MEMORANDUM

FROM: Daniel S. White, District IV
Disciplinary Counsel

TO: Board Prothonotary, The Disciplinary Board

DATE: August 3, 2023

RE: Office of Disciplinary Counsel
v. Lisa Ann Johnson
No. ___ DB 2023 (C4-22-884)

****

Attached hereto please find a Petition for Discipline for filing in the above matter.

Respondent is represented by Bethann R. Lloyd, DiBella Weinheimer, Law & Finance Building, 429 Fourth Avenue, Suite 200, Pittsburgh, Pennsylvania 15219 and Robert H. Davis, Jr., Davis Law Offices, 4900 Janelle Drive, Harrisburg, Pennsylvania 17112.

Thank you.

Attachment

cc: Renee L. Weber, Operations Coordinator

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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

PETITION FOR DISCIPLINE

Petitioner, the Office of Disciplinary Counsel, by Thomas J. Farrell, Chief Disciplinary Counsel, and Daniel S. White, Disciplinary Counsel, files the within Petition for Discipline, and charges Respondent, Lisa Ann Johnson, with professional misconduct in violation of the Rules of Professional Conduct and Rules of Disciplinary Enforcement as follows:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter "Pa.R.D.E."), 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.

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.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

CHARGE

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").

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

> the Department has determined that the Water Supply was not adversely affected by oil and gas activities including but not limited to the drilling, alteration, or operation of an oil or gas well.
> …
> On January 20, 2020, after the Department's initial sampling of

> your Water Supply, you had your water sampled by a private laboratory. You and your attorney expressed concerns about your laboratory's detection of triethylene glycol ("TEG") in the samples collected by the private laboratory as noted in the table below. Staff from the Department's Bureau of Laboratories ("BOL") reviewed the results from the private laboratory. As discussed with you and your attorney, the BOL identified a number of potential problems with the analysis conducted by the private laboratory resulting in unreliable results. Nevertheless, the Department agreed to sample your Water Supply again and include analysis for TEG.
>
> …
>
> Department staff sampled your Water Supply again on July 1, 2020. Samples were also collected on that date by your private laboratory. TEG was not detected in the samples collected by the Department as explained by the BOL. However, your private laboratory results again detected TEG, although at lower concentrations than previously detected in the first samples. BOL staff again reviewed the results of the samples collected by the private laboratory and identified a number of potential problems with the analysis, including the fact that the New Jersey laboratory that analyzed the sample is not accredited by the BOL Laboratory Accreditation Program in Pennsylvania for glycol analysis. On a number of occasions during the investigation, the Department requested that your private laboratory share the raw data from their analysis so that further evaluation could be conducted in an effort to resolve the discrepancies in the TEG sample results. However, you refused to allow your private laboratory to share the raw data with the Department.

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.

7. Respondent failed to propound any interrogatories in connection with this matter.

8. Respondent failed to propound any requests for production of documents in connection with this matter.

9. Respondent failed to propound any requests for admissions in connection with this matter.

10. Respondent failed to conduct any depositions in connection with this matter.

11. 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”).

12. 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.”

13. This Motion had no basis in fact that is not frivolous.

14. This Motion had no basis in law that is not frivolous.

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

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

(a) demanded that Respondent withdraw the Motion set forth in paragraphs 12-15 *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."

17. 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."

18. This Motion had no basis in fact that is not frivolous.

19. This Motion had no basis in law that is not frivolous.

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

21. On March 8, 2021, Respondent filed an Amended Notice of Appeal.

22. By Order dated March 26, 2021, *inter alia*, the Motions set forth in paragraphs 12-15 and 17-20 *supra* were denied.

23. 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.

24. 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."

25. 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."

26. The representations set forth in paragraphs 24-25 *supra* are false. As set forth in paragraph 23 *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."

27. On May 7, 2021, Mr. Braymer and DEP Assistant Counsel Kayla Despenes and Paul Strobel 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.

(emphasis in original, footnote omitted).

28. On May 21, 2021, Respondent filed Appellants' Reply Brief in Support of Appellants' Motion for Summary Judgment.

29. 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 Judgement or in the Alternative, for Sur-Reply.

30. On June 1, 2021, Ms. Stanley filed a disciplinary complaint against Ms. Barrette.

31. 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."

32. 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 24 *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."

33. On June 22, 2022, Respondent issued several subpoenas commanding various individuals, including Ms. Barrette, to "attend a videoconference deposition."

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

35. 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."

36. 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 34 *supra*.

37. 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."

38. 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).

39. The representation set forth in paragraph 37(b) *supra* is false. Neither Respondent nor Cabot were negotiating the terms of a consent order and agreement with the DEP.

40. Respondent's assertion 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" has no basis in fact that is not frivolous.

41. On August 16, 2021, Mr. Braymer propounded the Department's First Set of Interrogatories and First Request for Production of Documents

Directed to Tonya Stanley, Bonnie Dibble, and Jeffrey Dibble, which requested, *inter alia*:

(a) the identity of "each person that the Appellants intend to call as an expert witness at the hearing in this case"; and

(b) "[n]otes, worksheets, test data and reports, correspondence, memoranda, opinions, and conclusions of all expert witnesses who will or may testify at trial on behalf of Appellants."

42. 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.'"

43. 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."

44. By Order dated August 24, 2021, the Motion set forth in paragraphs 37-40 *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)."

45. 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 have always 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.

(internal citations omitted).

46. By letter to Ms. Stanley dated September 15, 2021, the Office of Disciplinary Counsel dismissed the disciplinary complaint set forth in paragraph 30 *supra*.

(a) Respondent was copied on this letter.

47. On September 15, 2021, Respondent provided Appellants' Responses to the Departments' First Set of Interrogatories and First Request for Production of Documents Directed to Tonya Stanley, Bonnie Dibble, and Jeffrey Dibble.

48. These responses did not identify any proposed expert witnesses.

49. These responses did not provide any expert reports.

50. On September 17, 2021, Respondent filed Appellants' Motion to Strike, for Sanctions for Spoliation of Evidence and Under Rule 4005, in which she averred that, *inter alia*:

> 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) 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."

51. 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).

52. 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).

53. By letter to Respondent dated September 23, 2021, Mr. Braymer said that, *inter alia*:

(a) the DEP found the Appellants' Responses to the Departments' First Set of Interrogatories and First Request for Production of Documents Directed to Tonya Stanley, Bonnie Dibble, and Jeffrey Dibble set forth in paragraphs 47-49 "to be deficient and noncompliant with the Rules of Civil Procedure"; and

(b) "[y]ou have not produced a single responsive document, identified any documents not produced, nor stated any objections or bases for non-production."

54. By email to Mr. Braymer dated September 29, 2021, Respondent said, "[w]e will not be supplementing our responses to the Department's interrogatories for a number of reasons. If the Department feels the need to file a motion to compel, that is the Department's prerogative."

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

(a) denied the Motion set forth in paragraphs 50-52 *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."

56. 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."

57. 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.

(emphasis in original).

58. Respondent failed to file a pre-hearing memorandum on or before December 30, 2021.

59. 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" (emphasis removed).

60. 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."

61. 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 56 *supra*.

62. On January 19, 2022, Respondent filed Landowners' Pre-Hearing Memorandum.

63. This Landowners' Pre-Hearing Memorandum 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.”

64. 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]*.

(internal citations omitted).

65. This Landowners' Pre-Hearing Memorandum failed to identify any expert witnesses that Respondent intended to call at the impending evidentiary hearing.

66. This Landowners' Pre-Hearing Memorandum failed to identify or attach any exhibits that Respondent intended to introduce at the impending evidentiary hearing.

67. On January 27, 2022, Ms. Barrette and Mr. Burns filed Coterra Energy, Inc.'s Motion *in Limine* to Preclude Appellants from Offering Expert Witness Testimony Not Identified in Appellants' Pre-Hearing Memorandum, averring that, *inter alia*:

(a) "Appellants filed their Pre-Hearing Memorandum on January 19, 2022, but they failed to identify any expert witnesses in their Pre-Hearing Memorandum" (internal citation omitted);

(b) "Appellants' Pre-Hearing Memorandum failed to summarize any expert testimony that Appellants intended to offer at the hearing" (internal citation omitted); and

(c) "Appellants failed to attach any expert witness reports to their Pre-Hearing Memorandum" (internal citation omitted).

68. On January 28, 2022, Ms. Barrette and Mr. Burns filed Coterra Energy, Inc.'s CORRECTED Motion *in Limine* to Preclude Appellants from

Offering Expert Witness Testimony Not Identified in Appellants' Pre-Hearing Memorandum, averring that, *inter alia*:

(a) "Appellants filed their Pre-Hearing Memorandum on January 19, 2022, but they failed to identify any expert witnesses in their Pre-Hearing Memorandum" (internal citation omitted);

(b) "Appellants' Pre-Hearing Memorandum failed to summarize any expert testimony that Appellants intended to offer at the hearing" (internal citation omitted); and

(c) "Appellants failed to attach any expert witness reports to their Pre-Hearing Memorandum" (internal citation omitted).

69. On February 1, 2022, Ms. Barrette and Mr. Burns filed Intervenor Coterra Energy, Inc.'s Motion *in Limine* to Exclude Fact Witnesses Not Identified in Appellants' Pre-Hearing Memorandum, averring that, *inter alia*:

(a) "Appellants January 19, 2022 Pre-Hearing Memorandum identified certain fact witnesses that they intend to call at the hearing on the merits" (internal citation omitted); and

(b) "[i]n their Pre-Hearing Memorandum, Appellants also purported to 'reserve the right to amend this Pre-Hearing Memorandum at any time[,]' in an attempt to leave open the possibility of including witnesses beyond those disclosed in their Pre-

Hearing Memorandum" (alteration in original, internal citation omitted).

70. On February 2, 2022, Ms. Barrette and Mr. Burns filed Coterra Energy, Inc.'s Motion *in Limine* to Exclude Issues Not Raised in Appellants' Notice of Appeal or Amended Notice of Appeal, averring that, *inter alia*:

(a) "[i]n their Pre-Hearing Memorandum, Appellants identified two issues that were not raised in either their Notice of Appeal or their Amended Notice of Appeal; namely, Appellants claim that the Department has taken their property in violation of the Pennsylvania Constitution, and that Coterra's gas operations constitute a *per se* nuisance under 58 Pa. C.S. 3252" (emphasis in original, internal citations omitted);

(b) "Appellants' Notice of Appeal does not assert an unconstitutional takings claim or a *per se* nuisance claim" (emphasis in original);

(c) "Appellants *[sic]* Amended Notice of Appeal is equally devoid of any unconstitutional takings claim or a *per se* nuisance claim" (emphasis in original);

(d) "Appellants' suggestion in their Pre-Hearing Memorandum that the Department committed an unconstitutional takings *[sic]*

exceeds the scope of the objections raised in their Notice of Appeal and Amended Notice of Appeal"; and

(e) "Appellants' suggestion that Coterra's operations constitute a *per se* nuisance under 58 Pa. C.S. 3252 is equally beyond the scope of the objections raised in their Notice of Appeal and Amended Notice of Appeal" (emphasis in original).

71. By email to representatives of the Environmental Protection Agency and the Pennsylvania Office of Attorney General dated February 2, 2022, Respondent provided copies of the Motions set forth in paragraphs 67-70 *supra*.

72. Respondent copied Ms. Barrette and Mr. Burns on this email.

73. 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.

74. 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."

75. This Motion had no basis in law that is not frivolous.

76. 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.

77. 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).

78. By email to, *inter alia*, 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.

79. 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.

(internal citation omitted).

80. 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, averring that, *inter alia*:

(a) "Appellants neither identified any exhibits within their Pre-Hearing Memorandum, nor attached any exhibits to their Pre-Hearing Memorandum";

(b) "Appellants indicated that they would not offer any scientific tests at the hearing"; and

(c) "With the hearing in this matter scheduled to begin on February 22, 2022—less than two weeks from the filing of this Motion—Appellants' failure to identify the exhibits and scientific tests that they intend to rely on at the hearing has significantly prejudiced Coterra's ability to adequately prepare for the hearing."

81. 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."

82. By Order dated February 9, 2022, the Motion to Stay Proceedings set forth in paragraphs 74-77 *supra* was denied.

83. 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 67-70 and 80 *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."

84. 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" (internal citation omitted); 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" (internal citation omitted).

85. By Opinion and Order dated February 17, 2022, the EHB, *inter alia*, granted the Motions set forth in paragraphs 68-69 and 80 *supra* and noted that:

The appellants' pre-hearing memorandum did not identify any scientific tests, list or attach any exhibits, or name any expert witnesses. Accordingly, the appellants will be precluded 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.

…

In their pre-hearing memorandum, the Appellants do not identify any scientific tests on which they intend to rely. Nor do the Appellants list or attach any exhibits that they propose to utilize at the hearing. Their memorandum also does not identify any expert witnesses that the Appellants will call to testify on their behalf and they seem to say that expert testimony is not necessary in this appeal that involves the disputed question of whether or not gas drilling operations polluted the Appellants' water supply.

…

Appellants filed a one-page letter on February 11 stating that they would not be responding to the motions in limine…Our Rules, of course, require responses in opposition to a motion to "set forth in correspondingly-numbered paragraphs all factual disputes and the reason the opposing party objects to the motion." 25 Pa. Code § 1021.91(e). 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.

…

Our Rules plainly detail the required contents of a party's pre-hearing memorandum. 25 Pa. Code § 1021.104. Among other things, our Rules require that a pre-hearing memorandum include "[a] list of the exhibits the party seeks to introduce into evidence and a statement indicating whether the opposing party will object to their introduction. A copy of each exhibit shall be attached." 25 Pa. Code § 1021.104(a)(7). Our Pre-Hearing Order No. 2, which schedules the hearing and sets the schedule for filing pre-hearing memoranda, essentially repeats this requirement, advising parties that their pre-hearing memoranda shall contain "[a] list of the exhibits the party seeks to introduce into evidence and a statement indicating whether the opposing party will object to their

introduction. Copies of these exhibits shall be attached. All documentary evidence shall be numbered and marked in order to allow for expeditious offering into evidence." (PHO-2 at ¶ 1.H.) In addition to exhibits, a party is required to provide "[a] description of scientific tests upon which the party will rely and a statement indicating whether an opposing party will object to their use." 25 Pa. Code § 1021.104(a)(3). (*See also* PHO-2 at ¶ 1.C (same).) Our Rules include an admonition if a party disregards the requirements for a pre-hearing memorandum, authorizing the Board to impose sanctions that "may include the preclusion of testimony or documentary evidence and the cancellation of the hearing." 25 Pa. Code § 1021.104(b).

Under the Scientific Tests heading of their pre-hearing memorandum, the Appellants state, "None." (PHM at 8.) Under the Exhibits heading, the Appellants do not list any exhibits, nor are any attached to their memorandum. Among the scientific tests we think would be relevant to the resolution of this appeal are the various water test and sample results of the Appellants' water supply that the parties have discussed and litigated in filings over the course of this appeal. *See Stanley v. DEP*, 2021 EHB 176 (denying Appellants' first motion for summary judgment on the issue of whether triethylene glycol was detected in different water samples taken by the Appellants and the Department). Indeed, both the Department and Coterra have in their pre-hearing memoranda identified water sample and analytical test results of the water supply as scientific tests they are likely to rely upon at the hearing. Further, we think at least some exhibits would be relevant, beginning with the Department determination letter that is the subject of this appeal. In any event, Coterra has moved to preclude the Appellants from offering or introducing any exhibits or scientific tests to prevent unfair surprise at the upcoming hearing.

We have no hesitation granting Coterra's motion in limine on this issue. To hold otherwise would make a mockery of our Rules and would be highly prejudicial to the Department and Coterra.

…

In terms of expert witnesses, the Appellants do not identify any experts in their pre-hearing memorandum. In fact, the

> Appellants actually disavow the use of expert testimony in their pre-hearing memorandum, saying that "such testimony is not required to prove pollution from oil and gas operations, particularly in the instant matter." (PHM at 9.) They go on to assert that:
>
> > 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.*)
>
> However, because "[a]n expert in a Board appeal can dramatically alter the orientation of the case," *Clean Air Council v. DEP*, 2019 EHB 685, 697, we want to make it clear that the Appellants will not be permitted to call any expert witnesses to testify on their behalf. Our Rules require parties to specifically identify any experts in their pre-hearing memorandum. 25 Pa. Code § 1021.104(a)(4)-(5).

(footnote omitted).

86. 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 59 *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]*."

87. The representation set forth in paragraph 86(a) *supra* is false. As set forth in paragraph 23 *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."

88. The representations set forth in paragraphs 86(d) and 86(e) *supra* are false. The EHB was not "discriminatory," "hostile" or "biased" against Respondent, Ms. Stanley or the Dibbles.

89. 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."

90. Respondent's representation that there were "pending ethical complaints" against Ms. Barrette is false. As set forth in paragraph 46 *supra*,

the Office of Disciplinary Counsel dismissed Ms. Stanley's disciplinary complaint against Ms. Barrette in September of 2021.

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

(a) Respondent presented no documentary or testimonial evidence;

(b) Respondent represented that, "[m]y clients never even made a monetary demand upon Coterra";

(c) Ms. Barrette moved for a compulsory nonsuit; and

(d) the DEP joined in Coterra's motion for a compulsory nonsuit.

92. The representations set forth in paragraphs 86(b)(c), 89(b) and 91(b) *supra* are false. By email to Ms. Barrette and Mr. Burns dated February 7, 2022, set forth in paragraph 78 *supra*, Respondent demanded that Coterra "pay[] [Respondent's] legal fees and costs on or before Friday."

93. 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.

…

> 81. 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.

(internal citation omitted).

94. 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.

95. Respondent's assertion 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" has no basis in fact that is not frivolous.

96. Respondent's assertion 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" has no basis in law that is not frivolous.

97. Respondent's representation that the EHB did not provide Ms. Stanley and the Dibbles with "a fair hearing" is false.

98. Respondent's assertion that the EHB did not provide Ms. Stanley and the Dibbles with "a fair hearing" has no basis in fact that is not frivolous.

99. Respondent's assertion that the EHB did not provide Ms. Stanley and the Dibbles with "a fair hearing" has no basis in law that is not frivolous.

100. Respondent's representation that Judge Labuskes is "biased" is false.

101. Respondent's assertion that Judge Labuskes is "biased" has no basis in fact that is not frivolous.

102. Respondent's assertion that Judge Labuskes is "biased" has no basis in law that is not frivolous.

103. 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. By email to Ms. Barrette and Mr. Burns dated February 7, 2022, set forth in paragraph 78 *supra*, Respondent demanded that Coterra "pay[] [Respondent's] legal fees and costs on or before Friday."

104. Respondent's representation that the Rule set forth in paragraph 59 *supra* is "indicative of Judge Labuskes' biases against either Landowners, Landowners' counsel or both" is false.

105. Respondent's representation that "Landowners are the sole party to produce evidence relevant to this matter" is false. As set forth in paragraph 91(a) *supra*, Respondent failed to present any documentary or testimonial evidence during the February 22, 2022 evidentiary hearing.

106. 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."

107. 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.

108. Respondent's representation that "Judge Labuskes is punishing Landowners for exercising their First Amendment rights" is false.

109. Respondent's assertion that "Judge Labuskes is punishing Landowners for exercising their First Amendment rights" has no basis in fact that is not frivolous.

110. Respondent's assertion that "Judge Labuskes is punishing Landowners for exercising their First Amendment rights" has no basis in law that is not frivolous.

111. By Opinion and Order dated June 7, 2022, the EHB granted the Motion for Sanctions set forth in paragraph 84 *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.
> …
> Johnson has routinely refused to comply with our rule that she confer with opposing counsel before filing a motion. Nor has she

accommodated or responded in any way when [Coterra's counsel] or counsel for the Department have attempted to obtain her position on a filing as required by our Rules.

…

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.[5] 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 nonmoving 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 County[6]; 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.
…

Cutting through all this noise, we went forward with the already delayed hearing on February 22. At the beginning of the hearing, Lisa Johnson demanded that, instead of proceeding with the hearing, "we argue the response to Coterra's motion for sanctions and legal fees." When the presiding judge said he would not rule on the motion one way or the other that day, Johnson moved "to take a recess for the parties to read the response, and we can reconvene." The presiding judge denied the motion to recess. Johnson then requested a 15-minute break and, after returning, refused to put her clients on to testify (her only witnesses) and be subject to cross-examination, claiming that "the sole intent of the motion for sanction [sic] and legal fees that Buchanan and Coterra filed was to somehow deter my clients' free testimony today." However, importantly, Johnson acknowledged that, even if the motion for sanctions were not on

the table, she would not have put her clients on the stand subject to cross-examination. Since the Appellants did not present any case-in-chief, Coterra made a motion for nonsuit, in which the Department concurred. We recessed the hearing so that the motion could be briefed and ruled on. That motion has since been briefed and is pending before the Board.

…

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 Landowners 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.

…

Lisa Johnson, Esquire, Lisa Johnson & Associates, and the Appellants are jointly and severally liable for reimbursing Coterra **$18,614.70** for the reasonable fees it incurred in responding to the Appellants' February 3, 2022 motion to stay proceedings. Payment shall be made on or before **July 7, 2022** to Amy L. Barrette, Esquire and/or Robert L. Burns, Esquire, of Buchanan Ingersoll & Rooney PC.

[5] The Department and Coterra have maintained throughout this litigation that there are no such credible sample results from a lab supporting a claim that Coterra's operations caused any contamination of the Appellants' water supply. This was a matter of active dispute during the course of this appeal.

[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.

(emphasis in original, internal citations omitted).

112. By Opinion and Order dated June 15, 2022, the EHB granted the motion for compulsory nonsuit set forth in paragraphs 91(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 3, 2022, the Appellants filed a motion to stay our proceedings. In the two-page motion to stay, the Appellants asserted that they had filed complaints with the Environmental Protection Agency (EPA) and the Pennsylvania Office of Attorney General, apparently against Coterra. The Appellants' motion averred that counsel for Coterra would have "conversations" with the EPA and the Attorney General's office that would "have a

direct bearing on this matter, and are grave enough, to warrant a stay of proceedings." In reality, no conversations were scheduled to occur and there was no factual basis for the motion. The Board denied the motion to stay on February 9. On February 15, Coterra filed a motion for sanctions to recover the fees it incurred in having to respond to the baseless motion to stay. The Appellants filed their response to the motion for sanctions late in the day on February 21, the day before the hearing was to begin.

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.

In opposition to the nonsuit motion, the Appellants say they presented documents

> 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

However, this is simply not true. 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.

(emphasis in original, footnotes and internal citations omitted).

113. 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.

a. **Disciplinary Complaints**. Judge Labuskes' retaliation includes the fact that Landowners and Landowners' counsel filed disciplinary complaints with the Pennsylvania Supreme Court Disciplinary Committee against Judge Labuskes on March 14, 2022 (after deleting, rejection *[sic]*, or improperly denying Landowners' filings). Landowner and Landowners' counsel have filed an additional disciplinary complaint against

Judge Labuskes related to the Order.

(emphasis in original, footnote and internal citation omitted).

114. Respondent's representation that Judge Labuskes unlawfully removed, rejected or denied Ms. Stanley's and the Dibbles' filings is false.

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

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

117. Respondent's representation that the Order set forth in paragraph 111 *supra* "is punishment of Landowners and Landowners counsel's right to free speech against the government" is false.

118. Respondent's assertion that the Order set forth in paragraph 111 *supra* "is punishment of Landowners and Landowners counsel's right to free speech against the government" has no basis in fact that is not frivolous.

119. Respondent's assertion that the Order set forth in paragraph 111 *supra* "is punishment of Landowners and Landowners counsel's right to free speech against the government" has no basis in law that is not frivolous.

120. Respondent's representation that Judge Labuskes is "bias[ed] towards Landowners and Landowners' counsel" is false.

121. Respondent's assertion that Judge Labuskes is "bias[ed] towards Landowners and Landowners' counsel" has no basis in fact that is not frivolous.

122. Respondent's assertion that Judge Labuskes is "bias[ed] towards Landowners and Landowners' counsel" has no basis in law that is not frivolous.

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

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

124. 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."

125. 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."

126. 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."

127. On November 12, 2021, the EHB issued an Opinion and Order on Motion to Dismiss, which, granted the Motion set forth in paragraph 125 *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.
> …
>
> The Department's inaction on the Appellants' water supply complaint undoubtedly does real harm to the Appellants. Should the Department need a reminder, its inaction here is not merely taking its time to review a permit application and possibly delaying a project, but it is a daily deprivation of usable water to ordinary citizens of the Commonwealth. However, even though the Department's inaction has not triggered this Board's jurisdiction, this does not mean the Appellants are without legal recourse. First, there is no doubt that a complainant may appeal *the conclusion* of the Department's investigation of a water supply contamination claim under the Oil and Gas Act. The

> Department's investigation appears to still be ongoing. The Department tells us in its reply brief that SWN Production has submitted a report to rebut the Department's presumption. The Department says that it will at some point make an "ultimate determination" on SWN's rebuttal report and the Appellants "will be free to appeal from that decision," whenever that may be.
>
> More immediately, nothing precludes the Appellants from pursuing a private cause of action against the Department or SWN. Indeed, Subsection (f) of the water supply provision of the Oil and Gas Act states, "Nothing in this section shall prevent a landowner or water purveyor claiming pollution or diminution of a water supply from seeking any other remedy at law or in equity." In its papers, the Department repeatedly makes the point that the Board does not have jurisdiction over a mandamus action. We are not sure if this is an invitation to the Appellants to file a mandamus action against the Department in an appropriate forum, but the avenue appears open.

(emphasis in original, footnote and internal citations omitted).

128. 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]*" (emphasis removed).

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

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

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

132. On December 9, 2021, the EHB issued an Opinion and Order on Petition for Reconsideration, which denied the Petition set forth in paragraph 128 *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."

133. Respondent did not seek the EHB's recusal at any time while this matter was pending.

134. On December 21, 2021, Respondent sent a Notice of Intent to Sue to then Governor Thomas Wolf in which she referenced the matters set forth in paragraphs 4-133 *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).

135. 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.

In the matter of Glahn and Gorencel v. DEP
EHB Docket No. 2021-126-L

136. By letter dated December 27, 2021, Respondent filed another Notice of Appeal in the EHB against the DEP on behalf of Mr. Glahn and Ms. Gorencel, in which she asserted that, *inter alia*:

> Mr. Glahn and Ms. Gorencel rightly believe that the Board, among other things, harbors biases against them due to their age, sophistication and socioeconomic status throughout the pendency of their initial appeal at 2021 EHB 049.
> …
> In candor to the tribunal, Mr. Glahn and Ms. Gorencel have sent a notice of intent to sue the EHB to the administration as the unconstitutional and improper precedents set by the Board cannot stand. Mr. Glahn and Ms. Gorencel request that the Board voluntarily recuse itself and immediately request that the Commonwealth Court take jurisdiction. If the Board does not voluntarily recuse itself, Mr. Glahn and Ms. Gorencel will take the steps necessary to seek such recusal as is mandatory under, and without limitation, Applicable Laws. It is difficult to imagine a less appropriate forum to hear this appeal.

137. Respondent's representation that the EHB "harbors biases against [Mr. Glahn and Ms. Gorencel] due to their age, sophistication and socioeconomic status" is false.

138. Respondent's assertion that the EHB "harbors biases against [Mr. Glahn and Ms. Gorencel] due to their age, sophistication and socioeconomic status" has no basis in fact that is not frivolous.

139. Respondent averred in the Notice of Appeal set forth in paragraph 136 *supra* that, *inter alia*:

(a) "[a]ppealing to the Board is a specific remedy for Appellants and those similarly situated. The Board knows that Mr. Glahn, Ms. Gorencel, and other landowners do not have the funds, contacts or time to have a firm on retainer and ask them to spend hours drafting a mandamus action or other pleadings in other forums, *all so the Board does not have to participate in such matters*" (emphasis in original, footnote omitted); and

(b) "[n]either the Board or the Department has any sense of urgency to protect people or the environment. The denials, delays and obstruction of the Board and the Department alone constitute takings and dangers to the Commonwealth."

140. Respondent's assertion that "the denials, delays and obstruction of the Board and the Department alone constitute takings" has no basis in fact that is not frivolous.

141. Respondent's assertion that "the denials, delays and obstruction of the Board and the Department alone constitute takings" has no basis in law that is not frivolous.

142. On March 14, 2022, Respondent filed a Motion for a Rule to Show Cause in which she stated that, *inter alia*:

> The Department, through its legal counsel and the abuse of these proceedings, continues to intimidate, harass, and retaliate against Landowners for pursuing their claims against the Department. Most recently, the Department, in violation of its statutory and mandatory obligations, terminated Landowners' sole source of fresh drinking water, incredulously claiming that the Department is legally entitled to deprive residents of the Commonwealth fresh drinking water in Landowners' situation.
>
> Landowners are keenly aware of the Department's malice towards them, which malice started in July 2020 when the Department initially concealed the water pollution from Landowners, and knowingly allowed Landowners to unwittingly drink such contaminated water. The Department intentionally concealed the fact that Landowners were entitled to clean water deliveries from July 2020 and that, pursuant to Applicable Laws, Landowners remain entitled to such deliveries to-date *[sic]*. The Department continues to conceal the severity of the danger Landowners are in by attacking Landowners and Landowners' counsel to deter them from pursuing their claims, all as in congruence with the patterns and practices of the Department and the industry and their lawyers.

> Landowners move the Board to issue a Rule to Show Cause to the Department for responses as to the Board granting Landowners judgment by default and whether Attorneys Braymer and Despenes should be disqualified from this matter and reported to the Disciplinary Board of the Supreme Court of Pennsylvania.

143. Respondent's assertion that the Department of Environmental Protection "continues to intimidate, harass, and retaliate against" Mr. Glahn and Ms. Gorencel has no basis in fact that is not frivolous.

144. By Order dated March 14, 2022, the EHB struck this Motion from the docket.

145. By letter to Judge Labuskes dated March 14, 2022, Respondent said:

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

146. By letter to the EHB dated March 15, 2022, Respondent said:

> The purpose of this letter is to inform the Board that Landowners' *[sic]* will be filing a motion demanding the recusal of Judge Labuskes from this matter and their matter pending before the Board at 2022013. The Board, through Judge Labuskes' improper and unlawful orders, has repeatedly violated Landowners' constitutional rights, and specifically their rights to be heard.
>
> Landowners have been subject to the improper orders of the

> Board since May 2021. In fact, upon filing this appeal, Landowners included a request for the Board to recuse itself due to the misconduct Landowners' *[sic]* have experienced throughout this process. *See attached*. The Board's actions towards Landowners culminated in Judge Labuskes ***unilaterally and with no discussion*** removing the attached Landowners' Motion for a Rule to Show Cause on March 14, 2022. *See attached*.
>
> Landowners 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, and in equity.
>
> This latest attack on Landowners' due process 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 remove any pleading from the docket on a whim. Landowners will fully avail themselves to their rights at law and in equity to seek Judge Labuskes' recusal and all other remedies at law or in equity. The Board belongs to the people.

(emphasis in original).

147. By Order dated March 16, 2022, the EHB struck the letters set forth in paragraphs 145-146 *supra* from the docket.

148. On June 26, 2022, Respondent filed a Notice of Withdrawal of Appeal.

149. By her conduct as alleged in Paragraphs 4 through 148 above, Respondent violated the following Rules of Professional Conduct and Rule of Disciplinary Enforcement:

(a) RPC 1.1, which provides that, "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation";

(b) RPC 1.3, which provides that, "[a] lawyer shall act with reasonable diligence and promptness in representing a client";

(c) RPC 3.1, which provides, in pertinent part, that, "[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";

(d) RPC 3.2, which provides that, "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client";

(e) RPC 3.3(a)(1), which provides that, "[a] lawyer shall not knowingly 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";

(f) RPC 3.5(d), which provides that, "[a] lawyer shall not engage in conduct intended to disrupt a tribunal";

(g) RPC 4.1(a), which provides that, "[i]n the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person";

(h) RPC 4.4(a), which provides, in pertinent part, that, "[i]n representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person";

(i) RPC 8.2(a), which provides, in pertinent part, that, "[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…integrity of a judge, adjudicatory officer or public legal officer";

(j) RPC 8.4(c), which provides that, "[i]t is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation";

(k) RPC 8.4(d), which provides that, “[i]t is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice”; and

(l) Pa.R.D.E. 402(c), which provides, in pertinent part, that, “all proceedings involving allegations of misconduct by or disability of an attorney shall be kept confidential.”

WHEREFORE, Petitioner prays that your Honorable Board appoint, pursuant to Rule 205, Pa.R.D.E., a Hearing Committee to hear testimony and receive evidence in support of the foregoing charge(s) and upon completion of said hearing to make such findings of fact, conclusions of law and recommendations for disciplinary action as it may deem appropriate.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

THOMAS J. FARRELL
CHIEF DISCIPLINARY COUNSEL

By_____
Daniel S. White
Disciplinary Counsel
Attorney Registration No. 322574
The Disciplinary Board of the
Supreme Court of Pennsylvania
Suite 1300, Frick Building
437 Grant Street
Pittsburgh, PA 15219
Telephone: (412) 565-3173

VERIFICATION

The statements contained in the foregoing Petition for Discipline are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

8/3/23
Date

Daniel S. White
Disciplinary Counsel

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:

Name: Daniel S. White

Attorney No. (if applicable): 322574