearsay Lack of Foundation	Overruled	T. 55-56
ODC-27	Hearsay Lack of Foundation	Exhibit withdrawn	T. 61-62
ODC-43	Hearsay Lack of Foundation	Overruled	T. 70-71

ODC presented the testimony of attorney Amy Barrette. (T. 19-144).

In the course of the hearing, Respondent introduced exhibits R-2 through R-6, R-8, R-10 through R-19, R-21, R-23, R-27, R-28, and ODC-69. ODC did not object to any of Respondent's exhibits.

Respondent testified on her own behalf, and presented the testimony of Tonya Staley, Donna Gorencel, attorney William Anthony Sala, Jr., attorney Steven Badger, Jane Cleary, and attorney Michael Bruzzese. (T. 95, 147-264, 268-404).

IV. FINDINGS OF FACT

1. ODC's principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, and is invested, pursuant to Pa.R.D.E. 207, with the power and 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.

2. Respondent, Lisa Ann Johnson, was born in 1974 and was admitted to practice law in the Commonwealth of Pennsylvania on October 20, 2005. Respondent's registered address is 1800 Murray Avenue #81728, Pittsburgh, Pennsylvania, 15217.

3. Respondent attended college, and hereafter attended the police academy and became a police officer, working both as an undercover officer for a period of time and then in the detective division. (T. 193). She was not subject to discipline in her service history. (T. 193).

4. While still working in law enforcement, Respondent attended law school, and graduated in 2005. (T. 194).

5. Respondent initially practiced with Klett Rooney (which was acquired by Buchanan Ingersoll) until 2013. (T. 195). She practiced within the firm's energy section. (T. 196).

6. Her departure from Buchanan Ingersoll involved stressful circumstances, which lead her to a period of abusing alcohol. (T. 303-304). During this time, she was criminally charged with a DUI, which she self-reported to the Disciplinary Board. (T. 303-306).

7. In the course of her legal career, Respondent served the public by providing pro bono legal services to asylum seekers and volunteering with the Southern Poverty Law Center. (T. 200).

8. For a period, Respondent practiced law together with a law school friend. (T. 201). During the time the specific underlying proceedings at issue were pending, Respondent worked as a solo practitioner without support staff. (T. 202, 251).

9. Prior to the underlying proceedings, other than handling asylum cases, Respondent had no experience with litigation. (T. 202).

10. Respondent otherwise has not been subject to discipline during the course of her practice as an attorney within the Commonwealth of Pennsylvania. (T. 303).

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

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

12. Tonya Stanley, who is Ms. Dibble's sister, resided in the Dibble home. (T. 149-150). (Ms. Stanley and Ms. Dibble sometimes hereinafter referred to as "Landowners.")

13. Ms. Stanley described the water quality in the home as "perfect" for many years, and testified that around January 2020, it went bad almost overnight. (T. 149-152).

14. Ms. Stanley testified that at the time the water quality changed, oil and gas company Coterra was working near the property. The activities were sufficiently close that Ms. Stanley could feel the house shaking. (T. 152).

15. Ms. Stanley photographed the water conditions, including brown water coming through the water line into the toilet and sediment in the water. (T. 152, R-2, R-3, R-4). Ms. Stanley also testified to water stoppages, a chemical smell, and an oily film. (T. 154). Ms. Stanley testified that she ceased drinking the water and that the water irritated her skin when bathing. (T. 158).

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

17. Ms. Dibble testified that she contacted Coterra[2], and was advised to contact the DEP. (T. 150, 157).

18. Respondent grew up in Susquehanna County and knew Ms. Dibble for essentially her whole life. (T. 203). Respondent acknowledged she had a close personal connection to the rural community in which she grew up and had a close relationship with Ms. Dibble. (T.204).

[2] Attorney Barrette identified the involved oil and gas company as "Coterra Energy, formerly known as Cabot," and confirmed both names refer to the same entity. (T. 20).

19. Respondent agreed to assist and represent Ms. Stanley and Ms. Dibble, because of their personal connection, and because, based on Respondent's experience in the energy industry, she believed that getting clean water for Ms. Stanley and Ms. Dibble would just be a matter of a few phone calls. (T. 204-205).

20. Respondent represented Ms. Stanley and Ms. Dibble on a pro bono basis. (T. 208).

21. Respondent hoped that the dispute would not lead to litigation. (T. 204). Respondent had reservations about handling litigation, due to her lack of litigation experience, and disclosed to her clients that she had no litigation experience. (T. 157, 207).

22. Respondent made efforts to retain substitute counsel or counsel to assist in the matter early on but was not successful in finding a willing attorney to do so. (T. 207). Ms. Stanley and Ms. Dibble had no other options for lawyers. (T. 157).

23. On January 10, 2020, Ms. Johnson wrote to Coterra, requesting potable water for her clients. (R-28; T. 84-86). The company declined to provide such water. (R-28; T. 84-86).

24. On February 20, 2020, Respondent wrote to the company's lawyer, Attorney Barrette, addressing pre-drill samples, coordinates, statutory presumptive distances, and the Act itself. (R-28; T. 86-88). The only request Respondent made was for potable water for her clients, which the company still declined to provide. (T. 89).

25. Respondent coordinated with the DEP in early 2020 to allow the DEP to test the water. Elevated levels of turbidity, iron and bacteria were detected. (T. 161, 213-214).

26. Respondent, on behalf of Ms. Stanley and Ms. Dibble, also hired a private laboratory, Eurofins, to test the water. (T. 161, 214).

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

28. Ms. Johnson shared the Eurofins testing results with the DEP, including the raw data, and also authorized the DEP to communicate directly with Eurofins. (T. 90-91, T. 220).

29. When the DEP questioned the Eurofins findings as to the presence of TEG, Respondent asked Eurofins to test again. (T. 222). Respondent also called Eurofins to discuss the discrepancy between the DEP's findings and Eurofins' test results. (T. 222-223).

30. Respondent shared Eurofins' second report (July 14, 2020) with the DEP. (T. 223; R-15). At that point, Respondent declined to share the second set of raw data, out of concern that the DEP was no longer acting cooperatively. (T. 224).

31. As the DEP's investigation proceeded on throughout the year 2020, Ms. Stanley moved out of the Dibble Home, because the water was unusable. (T. 162-163).

32. In June of 2020, a Grand Jury report investigating the fracking industry was made publicly available. (R-27). The report documented concerns, events and illnesses that matched Ms. Dibble and Ms. Stanley's experiences. (T. 226-227).

33. The report concerned groundwater pollution by fracking chemicals in the Susquehanna River Valley (where the Dibble Property was located). (R-27). The report described challenges to property owners in seeking redress for water contamination, including the lack of obligation upon the oil and gas industry to disclose chemicals used, the narrow focus of DEP testing failing to account for the full range of contaminants in the water, the DEP relying on outdated industry information, and the DEP ignoring testing results from outside experts hired at property owners' own expenses. (T. 226-232).[3]

34. The Grand Jury Report informed Ms. Johnson's thinking, with respect to her representation of Ms. Staley and Ms. Dibble. (T. 228).

35. Approximately a year after Ms. Dibble filed her DEP complaint, on January 15, 2021, the DEP issued a letter advising that it had determined that the Water Supply was not adversely affected by oil and gas activities and that the DEP had not detected TEG in the Dibble Property groundwater. (ODC-2).

36. The DEP's letter triggered a right of appeal to the EHB. (ODC-2).

37. Ms. Dibble and Ms. Staley disagreed with the DEP's findings, felt that the DEP was not providing assistance, and sought to appeal the DEP's letter. (T. 149, 162).

38. Although the Oil and Gas Act required the DEP to investigate the complaint within 10 days and make a determination within 45 days, the DEP's final determination was issued a year after Ms. Dibble initiated her complaint. (T. 96, 162).

[3] In 2022, Coterra (the same oil and gas company operating near the Dibble Property) pled no contest to criminal charges arising under the clean streams law in Susquehanna County, and was subject to a "15, 16 million dollar fine or penalty." (T. 125). While this plea occurred subsequent to the Stanley litigation, it supports the finding that it was reasonable for the June 2020 Grand Jury report's finding to generally inform Respondent's thinking in representing Landowners.

39. The DEP's letter confirmed the existence of pollutants in the water (elevated levels of iron, turbidity and bacteria), but concluded that oil and gas activity was not the cause. (ODC-2; T. 162).

40. On February 15, 2021, Respondent filed a Notice of Appeal with the Environmental Hearing Board ("EHB") on behalf of Tonya Stanley, Bonnie Dibble, and Jeffrey Dibble. ODC-3.

41. Respondent did not propound any discovery or take any depositions regarding the appeal. Ans. at ¶¶ 7-10; T. 238.

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

43. Coterra intervened in the litigation and entered the appearance of Attorneys Amy Barrette and Robert Burns. (ODC-4).

44. Coterra did not serve any discovery. (T. 108-109).

45. Respondent performed some investigation by informal means, including interviewing her clients, gathering documents through a Right to Know request, searching the websites Frack Focus and marcellusgas.org for well records and production reports, reviewing the Grand Jury Report and also reviewing a groundwater site assessment in nearby Dimmock, PA. (T. 239-241).

46. On February 22, 2021 Respondent filed a Motion to Disqualify Counsel, seeking to disqualify Attorneys Barrette and Burns from representation of Coterra in the EHB appeal. (ODC-5). Respondent's thinking behind this motion included reading about the tactics of Coterra and its counsel in other cases, including such information within an expert opinion report prepared in the *Speer* litigation by retired Supreme Court Justice

Castille, Attorney Barrette's efforts to sanction other lawyers in other cases, and that two Buchanan Ingersoll lawyers were on the rules committee at the time of the *Dibble* proceedings, including one lawyer serving as Chair. (T. 102, 122-123, 246-247) The rules committee provides input to the EHB from the oil and gas industry and DEP. (T. 122-123).

47. This Motion contained no factual information regarding Attorneys Barrette or Burns that would merit disqualification in the matter actually pending before the EHB. (ODC-5).

48. While it would be reasonable for Respondent to have general concerns given the Grand Jury Report and the *Speer* litigation expert report, Respondent's Motion to Disqualify had no basis in fact or in law that is not frivolous, within the facts of the *Dibble* case (ODC-73, T. 41-43).

49. Respondent failed to file a memorandum in support of the Motion to Disqualify. (Ans. at ¶ 15).

50. The following day, Attorney Burns, on behalf of Coterra, sent Respondent a letter demanding that the Motion to Disqualify be withdrawn, and attaching an approximately 300-page filing in which the oil and gas company initiated a Dragonetti Action seeking $5 million and sanctions against another lawyer. (ODC-77; T. 103-106).

51. On February 26, 2021, Respondent filed a Renewed Motion to Disqualify Counsel, asserting that Attorney Burns' February 23, 2021 letter amounted to "harassment and intimidation." (ODC-7). Respondent's Renewed Motion did not cite any additional facts or different authorities in support of her Motion. (ODC-7).

52. Respondent failed to file a memorandum in support of the Motion to Disqualify. (Ans. at ¶ 20).

53. On March 8, 2021, Respondent filed an Amended Notice of Appeal. (ODC-8.)

54. By Order dated March 26, 2021, Respondent's Motion to Disqualify and Renewed Motion to Disqualify were denied. (ODC-9).

55. On April 2, 2021, attorney Michael Braymer, Supervisory Counsel with the DEP, sent an email to Respondent, stating in part:

> 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 client's water supply again and would even be willing to split samples with multiple labs if so desired.
>
> Further, you had asked about whether Coterra 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.

(ODC-10).

56. On April 7, 2021, Respondent filed a Motion for Summary Judgment on behalf of Landowners in which she represented that, *inter alia,* "[t]he Department advised [Landowners] and [Landowners'] counsel on April 2, 2021 for the first time that (a) TEG was being used at the well sites operated by Coterra during the period in question and while all respective water tests were performed." (ODC-11).

57. On April 7, 2021, Respondent filed a Brief in Support of Appellant's 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 operated by [Coterra].” (ODC-11).

58. Respondent’s interpretation of the Department’s email was incorrect, as she interpreted the Department’s statement that “use of TEG at the well site was assumed,” as an affirmative confirmation that TEG was in fact used at the site. (T. 255). This interpretation, although erroneous, was consistent with Respondent’s industry knowledge that glycol dehydrators were used on almost every site, with her general knowledge of fracking fluids, and with the Eurofins private laboratory results. (T. 255).

59. On May 7, 2021, the DEP filed its Brief opposing the Appellant’s Motion for Summary Judgment and stated that “The Department has not made any determination regarding whether [Coterra] used TEG on the nearby well sites and has not communicated to [Landowners] otherwise. [Coterra’s] use of TEG on the nearby well sites remains a disputed material fact.” (ODC-12). The DEP further stated that Respondent’s characterization of Mr. Braymer’s April 2, 2021 email was “False.” (ODC-12).

60. Respondent was skeptical of the DEP’s representation, due to her reading of the 2020 Grand Jury report, including the Report’s summary of at least 7 different ways in which the DEP failed to test. (R-27, T. 227-230). However, the Motion for Summary Judgment contained no affirmative evidence of use of TEG at the well site. (ODC-11).

61. On May 21, 2021, Respondent filed a Reply Brief on the Motion for Summary Judgment. (Ans. at ¶ 28).

62. On May 28, 2021, Attorneys Barrette and Burns filed Intervenor Coterra's Motion to Strike Portions of Appellant's Motion for Summary Judgment or in the Alternative, for Sur-Reply. (Ans. at ¶ 29).

63. On June 1, 2021, Ms. Stanley filed a disciplinary complaint against Attorney Barrette. (ODC-13).

64. On June 3, 2021, Respondent filed a Response in Opposition to Coterra's May 28 Motion, in which she disclosed that her client filed an ethics complaint against Attorney Barrette. (ODC-14).

65. On June 11, 2021, the EHB issued an Opinion on Order denying the Motion for Summary Judgment filed by Respondent. (ODC-15).

66. On June 22, 2021, Respondent issued several subpoenas commanding various individuals, including Coterra's CEO, Attorney Barrette, U.S. Assistant Secretary of Health Dr. Rachel Levine, and then-Governor Tom Wolf to "attend a videoconference deposition." (T. 52, 142, ODC-1, ODC-17, ODC-76).

67. On June 24, 2021, Attorney Barrette filed Coterra's Emergency Motion to Stay Compliance with Subpoenas, which was granted on June 25, 2021. (ODC-1).

68. On July 1, 2021, Attorneys Barrette and Burns filed Intervenor Coterra's Motion to Quash Subpoena and for Protective Order. (Ans. at ¶ 34).

69. On July 16, 2021, Respondent filed Appellant's Memorandum in Opposition to Coterra's Motion to Quash, in which Respondent disclosed that "[Landowners] 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." (ODC-16).

70. On July 21, 2021, the EHB issued an Opinion and Order, quashing the subpoenas. (ODC-17).

71. On August 9, 2021, Respondent filed a Motion to Extend Discovery, in which she averred that the parties had not served discovery, and that negotiations concerning a consent order an agreement were ongoing with the DEP. (ODC-18).

72. There were no ongoing consent order negotiations between Coterra and DEP at that time. (T. 23, 54, 56, ODC-21).

73. Respondent was having communications with the Attorney General's office regarding further investigation into possible use of TEG at the well site, however, any consent order would have been within the purview of the DEP and not the Attorney General's Office. (T. 24-25; 261-263).

74. Respondent did not meet-and-confer before filing the Motion to Extend Discovery. (ODC-18).

75. Had Respondent done so, there was no likelihood that Coterra would have consented to a discovery extension. (T. 113).

76. On August 24, 2021, the Motion to Extend was denied for failure to comply with the meet and confer requirement. (ODC-22).

77. On September 14, 2021, Attorneys Barrette and Burns filed Coterra's Motion for Summary Judgment, on the basis that Respondent's clients had failed to introduce evidence of water supply contamination by Coterra's operations. (ODC-23).

78. On September 15, 2021, the Office of Disciplinary Counsel dismissed the disciplinary complaint Ms. Stanley filed against Attorney Barrette. (ODC-24). Respondent was copied on this letter. (ODC-24).

79. On September 17, 2021, Respondent filed Appellant's Motion to Strike, for Sanctions for Spoliation of Evidence and Under Rule 4005. (ODC-26).

80. Respondent failed to engage in the required meet and confer process before filing that motion, and she failed to file a supporting Memorandum of Law. (ODC-26; Ans. at ¶ 52).

81. On October 5, 2021, the EHB issued its order denying the Motion to Strike for failure to comply with procedural rules and stating that continuing failure to comply with EHB rules may result in the imposition of sanctions. (ODC-29).

82. On November 23, 2021, the EHB issued an Order directing Respondent to file a pre-hearing memorandum, setting forth all anticipated experts, summaries or reports of the expert's anticipated testimony, a list of exhibits and copies of all exhibits. (ODC-30).

83. The November 23 Order also set forth that failure to comply with time limits set forth in the rules may result in waiver. (ODC-30).

84. Respondent attempted, unsuccessfully, to pursue interlocutory appellate relief before the Commonwealth Court. (ODC-1).

85. While those appellate efforts were ongoing, the EHB's deadline for the pre-hearing memorandum came due. (ODC-1, ODC-30). Respondent failed to file a timely pre-hearing memorandum. (T. 63-64).

86. On January 3, 2022, the EHB issued a Rule, directing Respondent to show cause why the EHB should not issue sanctions for failing to timely file a pre-hearing memorandum, and allowing discharge of the Rule should the pre-hearing memorandum be filed on or before January 10, 2022. (ODC-31).

87. On January 7, 2022, Respondent filed Landowners' Motion to Stay Proceeding, or In the Alternative, Extend Time for Landowners to File Pre-Hearing Brief, seeking an extension to January 19, 2022 for the filing of the pre-hearing memorandum. (ODC-32).

88. On January 7, 2022, the EHB granted the request of an extension to January 19, 2022, to file the pre-hearing memorandum. (ODC-33).

89. On January 19, 2022, Respondent filed the Pre-Hearing Memorandum and identified the facts in dispute as: whether Landowners' water supply is and was contaminated by Coterra's oil and gas operations. (ODC-34).

90. In the Pre-Hearing Memorandum, Respondent did not identify any experts to be called as part of Landowner's case in chief. (ODC-34).

91. The Pre-Hearing Memorandum contained a narrative of facts, a statement of legal issues, a section on experts, and a list of fact witnesses. (ODC-34)

92. In the section on experts, Respondent argued that the DEP and Coterra had the burden to proffer expert testimony, and that they engaged in waiver by failing to put forward expert testimony. (ODC-34).

93. Respondent had not engaged experts, as Ms. Stanley and Ms. Dibble could not afford to retain experts. (T. 257-258).

94. Respondent did not identify exhibits or attach copies of exhibits to the Pre-Hearing Memorandum. (ODC-34).

95. Respondent had filed items on the EHB docket, including: pictures, well records, fracking chemical lists, witness statements, water tests, surface activities, inspection reports, and Eurofins' test results. (ODC-1; T. 110-112).

96. Respondent incorrectly expected that filing those items on the EHB docket would be sufficient for EHB consideration and failed to properly identify those items within the pre-hearing memorandum. (T. 110-112, 236-236, 257).

97. Between January 27 and February 2, 2022, Attorneys Barrette and Burns filed four Motions *in limine*, seeking to preclude Respondent from offering *inter alia,* expert witness testimony at the evidentiary hearing, due to deficiencies in the pre-hearing memorandum. (ODC-35-ODC38).

98. Respondent then forwarded these Motions to representatives of the EPA and the Pennsylvania Office of Attorney General, and copied Attorneys Barrette and Burns on the email. (ODC-39, ODC-40).

99. On February 3, 2022, Respondent filed a Motion to Stay Proceedings before the EHB, representing that Attorney Barrette "will have" conversations with the AG's Office and the EPA. (ODC-40). Respondent requested a stay of the EHB proceedings for a period of sixty days. (ODC-40).

100. At the time Respondent filed the motion, no conversations were scheduled to take place between Attorney Barrette, the AG's Office, and/or the EPA. (T. 69).

101. A prosecutor was ultimately assigned by the AG's office to investigate Ms. Stanley and Ms. Dibble's claims against Coterra, approximately six months later. (T. 262).

102. Respondent failed to engage in the required meet and confer process before filing the Motion to Stay. (ODC-76; Ans. at ¶ 77).

103. On February 7, 2022, Respondent sent an email to Attorneys Barrette and Burns, demanding the withdrawal of Coterra's Motions in Limine, on the basis that they were "filed for the sole purpose of abusing the legal process and harassing and

intimidating my clients and me." Respondent also demanded: "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." (ODC-39)

104. On February 7, 2022, Attorneys Barrette and Burns filed Intervenor Coterra Energy's Opposition to Motion to Stay Proceedings, accusing Respondent of engaging in frivolous litigation and extortion. (ODC-41).

105. On February 9, 2022, Attorneys Barrette and Burns filed Coterra's Motion *in Limine* to Exclude the Introduction of Exhibits and Scientific Tests not Identified in Appellant's Pre-Hearing Memorandum. (ODC-42).

106. On February 9, 2022, Respondent's Motion to Stay Proceedings was denied. (ODC-44).

107. On February 11, 2022, Respondent sent a letter to EHB Judge Bernard A. Labuskes, Jr., stating that Landowners would not be filing responses to Coterra's Motions *in Limine,* stating that Landowners object to Coterra's efforts to limit evidence, and that Landowners would be the only witnesses to be called to testify at the hearing. (ODC-45; T. 26).

108. On February 15, 2022, Attorneys Barrette and Burns filed a motion on behalf of Coterra, seeking Sanctions in the form of legal fees, on the basis that: Respondent's motion to stay the proceedings was frivolous and contained false claims about conversations scheduled between Coterra's counsel, the AG's office and EPA; and that Respondent's February 7, 2022 email demanded the withdrawal of Coterra's counsel,

and the payment of Landowner's attorneys fees in the amount equivalent to what Coterra had paid its counsel. (ODC-46).[4]

109. On February 17, 2022, the EHB granted three of Coterra's Motions *in Limine,* and entered an Order precluding Landowners from introducing scientific tests, exhibits, and expert testimony into evidence during their case-in-chief in the upcoming evidentiary hearing on the merits. (ODC-47).

110. On February 21, 2022, Respondent filed an Opposition to Coterra's Motion for Sanctions, and erroneously again represented that the DEP confirmed use of TEG in Coterra's operations. (ODC-48). Respondent further contended that the EHB had been a "discriminatory and hostile forum," and that the EHB exhibited "biases against Landowners and Landowners counsel," and challenged Attorney Barrette's continued representation of Coterra despite what Respondent believed to be "inappropriate" conduct. (ODC-48).

111. On February 21, 2022, Respondent filed Landowners Memorandum of Law in Opposition to Intervenor's Motion for Sanctions and represented that there were pending ethical complaints against Attorney Barrette. (ODC-49). The confidential disciplinary complaint against Attorney Barrette, however, had been dismissed in September of 2021. (ODC-24).

Dibble: The Evidentiary Hearing

[4] The Hearing Committee finds that Respondent's demand for payment of Attorney's fees, while inartful, could be considered akin to seeking a sanction rather than a customary settlement demand. While the measure of Coterra's attorney fee payments is not a guide for what a "reasonable" fee for Respondent's representation of Landowners, the panel is also mindful that Respondent was representing Landowners on a *pro bono* basis. Because the Hearing Committee does not consider Respondent's statements about financial "demands" to rise to the level of a factual misrepresentation, the Committee has not recited the other filings and occasions that Respondent made this statement.

112. An evidentiary hearing was held before the EHB on February 22, 2022, and was conducted virtually via WebEx. (T. 118, ODC-50).

113. Prior to the hearing, Respondent worked with her clients to develop topics and questions for the hearing, and to prepare for the presentation of evidence through their testimony. (T. 165).

114. Coterra's Motion for Sanctions (filed a week prior) concerned the Landowners to the point that they wanted the Motion for Sanctions resolved before proceeding. (T. 166).

115. Respondent appeared at the virtual hearing with her clients, ready to introduce testimony. (T. 332).

116. Consistent with her clients' wishes, at the outset of the hearing, Respondent asked the Judge to take up the pending Motion for Sanctions first. (T. 166). The Judge declined to do so. (T. 120-121).

117. Thereafter, there was a break in the proceedings for Respondent to consult with her clients. (T. 120-121, 166-167).

118. Respondent's clients decided to not proceed with presenting testimony in the evidentiary hearing, because they were uncomfortable doing so with the Sanctions motion unresolved. (T. 121, 167). Landowners were aware that if they declined to testify, they may not have a second opportunity to do so in the future. (T. 167).

119. During the hearing itself, Respondent was respectful; she did not raise her voice, engage in name calling or level accusations against opposing counsel or the tribunal. (T. 119-120, 168).

120. In the hearing, Respondent entered no documentary evidence or testimony on behalf of Landowners. (ODC-50). At that time, Coterra and the DEP moved for Compulsory Nonsuit. (ODC-50).

Dibble: Post-Hearing Activity

121. In the course of the EHB proceedings, Judge Labuskes had unilaterally removed certain improperly-filed documents from Landowners from the docket, including personal statements authored by Landowners. (R-19, T. 293-296).

122. Respondent wrote letters to the Judge on March 14 and 15, 2022, asking why the filings had been removed. (ODC-69, T. 295, R-25). On March 16, 2022, the Judge entered an Order, striking her letter. (ODC-1).

123. On May 9, 2022, Respondent filed Landowners' Reply Brief, opposing Coterra and the DEP's motion for nonsuit. (ODC-51). In that Brief, Respondent again contended that the DEP admitted to TEG use at the well sites in Mr. Braymer's April 2, 2021 email. (ODC-51). In this filing, Respondent also accused the DEP, EHB and Judge Labuskes of ongoing violations of Landowners' First Amendment free speech and due process rights. (ODC-51). Respondent contended that Judge Labuskes retaliated by deleting Landowners' filings from the EHB docket, that he demonstrated bias against Landowners, and demanded that he recuse himself from the proceedings. (ODC-51).

124. On May 9, 2022, the EHB communicated to the parties by email that Judge Labuskes would like to hold oral argument via telephone on Coterra's pending motion for sanctions and asked the parties to provide their availability the afternoon of May 25, 2022. (ODC-52).

125. Respondent objected to the matter proceeding as an oral argument, as she believed she and her clients should have had the opportunity for an evidentiary hearing. (T. 275, 308; ODC-53).

126. On May 10, 2022, Respondent filed Landowners Demand for the Board's Removal of Judge Labuskes, alleging:

> 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 Land-owners' 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.

(ODC-53).

127. Although it was reasonable for Respondent to have generalized concerns about the EHB proceedings and DEP activity, Respondent's allegations against Judge Labuskes as set forth within the Landowners Demand for the Board's Removal of Judge Labuskes were false, and had no basis in law or fact that is not frivolous. (*See* ODC-53).

128. On June 7, 2022, the EHB granted the Motion for Sanctions, entering sanctions against both Respondent and Landowners, although Coterra did not specifically request sanctions against Landowners. (ODC-76, T. 121).

129. On June 15, 2022, the EHB granted Coterra and the DEP's Motion for Compulsory Nonsuit, finding that the Landowners bear the burden of proof, and that Landowners failed to put on a case-in-chief or offer any evidence. (ODC-55).

130. On June 17, 2022, Respondent filed a Petition to Amend the Board's Interlocutory Order Granting Intervenor's Motion for Sanctions in the Form of Legal Fees, in which she continued to argue that the Order was borne of Judge Labuskes' bias against Landowners, and that the Judge's conduct, particularly in deleting Landowners'

inappropriately filed documents on the docket, constituted a violation of Landowners' First Amendment rights. (ODC-56).[5]

In the matter of Glahn and Gorencel v. DEP

EHB Docket No. 2021-049-L

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

132. Mr. Glahn and Ms. Gorencel had lived at their property for 38 years, and their water supply is a spring vault that comes from an aquifer under the ground. (T. 175-176).

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

134. Ms. Gorencel testified that prior to this, they had no problems with the water or the pond. (T. 177-179).

135. Ms. Gorencel testified that during the time of these changes in water quality, there was fracking activity on a well pad approximately 550 from the home and that above the house on top of the mountain, an energy company was putting in a pipeline. (T. 178).

136. The landowners were elderly, retired, and the male had significant health issues. (T. 182-183). Their goal was to get an investigation done and get help. (T. 182).

[5] It is not within the Hearing Committee's purview to reach a determination as to whether Judge Labuskes had the authority to delete filings. The Hearing Committee's focus is on Respondent's practice of inappropriately filing evidentiary type documents on the docket, and her lack of understanding about the nature of appropriate filing practices. At the time of the hearing, it appeared that Respondent still did not fully appreciate that personal statements and evidence are not appropriate documents to directly file on a litigation docket. (T. 294-295).

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

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

139. The landowners retained Ms. Johnson in April of 2021, well beyond the 45 day statutory period for DEP making a determination. (T. 181, 280).

140. Respondent and the landowners knew that the DEP needed to issue a Final Determination to trigger appellate rights to the EHB, but given the DEP's failure to timely act, Respondent looked for options for her clients. (T. 184, 281).

141. Respondent, on behalf of the landowners, appealed to the EHB in an effort to get the DEP to act, thereby raising the legal question of whether the DEP's failure to timely issue a determination was an appealable event. (Ans. at ¶ 124-125, T. 282-283).

142. On August 27, 2021, the DEP filed a Motion to Dismiss the appeal, arguing that Respondent, on behalf of landowners, failed to identify an appealable event to which the EHB's jurisdiction may attach. (ODC-59).

143. On September 24, 2021, Respondent filed an Opposition to the Motion to Dismiss, arguing that the DEP's failure to act constituted an unconstitutional taking. Ans. at ¶ 126.

144. On November 21, 2021, the EHB issued an Opinion an Order, evaluating the merits of the Motion to Dismiss. (ODC-61). The EHB determined that the DEP's failure to timely act was not an appealable event, creating jurisdiction within the EHB. (ODC-61). One EHB judge dissented from this decision. (T. 268, R-23).

145. On appeal, the Commonwealth Court affirmed the dismissal, but disapproved of the DEP's prolonged inaction. *Glahn v. Dep't of Env't Prot. (Env't Hearing Bd.)*, 2023 Pa. Commw. Lexis 98, *2 (2023), (T. 287).

146. On November 22, 2021, Respondent filed a Petition for Reconsideration on the Motion to Dismiss, arguing that the DEP's inaction constituted a "taking," and the EHB's prolonged proceedings constitutes an additional "taking." (Ans. at ¶ 128).

147. Although ultimately unsuccessful, Respondent's argument was a novel legal argument arising out of the DEP's failure to comply with its 45-day statutory mandate to issue a Determination Letter, in combination with the EHB's failure to enforce the statute against the DEP. (T. 289).

148. This theory was recognized in the jurisdiction of Maryland, in *Litz v. Md. Dep't of the Env't,* 131 A.3 923 (Md. 2016), and that opinion had been raised and considered by the EHB in the course of the *Glahn* litigation. (T. 290-291, R-23). This theory has also been discussed in the legal scholarly article by Joseph Belza, *Invers Condemnation and Fracking Disasters: Government Liability for the Environmental Consequences of Hydraulic Fracturing under a Constitutional Takings Theory,* 44 B.C. Envtl. Aff. L. Rev. 55 (2017). (T. 289, ODC-73).

149. Although novel and unsuccessful, Respondent's appeal to the EHB on behalf of Mr. Glahn and Ms. Gorencel was not frivolous.

Additional Facts and Mitigation Evidence

150. Attorney Barrette's testimony was credible.

151. Respondent's testimony was credible. She acknowledged her inexperience and missteps in handling the *Dibble* case. There are certain areas in which the Hearing

Committee believes Respondent does not fully appreciate the extent of her lack of experience, e.g. her apparent lack of appreciation about the types of documents that can appropriately be filed on a litigation docket. (*See* T. 294-295). However, the Hearing Committee found that she credibly testified that she is accepting mentorship, that she is openminded about her need to further develop the necessary expertise, and that she is making genuine efforts to find that help an apply it in her practice. (T. 278-279).

152. Respondent credibly expressed remorse for her tone and language in the *Dibble* case, and acknowledged that it was at times harsh, rude, and unprofessional. (T. 279).

153. Respondent credibly expressed remorse for the impact her conduct had upon her clients. (T. 307).

154. Respondent credibly testified that her language and conduct were driven by her emotions and perception that her clients were suffering, and that the dispute was a matter of her clients' health and clean water. (T. 279). The credibility of her testimony is bolstered by her personal connection as a life-long friend to Ms. Dibble, the credible testimony that Ms. Stanley and Ms. Dibble could find no other lawyer to help them, the fact that Respondent took on the *Dibble* representation *pro bono*, and that the goal of that litigation was to obtain clean, potable water for them. (T. 84-86, 157, 168-169, 203, 207-208).

155. Because of her unfamiliarity with the litigation process and the forum, Respondent failed to adequately prepare the *Dibble* matter, failed to fully understand the legal standards applicable to the issues presented, and failed to put forward an adequate evidentiary presentation.

156. The Respondent's requests for extensions and continuances in the *Dibble* matter appear to be a product of Respondent being overwhelmed, a lack of preparation, and unfamiliarity with the forum and its practices, and not an effort to unreasonably or vexatiously delay the proceedings. The goal was to obtain clean water for the Landowners in *Dibble,* and delay would not serve that purpose.

157. Respondent credibly testified that she has applied these lessons in her practice. Respondent continues to litigate before the EHB, and recently litigated a matter that proceeded to an 11–12-day trial before Judge Labuskes, who presided over *Dibble.* (T. 243, 380). In that case, she served formal discovery, took depositions, filed pretrial statements and introduced evidence at the hearing, including the examination of witnesses. (T. 244).

158. Other than the Sanctions Order in the *Dibble* case, Respondent has never been sanctioned or been the subject of any other Motion seeking sanctions. (T. 303).

159. Outside of the events at issue in this proceeding, no client, court, or employer has questioned Respondent's competency. (T. 303).

160. Respondent cooperated with ODC in connection with this Complaint and investigation. Respondent's Proposed Findings of Fact appropriately accepted facts that were established, and reasonably disputed facts that were subject to dispute. There has been no evidence that Respondent has attempted to evade, interrupt, or undermine these disciplinary proceedings.

161. Respondent has defended against these serious disciplinary charges, including by presenting her own testimony, witness testimony, and raising objections and motions through counsel.

162. Respondent's disciplinary history consists of previous criminal convictions related to a DUI incident, which occurred in conjunction with a mental health and substance abuse crisis surrounding her departure from Buchanan Ingersoll. (T. 303-304). She self-reported this conviction to the Disciplinary Board. (T. 303-304).

163. After the incident, she received therapy for PTSD, reached out to Lawyers Concerned for Lawyers, and in 2016, became a volunteer for LCL. (T. 303-304).

164. Attorney Michael Bruzzese credibly testified as a character witness, familiar with Respondent's skills as a lawyer. He has known Respondent since June 2023, as they served together as co-counsel on an oil and gas case. (T. 390-391). He assessed her professional skills and demeanor, and found her to be a competent and capable lawyer. (T. 389-403).

165. Attorney William Anthony Sala, Jr. credibly testified as a character witness, and has been familiar with Respondent's skills as a lawyer since 2014. (T. 354). He testified that she advocates honestly, within the realm of zealous advocacy. (T. 354-362).

166. Attorney Steven Badger credibly testified as a character witness and has known Respondent since 2018. (T. 364). He described he as a person with high integrity, honesty and a strong advocate for social justice and for people who would otherwise not be heard due to limited resources. (T. 364-372).

167. Ms. Jane Cleary also credibly testified as a character witness, and she has been familiar with Respondent as a liaison for one of Respondent's clients, CAESRA, since 2022. (T. 376). Ms. Cleary observed Respondent's representation in the 12-day EHB hearing before Judge Labuskes, and described her as very professional and calm. (T. 379-380). Ms. Cleary described Respondent as demonstrating the qualities of

transparency, access, promptness, diligence, an ability to communicate and passion. (T. 377-378). Ms. Cleary testified that Respondent immediately disclosed the Sanctions Order in *Dibble* to CAESRA, and was aware that the sanction order involved a conclusion involving dishonesty. (T. 383-385). Ms. Cleary was impressed with Respondent's honesty in divulging the order, as CAESRA was unlikely to discover it on their own. (T. 384-385).

V. CONCLUSIONS OF LAW

By her actions set forth above, Respondent violated the following Rules of Professional Conduct:

> **RPC 1.1:** A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
>
> **RPC 3.1** A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.
>
> **RPC 3.3(a)(1)** (a) A lawyer shall not knowingly:
>
>> (1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.
>
> **RPC 4.1(a)** In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person.
>
> **RPC 8.2(a)** A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.
>
> **RPC 8.4(c)** It is professional misconduct for a lawyer to: (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that a lawyer may advise, direct, or supervise others, including clients, law enforcement officers, and investigators, who participate in lawful investigative activities.

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

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

VI. DISCUSSION

This matter is before the Hearing Committee for consideration of the charges filed against Respondent alleging violations of Rules of Professional Conduct 1.1, 1.3, 3.1, 3.2, 3.3(a)(1), 3.5(d), 4.1(a), 4.4(a), 8.2(a), 8.4(c), 8.4(d) and Pa. R. D. E. 402(c). Respondent admits to a violation of Rule 1.1 with respect to the *Dibble* case, acknowledges that her motions to disqualify counsel in *Dibble* had insufficient legal support in contravention of Rule 3.1, and acknowledges a violation of Pa. R. D. E. 402(c) in failing to keep a disciplinary complaint confidential. In addition to Respondent's acknowledgment of these violations, the Hearing Committee finds that these violations were established by the evidence in this matter.

With respect to the remaining alleged violations, the ODC has the burden of proving that an attorney's actions constitute professional conduct and must meet that burden by a preponderance of clear and satisfactory evidence. *ODC v. Grigsby, 425 A.2d 730* (Pa. 1981), *ODC v. William B. Kiesewetter, Jr.,* 889 A.2d 47, 54 n. 5 (Pa. 2005)*, ODC v. Kerins,* 749 A.2d 441, 444 (Pa. 2000).

A. Established Violations

As discussed more fully hereinafter, based upon the evidence presented, the Hearing Committee finds that Respondent's conduct violated the following Rules of Professional Conduct:

***Dibble* Proceeding**:

COMPETENCE, RPC 1.1.: Respondent acknowledges a violation of Rule 1.1 in her conduct throughout the *Dibble* proceeding. Specifically, the Hearing Committee finds Respondent's conduct to have been violative of her duty of competence in: failure to conduct appropriate discovery and investigation, failure to adequately familiarize herself with the litigation process and EHB rules and procedures, failure to comply with the applicable procedural rules and deadlines, failure to competently submit an adequate Pre-Hearing Memorandum, and failure to adequately respond to the opposing party's Motions *in Limine*.

MISREPRESENTATIONS AND FRIVOLOUS ASSERTIONS, RPC 3.1, 3.3(a)(1), 4.1(a), 8.4(c):

The Braymer Email: The Hearing Committee finds that Respondent misrepresented, and perpetuated a misrepresentation, in continuing to assert that the DEP, through Mr. Braymer's April 2, 2021 email, admitted to TEG usage at the well site at issue. Although Respondent's initial characterization of this email could be tolerated as erroneous, once Respondent was put on notice of this mischaracterization by the DEP's Response to Motion for Summary Judgment (ODC-12), Respondent acted in reckless disregard for the truth in continuing to repeat her mischaracterization, without any further investigation and despite being notified of its falsity. The repetition of these statements in her filings in February of 2022 (ODC-48) and May of 2022 (ODC-51) constitute violations of these rules.

Motions to Stay and Extend Discovery: The Hearing Committee finds that Respondent further engaged in factual misrepresentations by affirmatively representing to the tribunal in her August 2021 Motion to Extend Discovery that consent order

negotiations between the DEP and Coterra were ongoing (ODC-18) and representing in her February 2022 Motion to Stay that conversations between Coterra, the DEP and the Attorney General's office "will" take place (ODC-40). No such negotiations or conversations existed. Respondent's hopes for the same, or off-the-record discussions with other entities, are not substitutes for non-existent events that Respondent affirmatively represented to the tribunal.

MISREPRESENTATIONS, FRIVOLOUS ASSERTIONS AND IMPUGNING THE INTEGRITY OF THE COURT:

Motion for Nonsuit and Demand for the Judge's Removal: Respondent engaged in further factual misrepresentations, as well as violations of **RPC 8.2(a) and 8.4(d)** in her unproven attacks upon the integrity of the EHB and Judge Labuskes in the May 9, 2022 opposition to the DEP and Coterra's Motions for Nonsuit (ODC-51) and May 10, 2022 Demand for the Board's Removal of Judge Labuskes (ODC-53). The Respondent was attempting to practice an unfamiliar area of law in an unfamiliar forum. Instead of corralling the efforts and resources necessary to comply with her duties of competence, she instead baselessly cast every adverse ruling as bias, retaliation, or corruption. While the Hearing Committee found Respondent's testimony that her thinking in the *Dibble* litigation was informed by the 2020 Grand Jury Report and Justice Castille's expert report in the *Speer* litigation, neither of those documents constituted facts or evidence specific to the *Dibble* case. Respondent's accusations against the Judge and opposing counsel were factually unsupported and intolerable, given her duties of Professional Conduct.

B. Violations Not Established

The Hearing Committee does not find that the ODC met its burden of proving the following rule violations:

***Dibble* litigation before the EHB**:

RPC 1.3 (Diligence)—While Respondent missed deadlines, requested extensions, and incurred other delay, the Hearing Committee concludes that these activities were attributable to Respondent's failures in competence (in violation of RPC 1.1) rather than a failure in diligence and promptitude.

MISREPRESENTATIONS AND FRIVOLOUS ASSERTIONS, RPC 3.1, 3.3(a)(1), 4.1(a), 8.4(c):

Statements Regarding Monetary Demands and Production of Evidence: The Hearing Committee finds that the evidence concerning Respondent's representations regarding "monetary demands" and Landowners' introduction of evidence fall more generally within her failings of competence in violation of Rule 1.1, than as misrepresentations of fact or dishonesty. The demand for reimbursement of attorney's fees was inartful and not based on any reasonable calculation method, however, it was raised more in the fashion of seeking a sanction than a demand for settlement of a claim. In the way that such statements were presented, the Hearing Committee did not find that the statements were misrepresentations or frivolous assertions in the fashion contemplated by the Rules. With respect to Respondent's representations regarding evidence, Respondent credibly testified that she believed (however wrongly) that filing narratives, test results and other "evidence" on the EHB docket was sufficient to introduce that evidence. Given her demonstrated failures in competence, the Hearing Committee is

of the opinion that Respondent made statements she believed to be true, although they were ultimately erroneous. The absence of Rule violation does not excuse the conduct on either of these points. Respondent did not meet the standard of competence for practice of an attorney, but the Hearing Committee did not find these statements to be knowing misrepresentations or dishonesty.

Glahn **litigation before the EHB**: The Hearing Committee finds that the ODC did not meet its burden of proof with respect to any rule violation by Respondent in the *Glahn* proceeding. The arguments raised therein were not successful, and it appears that the filings were not skillfully crafted, but they were not frivolous or violative of the Rules of Professional Conduct.

ODC and Respondent offer vastly divergent recommendations with regard to discipline in this case. ODC urges a five-year suspension, while Respondent suggests a reprimand. In imposing discipline, the Supreme Court "must balance a concern for the public welfare with a respect for the substantial interest that the attorney has in continuing his professional involvement in the practice of law." *Office of Disciplinary Counsel v. Lewis,* A.2d 1138, 1142 (Pa. 1921). The Hearing Committee finds that these circumstances fall somewhere in the middle and recommends a one year suspension as the appropriate discipline. Respondent here significantly failed to competently represent her clients in the *Dibble* proceeding, and when she faced the natural and probable consequences of those failures, she lashed out and groundlessly attacked the tribunal. These are serious acts that call for the serious consequence of suspension. A period of suspension acknowledges the number and severity of the offenses, while the one-year period and the corresponding opportunity to re-enter practice without a Petition for

Reinstatement, acknowledges the Respondent's acceptance of responsibility, remorse for wrongdoing, and proactive conduct to secure mentorship and assistance to cure her deficiencies in competence.

In Pennsylvania, there is no per se discipline for a particular type of misconduct, but instead each case is reviewed individually. *Office of Disciplinary Counsel v. Lucarini,* 472 A.2d 186 (Pa. 1982). In furtherance of its purpose of protecting the public from unfit lawyers, maintaining the integrity of the legal system, and preserving the public's confidence in the legal and judicial system, the disciplinary system seeks to deter similar misconduct. *Office of Disciplinary Counsel v. Costigan*, 584 A.2d 296 (Pa. 1990), *Office of Disciplinary Counsel v. Keller*, 506 A.2d 872 (Pa. 1986), *In re Iolo*, 766 A.2d 335, 339 (Pa. 2001). The disciplinary system must also be mindful of precedent and the need of consistency so that radically different discipline is not imposed for similar misconduct. *Lucarini*, 472 A.2d at 190.

Upon determining a violation of the Rules of Professional Conduct, the Hearing Committee must arrive at a disciplinary recommendation justified by the Respondent's unprofessional and unethical conduct. *Office of Disciplinary Counsel v. Campbell*, 245 A.2d 616 (Pa. 1975), *cert. denied,* 424 U.S. 926 (1976). The Committee must determine the appropriate discipline which will meet the disciplinary systems goals, and in consideration of any aggravating and mitigating factors. *Id.; Office of Disciplinary Counsel v. Anthony Dennis Jackson,* No. 145 DB 2007 (D. Bd. Rpt. 11/21/08 at 13-14) (S.Ct. Order 4/3/09).

In *Office of Disciplinary Counsel v. Arcuri*, 140 DB 2005 (D. Bd. Rpt. 2/13/2006) (S. Ct. Order 4/7/06), the Supreme Court accepted the Disciplinary Board's recommendation

of a one-year consented-to suspension, in a matter in which the respondent had failed to file timely appeals of two criminal defense clients, resulting in the appeals being quashed and these clients losing all appellate rights. That respondent also filed untimely briefs in fourteen cases (ranging from 73 to 28 days late) and filed untimely docketing statements in fourteen cases. The respondent also engaged in myriad failings of communication and competence throughout these fourteen cases. The respondent in *Arcuri* also had a disciplinary history of three prior private reprimands. Given the number of failings including numbers of clients detrimentally impacted, as well as the aggravating history of multiple prior disciplinary infractions, the Hearing Committee finds that *Arcuri* presented more severe attorney misconduct than that of Respondent's and is consistent with the recommendation of a one-year suspension under the present facts.

In *Office of Disciplinary Counsel v. Wadhwa*, 99 V 2005 (D. Bd. Rpt. 5/22/2007) (S. Ct. Order 8/30/2007) the respondent failed to communicate with her client and failed to competently represent him in immigration proceedings, resulting in an order subjecting her client to arrest and deportation (the client secured new counsel and was able to have his case reopened), and falsely represented to the court that she was hospitalized with pneumonia on the date of the client's hearing, when she was actually not hospitalized until several days later. The respondent had prior discipline involving a prior suspension and reinstatement. There, the disciplinary board determined that the respondent's failures in competence and misrepresentation warranted a nine-month suspension from the practice of law.

Wadhwa involved a lesser period of suspension with fewer lapses of competence in the course of the representation, and *Arcuri* involved suspension equal to the amount

recommended here, based upon more serious violations of the duty of competence. However, neither of these cases involved conduct impugning the tribunal such as presented by Respondent's outbursts against the EHB and Judge Labuskes here. This combination of violations by Respondent warrants discipline in the form of a one-year suspension.

Turning to the authorities cited by the parties, two authorities cited by Respondent, *Office of Disciplinary Counsel v. Gerace,* 26 DB 2023 (Feb. 15, 2023) and *Office of Disciplinary Counsel v. Mulvihill,* 56 DB 2023 (Apr. 12, 2023) involved discrete, singular incidents of outburst and unfounded accusations against opposing counsel and the tribunal. *Office of Disciplinary Counsel v. Korey,* 130 DB 2022 (Sept. 26, 2022) involved the respondent leveling written and verbal attacks against opposing counsel and the judiciary in hearings and written filings throughout the course of a legal dispute. We find that Respondent's conduct here, in attacking the EHB and the Judiciary, and in combination with her other violations of professional conduct in this matter, to be more serious than the conduct in *Gerace*, *Mulvihill* and *Korey*, and warranting of a higher level of discipline than a reprimand.

The authorities cited by ODC in support of a lengthier suspension are also dissimilar to the present circumstances. ODC cites *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); *Office of Disciplinary Counsel v. Donald A. Bailey,* 11 DB 2011 (D.Bd. Rpt. 5/1/2013) (S.

Ct. Order 10/2/2013); *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), all involve attorneys who engaged in a prolonged course of unfounded disparagement and accusations lacking factual foundation. Even when called up for disciplinary proceedings for the conduct, they failed to acknowledge their conduct, some even going so far as to proceed to attack ODC and the Disciplinary Board. While Respondent's disparagement of the EHB and Judge Labuskes certainly violated the Rules and warrants a consequence of suspension, Respondent's conduct is not to the nature or extent of the conduct in these cases.

Concerning evidence of aggravating and mitigating circumstances, the ODC argues that Respondent has been dishonest and uncooperative in the disciplinary proceedings. The Hearing Committee disagrees. The Hearing Committee found Respondent's testimony to be credible, although at times not entirely sophisticated to the legal issues faced in the underlying litigation. The Hearing Committee finds that Respondent truly believes that Respondent thought she was fighting the "good fight" in representing the underserved, often unheard, elderly "little guy" against a massive energy company with vast resources, both financial and legal. While several conclusions that Respondent drew in the course of that litigation were erroneous, the Hearing Committee believes that (with the exception of her filings impugning the EHB and Judge Labuskes, discussed above) she did not knowingly perpetuate falsehoods either in the *Dibble* mater or in these disciplinary proceedings. Additionally, the Hearing Committee finds that Respondent's conduct, through counsel, of defending against serious disciplinary charges is not "frivolous" behavior or "lack[ing] candor." Although the oral motion to

dismiss during the disciplinary proceedings is foreclosed by the Disciplinary Board rules, and Respondent did file a Motion *in Limine* and challenge to the ODC's exhibit list, these were advocacy activities by Respondent's counsel in the course of defending a client against serious disciplinary charges. The Hearing Committee also rejects the ODC's argument that Respondent "concealed" her previous substance-abuse related conviction from character witnesses, and the ODC's contention that this should be treated as an aggravating circumstance. Respondent, unfortunately like many attorneys, had a mental health and substance abuse crisis. She faced criminal consequences for her behavior, including criminal charges of child endangerment. She self-reported the incident, sought help, and became a resource for others in similar crisis by volunteering with Lawyers Concerned for Lawyers. The Hearing Committee is not convinced that she should bear an eternal scarlet letter of this misdeed and be expected to self-disclose this history to every professional contact she encounters. Respondent did what she is expected to do, to make things "right" from her bad decisions in a bad situation and should not be further penalized by the expectation that she widely share this painful history.

Respondent presented credible mitigation evidence, which supports the recommended level of discipline. Respondent demonstrated credible remorse and accepted responsibility, including admitting to infractions of Rules 1.1 and Pa. R. D. E. 402. Respondent's multiple character witnesses observed and testified to her practice of law, both as co-counsel and as clients, since the time of these events. Respondent's character witnesses testified to her good character and contributions to the legal field. She has made dedicated efforts to cure her deficiencies and demonstrated that ability in litigating an 11 or 12 day evidentiary hearing before the very same tribunal, by all accounts

without incident or concern. Respondent has engaged in pro bono work throughout the course of her career, with an aim of increasing access to justice for the underserved. Indeed, the very matter underlying this disciplinary representation was a pro bono engagement which aimed to provide clean water to her clients, rather than a profit to Respondent.

VII. RECOMMENDATION

Based on the evidence and considerations set forth above, the Hearing Committee recommends to the Disciplinary Board that Respondent be suspended from the practice of law for a period of one year.

Respectfully Submitted,

/s/ Kathleen P. Dapper
Kathleen P. Dapper Esq., Chair

/s/ Phillip R. Earnest
Phillip R. Earnest Esq., Member

/s/ Elizabeth F. Collura
Elizabeth F. Collura Esq., Member

Date: June 6, 2024