NO. _____

IN THE
UNITED STATES SUPREME COURT

RICHARD L. ABBOTT, ESQUIRE - PETITIONER

vs.

DELAWARE SUPREME COURT AND
DELAWARE OFFICE OF DISCIPLINARY
COUNSEL,
RESPONDENTS

ON PETITION FOR WRIT OF *CERTIORARI* TO
THE SUPREME COURT OF DELAWARE

PETITION FOR WRIT OF *CERTIORARI*

Richard L. Abbott, Esquire
5632 Kennett Pike
Wilmington, DE 19807
(302) 605-4253
rich@richabbottlawfirm.com
Dated: February 6, 2024

QUESTIONS PRESENTED

I. Whether a person proceeding *Pro Se* in defending a confidential professional licensure disbarment proceeding is vested with full 1st Amendment Rights to Freedom of Speech, including the Actual Malice standard?

II. Whether the 14th Amendment Due Process Clause or the 6th Amendment right to be informed of accusations prohibit a State Supreme Court from disbarring an attorney based on a new charge and a new and unforeseeable rule interpretation raised after trial and at the end of the disbarment process?

III. Whether the denial of all relevant Discovery and Trial Witnesses in a State professional licensure disbarment proceeding, which are guaranteed by applicable Rules, violates the 14th Amendment Right to Due Process of Law or the 6th Amendment Right to Confront one's accuser and have compulsory process for favorable witnesses?

IV. Whether a retaliatory and discriminatory lawyer disbarment, based on an 8+ year vigorous defense and policies and practices which base prosecution decisions on lawyer associational status, violates the 1st Amendment rights to Freedom of Association and to Petition for Redress of Grievances and the 14th Amendment right to Equal Protection of the Laws?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

CORPORATE DISCLOSURE STATEMENT
PURSUANT TO RULE 29.6

The Petition for Writ of *Certiorari* to which this Certificate is appended does not include any non-governmental corporation parties.

LIST OF ALL PROCEEDINGS IN STATE OR
FEDERAL COURTS RELATED TO THE APPEAL

Abbott v. Mette et al., 2021 WL 5906146 (3d Cir. Dec.14, 2021).

Abbott v. Mette et al., 2021 WL 1168958 (D. Del. Mar. 26, 2021).

Abbott v. Mette et al., 2021 WL 327375 (D. Del. Jan. 31, 2021).

In re Abbott, 2021 WL 1996927 (Del. May 19, 2021).

Abbott v. Vavala, 2022 WL 453609 (Del. Ch. Feb. 15, 2022).

Abbott v. Vavala, 2022 WL 3642947 (Del. Aug. 22, 2022).

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF CITED AUTHORITIES

Statutes

Rules

Constitutional Provisions

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF *CERTIORARI*

Petitioner respectfully prays that a Writ of *Certiorari* issue to review the judgment below.

OPINIONS BELOW

The opinion in the highest State Court to review the merits appears at Appendix A to the Petition and has been designated for publication but is not yet reported or is unpublished.

In re Abbott, Delaware Supreme Court No. 25,2023 (Nov. 9, 2023)

JURISDICTION

The date the Judgment or Order to be reviewed was entered was November 9, 2023.

The statutory provision believed to confer jurisdiction upon this Court to review the Judgment or Order in question pursuant to a Writ of *Certiorari* is 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. Amendment I to the United States Constitution, prohibiting laws abridging "freedom of speech" and the right of the people "peaceably to assemble," and "to petition the Government for a redress of grievances."

II. Amendment VI to the United States Constitution, which provides that an accused is guaranteed the rights "to be informed of the nature and cause of the accusation," "to be confronted with witnesses against him," and "to have compulsory process for obtaining witnesses in his favor."

III. Amendment XIV to the United States Constitution, Section 1 stating "nor shall any State deprive any person of life, liberty, or property without due process of law" and "nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

I. **Facts Material To Consideration Of The Questions Presented**

A. The Petition For Discipline, Applicable Rules Of Professional Conduct & The Soviet Style Show Trial

This is a lawyer disbarment case that constitutes a miscarriage of justice and is based on fabricated facts and fabricated law, which violated numerous protections under the United States Constitution. On February 5, 2020, a Petition for Discipline ("Petition") was brought by the Delaware Office of Disciplinary Counsel ("ODC") against Petitioner Richard L. Abbott, Esquire ("Abbott") before the Board on Professional Responsibility of the Supreme Court of the State of Delaware ("Board"). So began a proceeding which was rife with denials of Abbott's Constitutional rights under the 1st, 6th, and 14th Amendments (the "Star Chamber Proceeding").

The Petition contained 5 Charges, 3 of which were standalone Charges (the "3 Foundational Charges") and 2 of which were dependent on 1 or more of the 3 Foundational Charges (the "2 Catch-All Charges"). The 3 Foundational Charges were: (1) Count I, alleging a violation of DLRPC Rule 3.4(c); (2) Count III, alleging a violation of DLRPC Rule 8.4(c); and (3) Count IV, alleging a violation of DLRPC Rule 3.5(d).[1] The 2 Catch-All Charges were: (1) a Count II charge which depended on the Count I charge; and (2) a Count V charge which was dependent upon all 3 Foundational Charges.

Petition Count I alleged Abbott violated DLRPC Rule 3.4(c) by knowingly disobeying an obligation under the rules of a tribunal. Petition paragraph 36 averred that Abbott advised and

[1] "DLRPC" is shorthand for the Delaware Lawyers' Rules of Professional Conduct.

assisted his client "to disobey the Consent Order" as the sole predicate act. No Tribunal Rule was alleged or proven to have been disobeyed by Abbott. Abbott merely gave his client advice on how to potentially avoid the Consent Order.[2]

Petition Count III alleged a violation of DLRPC Rule 8.4(c), which proscribes conduct involving dishonesty, fraud, deceit, or misrepresentation of fact. Petition paragraph 40 contains the predicate acts: "Affirmative statements to the Court and opposing counsel, including but not limited to statements contained in [Abbott's] March 16, 2015 Letter, that were contrary to 'Abbott's' legal strategy, advice to his client and/or understanding of the facts and law." But Abbott's March 16, 2015 Letter (the "Abbott Letter")

[2] Notably, Rule 3.4 in Virginia, North Carolina, and Texas expressly provide that a lawyer may not disobey a "ruling." The predecessor to Rule 3.4(c) in Delaware provided similarly, but a 1985 amendment deleted the language.

contained no false "Affirmative statements"; it accurately advised of the transfer of title to 2 Properties (the "Ownership Transfer"). The Decision rendered by the Delaware Supreme Court on November 9, 2023, which disbarred Abbott (the "Decision"), was based on the uncharged allegation that the Abbott Letter contained 2 omissions (the "2 Alleged Omissions") not on any "Affirmative statements."

Petition Count IV alleged that Abbott violated DLRPC Rule 3.5(d) by engaging in undignified or discourteous conduct degrading to a tribunal. Paragraph 42 of the Petition contained the predicate acts for the charge, citing to "paragraphs 26-34 hereof." Paragraphs 26 through 28 refer to Abbott's Complaint to the Court on the Judiciary. Rules 17 and 19 of the Court on the Judiciary Rules, however, provide that: (1) all records and proceedings are

Confidential; and (2) communications to the Court relating to a Judge's misconduct or disability "shall be absolutely privileged… ." Abbott's Complaint was also designated as Confidential. Nothing contained in paragraphs 26 through 28 of the Petition was admissible or could be used against Abbott (as the complainant).

Paragraphs 29, 30, and 32-33 of the Petition aver that Abbott attacked the Vice Chancellor and the Supreme Court in written submissions to the Board, the Delaware State Public Integrity Commission ("PIC"), and the Delaware Supreme Court. But no filing was made with the Supreme Court; the filing was with the Board. The PIC filing is strictly Confidential pursuant to the Delaware Code. And no one knows about or may rely on submissions to the Board; they are strictly Confidential and Absolutely Privileged pursuant to DLRDP Rules 10 and 13 (*e.g.*

all communications to the Board and the ODC related to lawyer misconduct or disability "shall be absolutely privileged.").[3] And all of Abbott's submissions to the Board were marked "CONFIDENTIAL."

Paragraph 31 of the Alleged Petition contains 31 written statements by Abbott. Paragraphs 31(a) through (k) and (m) through (ee) (30 of the 31 statements) were all Absolutely Privileged and Confidential Board communications (all designated as Confidential). Paragraph 31(l) relies upon a written submission to the PIC, but it contained nothing disparaging.

Policies and procedures applied by the PIC render submissions to it completely Confidential; no one will ever know of the one (1) non-disparaging, truthful statement ("*ipse dixit* spewed by the Vice

[3] "DLRDP" is shorthand for the Delaware Lawyers' Rules of Disciplinary Procedure.

Chancellor during the course of a Star Chamber proceeding that was scheduled on an impromptu basis under very strange and unusual circumstances."). PIC Rules also insure submissions remain Confidential. The confidentiality policy of the PIC was followed pursuant to 29 *Del. C.* § 5810(h)(3) and all documents submitted by Abbott were marked "Confidential."

The failure to prove the 3 Foundational Charges doomed the 2 Catch-All Charges. Abbott should have been exonerated on all 5 Charges.

In November of 2021, the charges alleged in the Petition were considered at a hearing (the "Soviet Style Show Trial") conducted by a 3-person panel of the Board (the "Panel"). In May, 2023, the Panel issued its report ("Recommendation") regarding the charges alleged in the Petition, suggesting 3 violations and 2 exonerations. The Delaware Supreme Court

effectively rubberstamped the error-riddled Recommendation.

B. The Decision Disbars Abbott Sans Due Process, Based On A New Charge And A Non-Existent Rule & Without Proof Of All Elements Of The 3 Foundational Charges

On November 9, 2023, the Delaware Supreme Court issued the Decision, which found that Abbott committed five (5) violations: the 3 Foundational Charges and the 2 Catch-All Charges. In re: Abbott, 2023 WL 7401529. Appendix A. The 3 Foundational Charges were supposedly proven based on: (1) a new charge raised for the first time post-trial; (2) a theory that Abbott violated an unspecified Court Rule by advising his client on how to potentially avoid a Court Order; and (3) the posit that degrading a judicial officer may occur despite no judicial officer knowing about Abbott's statements.

The Decision was also based on conclusory statements that violations occurred, not on any analysis and rationale explaining how the elements of the 3 Foundational Charges were proven (by Clear and Convincing Evidence). The Decision simply parroted the Recommendation and tacitly admitted it was driven by an intent to retaliate against Abbott for his pursuit of numerous defensive and offensive litigation measures during the course of the 8½ year long Star Chamber Proceeding.

The Decision largely ignored Abbott's challenge to the Delaware lawyer discipline system (the "System"), due in part to evidentiary limitations caused by the Unconstitutional denial of all of Abbott's dozens of discovery requests and all of Abbott's trial subpoenas (duces tecum and ad testificandum). The Decision also failed to decide Abbott's claims to enjoin the Star Chamber Proceeding and invalidate the

System based on Federal and State Racketeering laws (the "RICO Claims"). The Delaware Federal District Court and the Third Circuit Court of Appeals both previously held that Abbott would be able to pursue the RICO Claims in the Star Chamber Proceeding. But both the Recommendation and Decision refused to decide the RICO Claims.

II. Stage Of Proceeding When Federal Questions Were Raised, Means Of Raising Them, The Way The State Court Passed Upon Them & Portions Of Record Regarding Federal Questions

A. The First Amendment Free Speech Issue

Abbott's challenge to the Petition based upon the assertion that the *Pro Se*, Confidential and/or Absolutely Privileged Statements at issue were protected speech under the 1st Amendment was first raised in the Third Affirmative Defense in his Answer To Petition For Discipline ("Answer") filed on July 1, 2020. Appendix D. Abbott's Void for Vagueness argument was raised in Answer paragraphs 57 and 95. The issue was also presented in "*Pro Se* Respondent's Post-Trial Memorandum & Memorandum On Related Subjects" dated April 18, 2022, at pages 14-17 (the "Post-Trial Memo") and in "*Pro Se* Respondent/Third Party Petitioner's

Objections To Proceedings, Recommendations & Misconduct Of ODC Counsel And Board Panel Chair" dated March 22, 2023 (the "Objections") at pages 23 and 66-69. Appendix E and Appendix B, respectively.

The Decision addressed Abbott's 1st Amendment Free Speech argument by opining that a *Pro Se* Respondent in a lawyer disciplinary action bears the burden to prove a factual basis for statements, citing *In re Palmisano*, 70 F.3d 483, 487-88 (7th Cir. 1995). *In re Abbott* at *24-25. That Decision, however, is in conflict with the decisions of numerous other State Supreme Courts and the 6th and 9th Circuit Court of Appeals.

B. The Procedural Due Process Violations

Abbott first raised his procedural Due Process arguments in his Eighth Affirmative Defense at paragraph 54 of the Answer. The arguments were

further presented in the Post-Trial Memo at pages 24-26 and in the Objections at pages 25-26 and 71.

The Decision found that Abbott was not denied Due Process since he failed to meet the supposed high burden to show a right to discovery and trial witnesses and evidence. *In re Abbott* at *27-28.

C. The Due Process "Fair Warning" Issue: An Unforeseeable Interpretation & A New Charge Raised Post-Trial

Abbott first raised the issues that DLRPC Rules 3.4(c) and 8.4(d) did not proscribe a *Pro Se* Respondent's speech in the form of critical comments based on truth and litigation strategy in Affirmative Defenses contained in paragraphs 57 and 95 (Void For Vagueness Doctrine), 64 (Absolute Privilege), 75 (lack of allegation of elements of offenses), and 119 (must be in public forum) of the Answer. Abbott further presented these arguments in the Post-Trial Memo at pages 1-4 and the Objections at pages 9-12, 20, and 25-26.

The Decision largely ignored the arguments. It concluded that Rule 3.4(c) could be read to apply to a Court "ruling," rather to "rules of a tribunal," as its language provides, despite the fact that the term "ruling" was previously stricken form the rule. *In re*

Abbott at *18. And the Decision alleged that one charge's allegation regarding "affirmative statements" was sufficient to plead "omissions." *In re Abbott* at *20.

D. The 1st Amendment Freedom Of Association & Right To Petition For Redress Violations

Abbott first raised the 1st Amendment Freedom of Association and Right to Petition issues in paragraphs 50 and 55 in the Answer. Arguments in those regards were also presented in the Post-Trial Memo at pages 17-23 and in the Objections at page 25-26. The Decision did not address the arguments.

E. The Related Equal Protection Violations Rendering The Charges & Entire System Unconstitutional

The Equal Protection arguments were first raised by Abbott in Answer paragraphs 51 (Invidious Discrimination), 52 (Disparate Treatment), 113 (Retaliatory Intent and Purpose), 137 (discrimination

based on associational status), 141 and 142 (Unconstitutionality of entire discipline system due to discriminatory policies and practices), and 143 (discrimination based on associational status). The arguments were also presented in the Post-Trial Memo at pages 1-14, and 21-23 and the Objections at page 25-26.

The Decision did not address the Equal Protection challenge to the Star Chamber Proceeding and System. It only discussed Equal Protection in the context of discovery regarding a Selective Prosecution Defense. *In re Abbott* at *28

F. The 6th & 14th Amendment Violations Of The Rights To Confront One's Accusers, Subpoena Trial Witnesses & Be Informed Of The Charges Pre-Trial

The issues regarding the Right to Confront an Accuser, Subpoena Trial Witnesses, and be notified of Charges was first raised in Answer paragraphs 75

(Failure to Allege Predicate Acts) and 140 ("any other defenses that may arise during the course of discovery in this action"). Abbott's right to confront his accusers and subpoena trial witnesses were also raised in numerous filings Abbott made in opposition to the witnesses' Motions to Quash Abbott's subpoenas filed in 2021 and 2022, in the Post-Trial Memo at pages 1-4, 17-21, and 24-26 and Objections at pages 9-12 (Pretrial notice of charges), 18-19 (deviation from charge alleged in Petition), 20-22, and 24-25 (no notice of new rule interpretation), 25-26 (confrontation & procedural Due Process violations), and 29-30 and 33-34 (*post hoc* new charge).

The Decision denied the arguments based on the theories that: (1) the Confrontation Clause was inapplicable; and (2) Abbott had not met an alleged high burden to receive discovery and subpoena relevant trial witnesses and documents. *In re Abbott*

at *27-28. The Decision did not address Abbott's arguments regarding new charges asserted against him post-trial, other than to conclusorily contend that the charge of "affirmative statements" adequately pleaded a charge of "omissions." *Id*. at *20.

REASONS FOR GRANTING THE PETITION

I. *PRO SE* RESPONDENT STATEMENTS IN CONFIDENTIAL AND ABSOLUTELY PRIVILEGED COMMUNICATIONS ARE PROTECTED SPEECH & THERE IS A CIRCUIT AND STATE SUPREME COURT SPLIT ON 1ST AMENDMENT FREE SPEECH RIGHTS OF ATTORNEYS

A. Lawyer Speech is Constitutionally Protected In Some Jurisdictions, But Not In Delaware; The Court Should Resolve The Jurisdictional Split Of Authority

1. Proof Of Falsity & Actual Malice Are Required In Some Jurisdictions, But Not All – Including Delaware

Disciplinary rules which impinge upon a lawyer's First Amendment right to free speech are constitutionally constrained. *Iowa Supreme Court Board of Professional Ethics And Conduct v. Visser*, 629 N.W.2d 376, 380 (Iowa 2001). It is well settled that a lawyer's out of court statements regarding matters involved in litigation are entitled to First Amendment protection. *Id.*; *Commission for Lawyer*

Discipline v. Benton, 980 S.W.2d 425, 454 (Tex. 1998), citing *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1075-76 (1991). First Amendment protections are even more important where speech involves criticism of the government or government officials (*e.g.* Judicial Officers). *Id.*

The Free Speech clause of the First Amendment goes so far as to protect a lawyer's criticism of the legal system and its judges. *Committee on Legal Ethics of the West Virginia State Bar v. Douglas*, 370 S.E.2d 325, 332 (W.Va. Ct. App. 1988). Such speech is only proscribed if it constitutes a knowingly false statement or a false statement made with a reckless disregard for its truth. *Id.*

As in West Virginia, a violation of the Rules of Professional Conduct for criticism of judges in some jurisdictions requires the disciplinary authority to prove: 1) the statement was a false statement of fact;

and 2) the statement was made with actual malice – *i.e.* knowledge that it was false or with reckless disregard as to its truth. *In re: Green*, 11 P.3d 1078, 1085 (Colo. 2000) (*En banc*). The 9th Circuit and 6th Circuit have similarly held. *Standing Committee v. Yagman*, 55 F.3d 1430, 1438 (attorney statements must be proven to be false and statements of opinion are protected speech unless they imply a false assertion of fact); *Berry v. Schmitt*, 688 F.3d 290, 303-04 (6th Cir. 2012).

The Decision, however, rejected *Yagman* and any similar heightened lawyer speech standard. *In re: Abbott*, 2023 WL 7401529, *25 (Del., Nov. 9, 2023). Instead, the Decision placed the burden on Abbott to prove the truth of his speech. *Id.* And since Abbott

was denied all discovery and all trial witnesses, that burden was an even more daunting task.[4]

2. *Becerra* Imposes The Falsity & Actual Malice Standards On Regulation Of Professional Speech, But The Decision Ran Afoul Of Those Constitutional Standards

The Court should also provide clarity on lawyer Free Speech rights in light of its decision in *National Institute of Family And Life Advocates v. Becerra*, 585 U.S. ___, 138 S. Ct. 2361, 2371-72 (2018). In *Becerra*, the Court addressed the issue of whether "professional speech" was a separate category of speech that was entitled to less than full 1st Amendment Freedom of Speech protections. The Court noted that content-based regulations of speech: (1) target speech based on its communicative content; and (2) are presumptively Unconstitutional and can only stand if they are narrowly tailored to advance a

[4] Abbott presented uncontested exhibits and testimony that the statements were true, but the Decision ignored such evidence.

compelling state interest. *Becerra* at 2371. The Court went on to note that its precedents have long protected the 1st Amendment rights of professionals, including application of "strict scrutiny to content-based laws that regulate the noncommercial speech of lawyers." *Becerra* at 2374. Ultimately, the Court held that the State of California and the Circuit Court had not "identified a persuasive reason for treating professional speech as a unique category that is exempt from ordinary First Amendment principles." *Becerra* at 2375.

The Decision denied Abbott his full 1st Amendment rights to Freedom of Speech, instead applying an extremely low bar to regulating his speech. Strict scrutiny of DLRPC Rule 3.5(d), both on its face and as applied, was not engaged in by the Decision. Abbott was disbarred despite the 1st Amendment protections afforded to his speech.

Becerra therefore establishes that the Decision is in contravention of the 1st Amendment to the United States Constitution.

The proper standard should require proof by Clear and Convincing Evidence that statements are False and that they were made with Actual Malice. That is particularly the case where, as here, the professional speech is strictly Confidential versus publicly disseminated. The Delaware Supreme Court rejected the normal 1st Amendment standards, which require proof by the disciplinary authority of Falsity and Actual Malice, thereby denying Abbott's free speech rights as established by *Becerra*.

B. Even Under The Decision's Free Speech Standard, Abbott's Speech, Which Was Outside The Public Realm, Was Protected

In Delaware, it has been held that "criticism of a judge…in the performance of his duties is within the purview of the right to free speech guaranteed by the

First and Fourteenth Amendments to the U.S. Constitution." *State v. Payne*, 329 A.2d 157 (Del. Super., 1974). The Court noted, however, that 1st Amendment free speech rights do not immunize a litigant from reviling a judge during courtroom proceedings. *Id*. at 158. Similarly, the U.S. Supreme Court has held that "in the courtroom itself, during a judicial proceeding, whatever right to 'free speech' an attorney has is extremely circumscribed." *Gentile*, *supra*. at 1071. So decisional law authority draws a line of distinction between speech limitations that may be imposed upon a lawyer during the course of public proceedings in litigation versus the acts of a lawyer *qua* citizen in private. As for the latter, full 1st Amendment rights to Freedom of Speech apply; Abbott's non-lawyer speech in Confidential proceedings was Unconstitutionally punished in violation of his 1st Amendment Free Speech Rights.

Under the circumstances at issue, Abbott was not acting as a lawyer or in a public proceeding when he made the statements that the Rule 3.5(d) charge was based upon. Instead, Abbott was proceeding *Pro Se*, as a private citizen, and in private, Confidential matters. Thus, his statements constitute Constitutionally protected Free Speech and cannot form the basis for disbarment.

C. The Charges Alleged Also Violate Constitutional Free Speech & Due Process Rights As Applied

The Disciplinary Rule at issue in this case, Rule 3.5(d), is also unconstitutional as applied. The U.S. Supreme Court has made it clear that vague regulations of free speech are proscribed based on the need to eliminate the impermissible risk of discriminatory enforcement. *Gentile v. State Bar of Nevada*, *supra.* at 1051. Indeed, the Supreme Court has noted that "history shows that speech is

suppressed when either the speaker or the message is critical of those who enforce the law." *Id.*

In order to determine unconstitutional vagueness under the First Amendment, the question is whether "the Rule is so imprecise that discriminatory enforcement is a real possibility." *Gentile v. State Bar of Nevada*, *supra.* And two manifestations of the Due Process Clause's Fair Warning requirement include: (1) the Vagueness Doctrine, which bars enforcement of a law stated in terms too vague for a reasonable person to discern its meaning; and (2) the Canon of Strict Construction, which resolves ambiguity in a law so as to apply it "only to conduct clearly covered." *U.S. v. Lanier*, 520 U.S. 259, 266 (1997). As to the Vagueness Doctrine, the Supreme Court has previously required that "laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he

may act accordingly" and that "laws must provide explicit standards for those who apply them." *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972).

Under the circumstances, the ODC and the Delaware Supreme Court attempted to wedge Confidential and Absolutely Privileged criticisms of judicial officers by a *Pro Se* Respondent into rules aimed at protecting the public perception of the judiciary and the judicial system generally. The rule language – "undignified or discourteous conduct that is degrading to a tribunal" – is a highly subjective, "eye-of-the-beholder" provision that is so vague that it was stretched so as to apply to Abbott's statements that the subject tribunals were unaware of and could never become aware of (*i.e.* the veritable "Message In A Bottle"). Consequently, disciplining Abbott for his

Pro Se, Private speech is constitutionally proscribed due to the vagueness of DLRPC Rule 3.5(d).

II. DISBARRING A LAWYER BASED ON CHARGES ALLEGED POST-TRIAL VIOLATED THE DUE PROCESS CLAUSE & THE 6TH AMENDMENT

B. Constitutional Due Process Principles Require Adequate Advance Notice And Some Form of Hearing Before An Attorney May Be Disciplined; Two Late-Concocted Charges Ran Afoul Of Those Bedrock Principles

It is well established that attorney disciplinary proceedings are *quasi*-criminal in nature, and that as such they trigger certain Due Process requirements. *In re Ruffalo*, 390 U.S. 544, 551 (1968). It is axiomatic that Due Process requires, at a bare minimum, that a party be provided with notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). The 6th Amendment provides similar

protections. As a result, the bringing of new charges after trial is Unconstitutional.

A lawyer that is subject to a disbarment proceeding is "entitled to procedural due process, which includes fair notice of the charge." *In re: Ruffalo* at 550 ("The charge must be known before the proceedings commence."). And the 6th Amendment entitles an accused like Abbott to be "informed of the nature and cause of the accusation."

Rule 9(d) of the DLRDP requires that the charges alleged against a lawyer be those brought in a petition approved by a panel of the Preliminary Review Committee, to which a Respondent has an opportunity to answer and thereafter defend against. But the Decision was based on *post hoc* charges and a *post hoc* rule amendment.

B. Creating A Completely New Rule 8.4(c) Charge & Effectively Re-Writing The Language Of Rule 3.4(c) After Trial Violated The 6th & 14th Amendments

The Decision found that Abbott committed one violation which was not alleged in the Petition. Abbott was charged with making false "Affirmative statements in violation of Rule 8.4(c)," but after trial it was alleged, for the first time, that Abbott misled a Court via 2 alleged omissions. And the Decision also found another violation based on conduct which was not expressly proscribed by unambiguous rule language. DLRPC Rule 3.4(c) only forbids a lawyer from disobeying "an obligation under the rules of a tribunal," but the Decision unexpectedly interpreted Rule 3.4(c) to forbid Abbott, *post hoc*, from advising his client on how to potentially avoid a court judgment.

The Delaware Supreme Court has adopted the *Accardi* Doctrine to State agency conduct regarding

the protection of individual rights and Due Process safeguards. *Dugan v. Delaware Harness Racing Com'n*, 752 A.2d 529, 531 (Del. 2000) (en Banc). *Dugan* adopted 2 principles of *Accardi*: (1) where individual rights are impacted, a government agency must follow its own procedural rules; and (2) if a rule affords Due Process, then any action that results from a violation of that rule is invalid. *Id*., citing *United States v. Caceres*, 440 U.S. 741, 749-50 (1979) and *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260 (1954). But the Decision ignored the language contained in the Rule 8.4(c) charge and in Rule 3.4(c) and the charge based thereon, instead effectively engaging in an *ex post facto* re-write of rule and charge language. Accordingly, the Decision violated Abbott's Due Process rights.

The Petition alleged that Abbott made false "Affirmative statements," not that he misrepresented

based upon the 2 Alleged Omissions. The post-trial attempt to bring a new charge based on the 2 Alleged Omissions is therefore Unconstitutional based on its violation of Abbott's procedural Due Process rights.

The applicable rules also limited prosecution of Abbott to the specific Rule 3.4(c) language as alleged in the Petition, to-wit: disobeying rules of a tribunal, not advising a client on how to avoid a Court Judgment. The Delaware Supreme Court therefore violated Abbott's Due Process rights by changing 2 of the 3 Foundational Charges after trial. Reversal is in order based on clear-cut Due Process violations, particularly in light of the severe sanction – Disbarment – that the Decision imposed.

III. THE 6TH AMENDMENT RIGHT TO CONFRONT ONE'S ACCUSERS & THE 14TH AMENDMENT RIGHT TO DUE PROCESS WERE VIOLATED; ABBOTT WAS DENIED HIS RIGHT TO CONFRONT HIS JUDICIAL ACCUSERS

Due Process has been held to allow a law license applicant to confront and cross-examine persons whose word is used against him. *Willner v. Committee on Character And Fitness*, 373 U.S. 96, 103-04 (1963). A law license holder like Abbott is, by extension, entitled to the same Due Process right to confront Judicial Officers who were the complainant and the alleged victims that gave rise to disbarment charges against him. This is particularly the case since Delaware has established that a professional license is a State property right deserving of Due Process protections. *Villabona v. Bd. Of Medical Practice of State,* 2004 WL 2827918, *6 (Del. Super., April 28, 2004). Abbott's potential loss of his license to practice

law implicated property rights of the utmost importance.

The Supreme Court has also held that the 6th Amendment Confrontation Clause guarantees an accused the right to confront his accuser, and that reliance upon out of Court statements against the accused violates the Constitution. *Crawford v. Washington*, 541 U.S. 36, 68-69 (2004). But it has been noted that "Courts are divided over the applicability of the right to confrontation in disciplinary proceedings." *In re: Harper*, 725 F.3d 1253, 1260 (10th Cir. 2013). The Court should therefore resolve the conflict among the Circuits and State Supreme Courts and hold that the 6th Amendment Confrontation Clause applies to a lawyer discipline action.

Abbott subpoenaed the complainant judicial officer and the other judicial officers who were

allegedly degraded by Abbott's statements, despite the fact that they were Confidential and Absolutely Privileged (so that none of the judicial officers could have ever known about them). Abbott also subpoenaed chairpersons of the Board, who the Panel alleged to have been inconvenienced by certain of Abbott's statements contained in pleadings they reviewed and rendered decisions on. The subpoenas were issued at the discovery stage and the trial stage. But all of the subpoenas were wrongly quashed; Abbott was disabled from fully and fairly presenting his defenses.

Abbott's statements were alleged to be untrue, but no proof was presented at trial by the ODC as to their falsity. And Abbott, the sole witness that testified on the subject, established the truth of all fact-based statements and explained the opinion-based nature of all non-factual statements.

Abbott's deposition subpoenas and trial subpoenas for relevant discovery and trial witnesses were all quashed. Abbott had a right and entitlement to take such discovery and call such witnesses based upon the applicable DLRDP Rules. Abbott's rights to Confrontation, Compulsory Process, and Due Process were denied in contravention of the 6th and 14th Amendments.

IV. THE DECISION VIOLATED THE DUE PROCESS CLAUSE'S FAIR WARNING REQUIREMENT

A. The Legal Standard: Fair Warning

The United States Supreme Court has long recognized that criminal provisions must give fair warning of the conduct that is proscribed. *Bouie v. City of Columbia*, 378 U.S. 347, 350-51 (1964). Further, the Supreme Court has recognized "that a deprivation of the right of fair warning can result not only from vague statutory language, but also from an

unforeseeable and retroactive judicial expansion of narrow and precise statutory language." *Id.* at 352. Since this disbarment action is *quasi*-criminal in nature under *In re Ruffalo*, the Due Process Clause's Fair Warning requirement applies with equal force.

In *Bouie*, the Court also noted that "an unforeseeable judicial enlargement of the criminal statute, applied retroactively, operates precisely like an *ex post facto* law, such as Art. I, § 10 of the Constitution forbids." *Id.* at 353. Indeed, the Court concluded that if the judicial construction was unexpected by reference to the law in affect at the time the conduct occurred, it may not be given retroactive effect. *Id.* at 354. Here, the Decision's transmogrification of the terms lawyer disobedience and "rules of a tribunal" in Rule 3.4(c) to lawyer advice to client and "Court Order" was heretofore unknown to Delaware lawyers. Thus, the Decision's tortured,

first-time construction of DLRPC Rule 3.4(c) violated Abbott's Constitutional right to Fair Warning of the applicable standards of lawyer conduct.

B. The Decision Ran Afoul Of Due Process Fair Warning Protections Regarding Rule 3.4(c) & Rule 3.5(d)

As the Supreme Court held in *Gentile*, *supra*. at 1048-49, a lawyer disciplinary rule must provide "fair notice" of prohibited conduct. DLRPC Rules 3.4(c) and 3.5(d) fail to provide fair notice of conduct that was proscribed. Rule 3.4(c) provides that a lawyer shall not "knowingly disobey an obligation under the rules of a tribunal," not, as the Decision applied to Abbott, that a lawyer shall not advise a client on how to potentially avoid a Court Judgment. And Rule 3.5(d) prohibits "undignified or discourteous conduct that is degrading to a tribunal," not to statements in Confidential, Absolutely Privilege proceedings that the tribunal will not and cannot ever find out about.

The Court well-explained in *Gentile* that:

> **The prohibition against vague regulations of speech is based in part on the need to eliminate the impermissible risk of discriminatory enforcement, for history shows that speech is suppressed when either the speaker or the message is critical of those who enforce the law.** *Gentile* at 1051 (citations omitted).

Abbott's statements were critical of a judicial officer and the Delaware Supreme Court. So the concern expressed by the Court in *Gentile* is omnipresent here.

Rule 3.4(c) only prohibits a lawyer from disobeying obligations imposed by Court Rules; no language even remotely forbids a lawyer from advising a client on how to avoid a Court Judgment. And the tribunals that were the subject of Abbott's Confidential statements at issue in the Rule 3.5(d) charge were not proven to have ever become aware of

them, so that the statements could not have degraded them. Consequently, it is evident that Abbott could not have been given "fair warning" in order to conform his conduct with the *supra*-legal principles the Decision was based on.

The Decision effectively rewrote Rules 3.4(c) and 3.5(d) to fit the circumstances – *i.e.* a pre-ordained conclusion. While the Delaware Supreme Court possesses the legal authority to rewrite the DLRPC, it may not Constitutionally do so after-the-fact. But that is precisely what the Delaware Supreme Court did, rendering the Decision Constitutionally invalid.

V. THE DELAWARE LAWYER DISCIPLINE SYSTEM IS CONSTITUTIONALLY INFIRM UNDER THE 1ST AMENDMENT FREEDOM OF ASSOCIATION & 14TH AMENDMENT EQUAL PROTECTION CLAUSES

The 1st Amendment Right to Freedom of Association includes the freedom to not associate. *California Democratic Party v. Jones*, 530 U.S. 567, 574 (2000); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984). A sole practitioner lawyer has the right to not associate with other lawyers, like big firm and government lawyers practice law. And a lawyer may also choose to be a supplicant to Judicial Officers or a zealous advocate unafraid of displeasing Judicial Officers based on their personal predilections. Both circumstances implicate the right to Freedom of Association.

Abbott presented uncontested evidence of discrimination based on a lawyer's association or lack

of association with a large legal organization – *e.g.* big law firms or government versus a sole practitioner (like Abbott). He also presented evidence of ODC discriminatory policies and practices, to-wit: immunity for lawyer ethical violations a judicial officer overlooks versus *supra*-legal prosecution of lawyers a judge disfavors (like Abbott).

An Equal Protection claim may be based on a classification that interferes with a fundamental right, which includes rights guaranteed by the 1st Amendment. *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 and n.3 (1976). Freedom of Association is protected by the 1st Amendment. *Williams v. Rhodes*, 393 U.S. 23, 30 (1968). And an individual may assert an Equal Protection claim under a "class of one" theory where there is proof that he or she "has been intentionally treated differently from others similarly situated and that there is no

rational basis for the difference in treatment." *Village of Willowbrook v. Oleck*, 528 U.S. 562, 564 (2000).

Abbott, a sole practice lawyer, was prosecuted based on extra-legal standards, while at least 6 other lawyers associated with law firms or government were not prosecuted for clear-cut ethical violations.[5] And the ODC admitted it had a policy and practice of making decisions to prosecute lawyers based on whether a Judge involved in the matter made a figurative *Pollice Verso* ("with a turned thumb") gesture. So if a Judge favors a lawyer, then unethical conduct is overlooked by the ODC. But if a Judge does not like the lawyer, then ethical conduct is prosecuted by the ODC based on *supra*-legal constructs.

[5] Abbott was denied all relevant discovery, including ODC records regarding its handling of lawyer discipline complaints, or else he would have been able to provide further evidence of such ODC discriminatory policies and practices.

Abbott proved that the System, through its policies and practices, intentionally treated lawyers differently based on associational status – *i.e.* based on whether the lawyer was a sole practitioner or large law firm or government lawyer and whether the lawyer was favored or disfavored by a judge. No rational basis or compelling State interest exists to treat lawyers differently based solely on whether they practice on their own or associate in large organizations. Nor is there any rational basis or compelling State interest to treat lawyers who a judge personally dislikes different than lawyers that a judge does not complain about or favors. Pursuant to the 14th Amendment Equal Protection clause, the Delaware Lawyer Ethics Rules should be applied equally and evenhandedly, not based on a lawyer's associational status.

Unrebutted proof of the System's discriminatory treatment of lawyers based on associational status, both System-wide and in the Star Chamber Proceeding, was presented by Abbott at trial. Accordingly, the System and the Decision are both Constitutionally infirm.

VI. THE DECISION WAS UNCONSTITUTIONALLY RETALIATORY; IT VIOLATED ABBOTT'S 1ST AMENDMENT PETITION RIGHTS

The Decision evinces an intent to punish Abbott for having pursued legal action against the ODC and Delaware Supreme Court in Federal and State Courts based upon RICO Claims and challenges to the Constitutionality of the System and the Star Chamber Proceeding (due to ODC discriminatory policies and practices). Specifically, the Decision recounted a long list of irrelevant filings made by Abbott and asserted, for the first time, that they included "inappropriate

attacks" and "submitted materials…that attacked the Vice Chancellor and this Court." *In re: Abbott*, *supra*. at *7-13.

Additionally, the Decision introduces its discussion of Abbott's well-founded efforts to obtain fair treatment by alleging that "some of [Abbott's] statements in…other proceedings gave rise to additional disciplinary violations." That allegation is false, but it evidences the Decision's personal disdain and recriminations *vis-à-vis* Abbott based solely on his exercise of his 1st Amendment Right to Petition for Redress of Grievances. The Decision would not have mentioned the non-record court pursuits undertaken by Abbott if they did not color the act of disbarment.

The Petition only alleged Abbott violated DLRPC Rule 3.5(d) by making one (non-degrading) statement in one "other proceeding." But the Decision admitted that it was based on other uncharged,

Constitutionally protected Petitions filed by Abbott, stating that "[a]fter the filing of the disciplinary petition, Abbott…continued to assert claims relating to the disciplinary proceeding in other venues."[6] The Decision thereby tacitly admitted that it was in retaliation for Abbott's exercise of his 1st Amendment right to Petition the Government for Redress of Grievances.

The 1st Amendment Right to Petition the Government for Redress of Grievances includes the right to pursue litigation in the Courts. *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972) ("The right of access to the courts is indeed but one aspect of the right of petition."). The Supreme Court has protected the 1st Amendment

[6] This comment obviously refers to additional litigation Abbott pursued to stop the rigged Star Chamber Proceeding from continuing. *See Abbott v. Vavala*, 2022 WL 453609 (Del. Ch., Feb. 15, 2022), *aff'd*, 2022 WL 6342947 (Del. Aug. 22, 2022).

right to petition the government for redress of grievances by establishing *Noerr-Pennington* immunity, which has been extended to administrative and judicial actions. *California Motor Transport Co., supra*. As a consequence, the Decision's retaliation for Abbott's prosecution of lawsuits against the Delaware Supreme Court and ODC prosecutors violates Abbott's 1st Amendment Petition rights.

The severe, career-ending punishment imposed against Abbott by the Decision was based on retaliatory intent, to-wit: disbar Abbott for his filing of lawsuits against the Delaware Supreme Court and ODC and vigorously defending himself in the Star Chamber Proceeding. The *Noerr-Pennington* Doctrine protects Abbott's petitioning of the Courts for legal redress. As a result, the Decision should be reversed since it is Constitutionally invalid.

VII. DENIAL OF ALL RELEVANT DISCOVERY & TRIAL WITNESSES RAN AFOUL OF DUE PROCESS PROTECTIONS AFFORDED BY THE 14TH AMENDMENT & THE *ACCARDI* DOCTRINE

As noted hereinbefore, the *Accardi* Doctrine requires a government agency to abide by their own rules. And the Doctrine further requires invalidation of any action taken in contravention of rules that insure Due Process. Here, Abbott was denied his right to broad and liberal discovery guaranteed by applicable Court Rules, which supports invalidation of the Decision.

DLRDP Rule 15(b) provides that the Superior Court Civil Rules generally apply to lawyer discipline cases, except that "discovery procedures shall not be expanded beyond those provided in Rule 12 hereof… ." In turn, DLRDP Rule 12(a)(2) provides that "[a]fter the filing of a petition for discipline, the ODC or the respondent may compel by subpoena the testimony of

witnesses, or the production of pertinent records, books, papers, and documents, at a deposition or hearing under these Rules." In addition, Rule 12(e) permits a respondent to "take the deposition of a witness…by subpoena as set forth in Rule 12(a)(2) above."

Based on applicable Rules, Abbott was entitled to take depositions *duces tecum* and *ad testificandum* as "discovery procedures," and Superior Court Civil Rule 26 established the broad scope of such discovery that was available. The same held true for witnesses subpoenaed to testify and produce documents at trial.

Abbott made filings regarding all discovery, which were all quashed, on November 30, 2020, March 1, 2021, June 30, 2021, July 22, 2021, and August 12, 2021. Abbott made filings regarding all trial witnesses, whose subpoenas were all quashed, via filings dated October 28, 2021, November 5, 2021, and

August 22, 2022. All such subpoenas were quashed; Abbott was denied ALL RELEVANT DISCOVERY and ALL RELAVANT TRIAL WITNESSES AND DOCUMENTS.

The Delaware Courts have established a liberal scope of discovery. In *In Re Oxbow Carbon LLC Unitholder Litigation*, 2017 WL 959396, Laster, V.C. (Del. Ch., Mar. 13, 2017), the Court held:

1. The scope of discovery is broad and far-reaching.
2. Rule 26(b) requires "all relevant information, however remote, to be brought out for inspection not only (for) the opposing party but also for the benefit of the Court." (emphasis added).
3. Relevance must be viewed liberally, and discovery into relevant matters should be permitted if there is any possibility that the

discovery will lead to relevant evidence. (the "Any Possibility Of Relevance Standard").

4. "Discovery is called that for a reason. It is not called 'hide the ball.'" (the "Hide The Ball Approach").

5. The burden regarding disputed discovery is on the party objecting to show why, and in what way, the information requested is privileged or not properly requested.

The Any Possibility Of Relevance Standard was contravened in the Star Chamber Proceeding and at the Soviet Style Show Trial. Instead, the Recommendation and Decision were fatally flawed since they were founded on the Hide The Ball Approach. Indeed, the Decision erroneously shifted the burden on the movants' motions to quash subpoenas to Abbott and applied a heightened

standard to boot. As a result, the *Accardi* Doctrine establishes that the Decision should be revered.

Abbott's right to Due Process of Law was roundly denied by the quashing of his subpoenas for all relevant Discovery, Trial Witnesses, and Trial Evidence. Concomitantly, Abbott was denied his right to fully and fairly present his defense case at the Soviet Style Show Trial. The 14th Amendment's Due Process Clause supports invalidation of the Decision, in order to protect Abbott's property right: his license to practice law.

CONCLUSION

The Decision violated Abbott's Constitutional rights to: Free Speech, Freedom of Association, Equal Protection of the Laws, Due Process of Law, Confront the Accuser, and to Petition the Government for Redress of Grievances. The Delaware Supreme Court concluded that a *Pro Se* person's speech, which was critical of Judicial Officers, was *ipso facto* degrading to the subject Judicial Officers even though no proof was presented that the Judicial Officers were aware of the Statements (which were made in strictly confidential and privileged proceedings) or could ever become aware of the statements. In addition, the Decision held that Abbott had to prove the truth of the statements, rather than placing the burden on the ODC to prove Falsity and Actual Malice as other State Supreme Courts and Circuit Courts have held. And

the Decision disregarded Abbott's *Noerr-Pennington* immunity.

Additionally, no "fair warning" or fair notice was provided to Abbott on 2 of the 3 Foundational Charges. The Decision raised a new charge post-trial – omissions versus false affirmative statements charged - and found Abbott in violation of it, denying him his fundamental Due Process and 6th Amendment right to notice and a hearing and to be adjudicated in accordance with applicable rules. The Decision also found Abbott in violation of a Rule which did not exist – prohibiting advice to a client on how to possibly avoid a Court Judgment – despite the charge and rule only barring lawyer disobedience of a Court Rule.

The Decision was also Retaliatory, punishing Abbott for exercising his Petition Rights. And Abbott's Due Process Rights were denied under the *Accardi* Doctrine based on the denial of <u>all</u> Discovery

and all Trial Witnesses and related Evidence, which applicable Rules guaranteed the right to.

Finally, the Decision held that the 6th Amendment Confrontation Clause did not apply in the Star Chamber Proceeding, contrary to holdings in other jurisdictions, but consistent with other authority. And the Decision failed to address or conclusorily addressed Constitutional issues regarding Due Process and Equal Protection frailties in the Star Chamber Proceeding and System. For these reasons, the decision of the Delaware Supreme Court should be reversed.

Respectfully submitted,

Richard L. Abbott, Esquire
5632 Kennett Pike
Wilmington, DE 19807
(302) 605-4253
rich@richabbottlawfirm.com
Dated: February 6, 2024

APPENDIX TABLE OF CONTENTS

APPENDIX A
TO PETITIONER'S PETITION
FOR WRIT OF *CERTIORARI*

2023 WL 7401529
Only the Westlaw citation is currently available.

Supreme Court of Delaware.

In the MATTER OF a Member of the Bar of the Supreme Court of Delaware, Richard L. ABBOTT, Esquire, Respondent.

No. 25, 2023
|
Submitted: June 28, 2023
|
Decided: November 9, 2023

Synopsis
Background: Attorney disciplinary proceeding was brought arising from attorney's representation of client in tree-trimming dispute with a homeowners' association.

Board Case No. 112512-B

Upon Review of the Reports of the Board on Professional Responsibility. **DISBARRED**.

Attorneys and Law Firms

David A. White, Esquire, Chief Disciplinary Counsel, and Kathleen M. Vavala, Esquire, Deputy Disciplinary Counsel, Office of Disciplinary Counsel, Wilmington, Delaware.

Richard L. Abbott, Esquire, Hockessin, Delaware.

Before TRAYNOR, LEGROW, and GRIFFITHS, Justices.

Opinion

PER CURIAM:

***1** This lawyer disciplinary proceeding arises from Respondent Richard L. Abbott's conduct in *Seabreeze Homeowners Assoc. v. Jenney*, C.A. No. 8635-VCG (Del. Ch.) ("Seabreeze Litigation")—a dispute over the trimming of trees and shrubbery between a homeowners' association and a property owner—as well as statements he made in filings related to this disciplinary proceeding. We cannot help but lament that a seemingly mundane lawsuit would escalate into a nasty feud and, in turn, prompt Abbott, an experienced litigator, to ignore fundamental ethical constraints, putting his privilege to practice law at risk. The genesis of this disciplinary action was advice Abbott gave to his client to help the client violate an order and bench rulings issued by the Court of Chancery. The advice and the documentation that effectuated it was followed by misrepresentations to the court as to the client's status *vis-à-vis* the court's order and rulings. And when the trial judge who had issued the order and rulings learned of Abbott's dodgy

stratagem and reported the matter to the Office of Disciplinary Counsel ("ODC"), Abbott's conduct only got worse. Abbott eschewed a lawyerly defense of his questionable actions and, despite being previously disciplined for similar misconduct, unleashed a persistent flurry of false invective impugning the integrity of the trial judge, ODC, and eventually this Court.

Not surprisingly, Abbott's conduct in the Seabreeze Litigation prompted ODC to open an investigation in 2015, which led to a petition for discipline in 2020. Through a variety of procedural maneuvers, Abbott succeeded in delaying ODC's filing of the petition and the Board on Professional Responsibility's consideration of the petition for years.

In due course, however, a panel of the Board on Professional Responsibility ("Panel") found that ODC established by clear and convincing evidence that Abbott violated Rules 3.5(d),[1] 8.4(c),[2] and 8.4(d)[3] of the Delaware Lawyers' Rules of Professional Conduct ("DLRPC"). The Panel found that ODC did not establish by clear and convincing evidence that Abbott violated Rules 3.4(c)[4] or 8.4(a).[5] A majority of the Panel ("Panel Majority") recommended a two-year suspension for Abbott's disciplinary violations. The chair of the Panel ("Panel Chair") recommended disbarment.

***2** Both ODC and Abbott have filed objections to the Panel's findings and recommendations. After our independent review of the Panel's recommendations, we conclude that Abbott violated Rules 3.4(c), 3.5(d), 8.4(a), 8.4(c) and 8.4(d) of the DLRPC and that the

appropriate sanction is disbarment.

I.

A.

The Seabreeze Litigation arose from a dispute between Marshall Jenney, the owner of two properties at 317 Salisbury Street and 318 Salisbury Street in Rehoboth Beach (collectively, the "Properties"), and the Seabreeze Homeowners' Association, Inc. ("Seabreeze"). In 2011, Seabreeze filed a Court of Chancery action against Jenney for a mandatory injunction requiring Jenney to trim trees and shrubs on the Properties. Jenney and Seabreeze resolved the action in a settlement agreement dated December 21, 2012 ("Settlement Agreement"). Under the Settlement Agreement, Jenney agreed to trim the trees and shrubs on the Properties and Seabreeze agreed to dismiss the action.

After Jenney failed to comply with the Settlement Agreement, Seabreeze instituted the Seabreeze Litigation in June 2013. Seabreeze sought specific performance of the Settlement Agreement. Jenney and Seabreeze resolved the matter in a stipulation and consent order granted by the Court of Chancery on July 11, 2014 ("Consent Order"). Under the Consent Order, Jenney was required to take steps to ensure that the trees and shrubs on the Properties would be trimmed by October 31, 2014.[6] Time was of the essence.[7] Paragraph 17 of the Consent Order provided that it was "for the benefit of, and shall be binding on, all Parties and their respective successors, heirs, assigns, officers, and directors."[8] After Jenney

failed to take the necessary steps for completion of the work by October 31, 2014, Seabreeze filed a motion for a rule to show cause hearing on November 3, 2014. On November 6, 2014, Jenney filed a response stating that he did "not refuse to have the work performed as expeditiously as possible" and requested an extension to have the work completed by November 21, 2014.[9]

B.

On December 5, 2014, Abbott entered his appearance for Jenney in the Seabreeze Litigation. Abbott was Jenney's fourth or fifth attorney since the filing of the original action in 2011. Between December 2014 and March 2015, the parties filed competing motions and appeared before the Vice Chancellor multiple times. As described by the Panel, "Seabreeze generally alleged that Jenney failed to comply with the Consent Order by not trimming the trees and shrubs; Jenney generally accused Seabreeze of interfering with Jenney's attempts to comply with the Consent Order."[10] The Vice Chancellor reaffirmed Jenney's obligation to trim the trees and shrubs in bench rulings on January 15, 2015 and February 23, 2015.

***3** At the February 23, 2015 hearing, the Vice Chancellor directed the parties to submit a proposed form of order encompassing how the trees and shrubs were to be trimmed within a reasonable amount of time and the attorneys' fees to be awarded to Seabreeze for Jenney's breach of the Consent Order. Abbott and Seabreeze's counsel exchanged emails regarding the proposed form of order. On February 25, 2015, Seabreeze's counsel submitted a form of order to the Court of Chancery ("February 25, 2015 Order").

The Vice Chancellor granted the order shortly thereafter.

Later that day, Abbott filed a motion for reargument, arguing that Seabreeze's counsel had misrepresented Abbott's agreement to the form of order and included language in the order that was not discussed or contemplated at the February 23, 2015 hearing. On behalf of Jenney, he sought attorneys' fees incurred in filing the motion for reargument. Seabreeze's counsel objected to Abbott's statements and filed a counter-motion for Rule 11 sanctions.

After additional submissions by the parties, the Vice Chancellor held a hearing on March 3, 2015, and made several rulings ("March 3, 2015 Bench Rulings"). The Vice Chancellor modified the February 25, 2015 Order to, among other things, remove language finding Jenney in contempt. As a result of the March 3, 2015 Bench Rulings, Jenney had to complete the trimming of the trees and shrubs on 318 Salisbury Street within eight weeks of the February 25, 2015 Order, which was April 22, 2015.

The Vice Chancellor directed the parties to submit additional documents regarding the amount of attorneys' fees sought by Seabreeze. As to Jenney's request for attorneys' fees, the Vice Chancellor described Seabreeze counsel's conduct as possibly "less than precise or best practice legal work," but found no intentional misrepresentation or bad-faith litigation conduct that merited an award of attorneys' fees.[11] Seabreeze withdrew the motion for Rule 11 sanctions. On March 6, 2015, Seabreeze informed the Court of Chancery that more trimming work needed

to be performed at 317 Salisbury Street.

C.

On March 7, 2015, Abbott sent Jenney an email outlining a legal strategy to avoid enforcement of the Settlement Agreement, Consent Order, and March 3, 2015 Bench Rulings. Abbott first opined that it was clear Seabreeze would not stop harassing Jenney while he owned the Properties and that the Vice Chancellor did not understand this or care about the amount of harassment over trees and shrubs. He then stated that, as previously discussed, conveying title to another entity controlled by Jenney was not a viable option for circumvention of the Settlement Agreement and Consent Order because the Vice Chancellor would likely exercise his equitable powers to make Jenney personally responsible. Abbott went on to advise:

So this morning I came up with this theory – CONVEY BOTH PROPERTIES to [Jenney's wife].

No tax consequences will result since she is your wife. And then I can advise the Court and [Seabreeze's counsel] that there is no need for any further activity in the case since it is now moot—i.e.[,] you are no longer the title owner AND the Settlement Agreement and Consent Order are purely personal obligations of yours that it would then be impossible for you to perform.

If Seabreeze and [Seabreeze's counsel] wanted to make the obligation on trees and hedges to be perpetual, then they should have made them run with the land. But they did not—enabling me to happily point out that [Seabreeze's counsel] probably

committed malpractice. Indeed, if you sold the properties on the market, then you would be off the hook. The same follows if you convey to [your wife].

***4** Now Seabreeze might file a new action against [your wife], but then we would have a clean slate to fight against them and get the case tossed out. [Seabreeze's counsel] will kick and scream that the transfer is a sham, but the law is the law. And a wife has not legally been deemed to be a mere legal extension/appendage of her husband since the Married Woman's Property Act passed in Delaware about 140 years ago.
Let me know if you can do this, based on an Pre-Nuptial Agreement, any Trust, and any other financial or legal issues unique to you situation. You can just wait a few years and then have [your wife] convey the parcels back to you, at which time Seabreeze would likely do nothing (and if they did they would probably have to file a new case against you).[12]

Abbott did not mention the language in Paragraph 17 of the Consent Order providing that it was binding on Jenney's successors, heirs, and assigns. Jenney agreed to Abbott's proposed strategy. During the disciplinary proceeding, Jenney testified that Seabreeze had been harassing him and that Abbott advised him transferring the Properties would be a way to end the Seabreeze Litigation. Jenney also testified that at the time of Abbott's advice he "maybe, most likely" would transfer the Properties back to himself within six months.[13] After Jenney agreed to the proposed strategy, Abbott instructed his assistant to prepare the deed transfers and a letter to the Vice

Chancellor informing him of the transfer of the Properties.

In a March 9, 2015 email, Jenney told Abbott that his wife was amenable to the transfer and asked about establishing a post office box as a legal address "to make it as hard as possible for her to be served."[14] Abbott responded that same day, advising that Abbott's address would appear on the deed and he would not accept service of any new filing.[15] Abbott also acknowledged Paragraph 17 of the Consent Order:

First we will have to deal with [Seabreeze counsel's] inevitable filing with the Court challenging the effect of the transfer. I am hoping the Court wants to be rid of the matter and shoots him down. I am sure [Seabreeze's counsel] will argue that [your wife] takes title subject to all of the requirements imposed on you, which would be based on some unfortunate language in the Consent Order ... "binding on heirs, successors, assigns." It is clear that the original Settlement Agreement did not run with the land, and was only binding on you[ ] personally, but the Order language could give [Seabreeze's counsel] a shot at arguing that it ran with the land.[16]

Based on Abbott's advice and assistance, on March 12, 2015, Jenney executed two deeds transferring the Properties to his wife, each for the nominal amount of $10.00. Abbott's office then recorded the deeds.

D.

In his March 16, 2015 letter to the Vice Chancellor ("March 16, 2015 Letter"), Abbott stated:

I am writing to advise the Court that no further proceedings in this action will be necessary, other than on the pending requests for awards of attorneys' fees. The remainder of the action is now legally moot.

Enclosed please find a copy of the Deeds transferring title from Marshall T. Jenney to Erin C. Jenney, which were recorded on March 13, 2015. As a result, Mr. Jenney no longer has any ownership interest in the properties and is therefore relieved of the purely *in personam* obligations under the Settlement Agreement.
***5** Mr. Jenney and I appreciate the Court's courtesies in this matter.[17]
Abbott did not mention Paragraph 17 of the Consent Order or that Jenney would continue to exercise control over the Properties.

On March 17, 2015, Seabreeze filed a renewed motion for a rule to show cause hearing on Jenney's violation of the Consent Order and a motion to join Jenney's wife as an indispensable party. Jenney opposed the motions and filed a motion to strike statements in Seabreeze's filings and a Rule 60(b) motion to reopen the Consent Order.

On April 13, 2015, the Vice Chancellor granted Seabreeze's motion to join Jenney's wife as an indispensable party. The Vice Chancellor also held an evidentiary hearing on Seabreeze's renewed motion for a rule to show cause that day. At the beginning of the hearing, the Vice Chancellor denied Jenney's motion to strike and Rule 60(b) motion. The Vice Chancellor then heard testimony from several witnesses including Jenney. When Jenney was asked

if he ever had any intent of complying with the Consent Order, he testified:

Well, I was so upset with my neighbors and the way I was treated, considering I was born and raised in this neighborhood that, you know, I figured that I still might sell the property. So I wanted to make sure with my lawyer that there was no language, you know, that would state that it would run with land or pass to the person I sold it to. So that was my thought process.[18]

Jenney initially denied discussing the transfer of the Properties with Abbott, but then admitted otherwise:

Question: So you did discuss with Mr. Abbott the reasons for transfer from you to Erin Jenney of the two properties?

Answer: Yes. So it was either I take the properties to market and sell them to circumvent, or, you know, my attorney said, "If you want to retain it, stay in the neighborhood and keep your family home, you can transfer it to your wife."

Question: And you had that discussion about transferring it to your wife so that you didn't have to comply with the court order. Correct?

Answer: Can you ask your question again?

Question: Yeah. You had the discussion about transferring the two properties from you to your wife so you did not have to comply with the court order. Correct?
Answer: I mean, it was—yeah. Yes.[19]

Jenney testified similarly at the disciplinary hearing,

stating that the purpose of the transfer of the Properties was to end the Seabreeze Litigation and to force Seabreeze to start the case over again. Abbott also testified that the purpose of the transfer was to end the Seabreeze Litigation:

[T]he deed transfer became a necessity, because essentially it was never going to end, otherwise, in my estimation, based on, you know, a few—two, three months of experience in seeing this, and No. 1, [Seabreeze's counsel] was going to continue I think I used at one point, "ad finitum" and "ad nauseam."[20]

After the witnesses testified at the April 13, 2015 hearing, Abbott argued, among other things, that he thought the Vice Chancellor was going to issue another written order after the March 3, 2015 hearing, but also said that he had calculated the eight-week deadline to complete the trimming work from the February 25, 2015 Order. He contended that Jenney was entitled to transfer the Properties and that, in any event, the transfer caused no harm because the Vice Chancellor had granted Seabreeze's motion to join Erin Jenney as a party.

***6** At the conclusion of the hearing, the Vice Chancellor expressed his disbelief at what had transpired:

[D]espite having done many, many, many homeowner cases, I have never had a defendant in one of those cases sit in a witness chair and tell me that he didn't intend to comply with his agreement because he was upset with his neighbors and he might want to sell the property. Nor have I ever had anybody sit in a witness chair and tell me that on advice of counsel, he had

entered into a sham transaction to frustrate the specific performance of an agreement.

It is shocking to me. It is unacceptable. It is unacceptable behavior for a litigant in this Court. It is unacceptable behavior for an attorney in this Court. So it's clear to me there was contempt of my bench order and of the stipulation and order of this Court. But we're not going to end this hearing today with me finding contempt because, like Mr. Abbott, I want to kill this action. I want it over.[21]

The Vice Chancellor suspended the hearing to be reconvened at the Properties to determine what needed to be trimmed and the proper remedy for contempt. The reconvened hearing at the Properties was scheduled for May 21, 2015.

On May 8, 2015, the Jenneys filed a notice of appeal in this Court. The Court dismissed the appeal because it was interlocutory and the Jenneys had not complied with Rule 42.[22]

E.

On May 21, 2015, the Vice Chancellor conducted a hearing at the Properties to determine the necessary trimming and then reconvened the hearing at the courthouse. At the courthouse, the Vice Chancellor confirmed his previous finding of contempt based on a sham transfer intended solely to avoid enforcement of a court order. The Vice Chancellor awarded Seabreeze its costs and attorneys' fees in responding to the transfer of the Properties and left it to Abbott and Jenney to determine who would pay. Recognizing this Court's exclusive role in addressing ethical violations,

the Vice Chancellor stated that he would refer the matter to ODC.

On June 1, 2015, the Court of Chancery entered an order ruling that the necessary work had been completed at 317 Salisbury Street and setting forth the work on 318 Salisbury Street to be completed by June 30, 2015. On June 10, 2015, a Court of Chancery employee sent a letter to the then-Chief Disciplinary Counsel informing her of the Vice Chancellor's May 21, 2015 bench ruling and providing the docket entries and transcripts in the Seabreeze Litigation for a review of Abbott's conduct. On June 11, 2015, the Vice Chancellor reconfirmed his previous contempt findings and awarded Seabreeze fees and costs. The required work was completed and the case was dismissed on August 21, 2015.

Eight months after the transfer, Jenney reconveyed the Properties back to himself because he wanted to refinance loans that had remained in his name. During the disciplinary hearing, Jenney testified that he had just as much control over the Properties after the transfer to his wife as he did before. As to 317 Salisbury Street, Jenney paid the taxes, bills, and maintenance, hired contractors as necessary, and collected rent. As to 318 Salisbury Street, he paid all the property taxes, bills, and maintenance costs. No one else undertook these responsibilities for either property.

II.

***7** Since his referral to ODC in June 2015, Abbott has challenged or litigated aspects of this disciplinary

proceeding in multiple venues. Some of his statements in this proceeding and other proceedings gave rise to additional disciplinary violations.

A.

In June 2015, Abbott filed a complaint against the Vice Chancellor in the Court on the Judiciary.[23] He alleged that the Vice Chancellor acted with bias against him in the Seabreeze Litigation. The former Chief Justice dismissed the complaint, concluding that the record was devoid of any facts or reason showing why the Vice Chancellor would be biased against Abbott.

On July 23, 2015, ODC advised Abbott that it had opened a file following the Vice Chancellor's referral. ODC asked Abbott to provide any documents he thought would be relevant to ODC's investigation. Abbott objected to the Vice Chancellor's referral, but indicated that he would provide documents.

In April 2016, ODC advised Abbott that ODC intended to proceed with a formal investigation because there was a reasonable inference that he had violated Rules 3.5(d), 4.4(a), and 8.4(d) of the DLRPC. As part of this investigation, ODC would determine whether to present the matter to a panel of the Preliminary Review Committee ("PRC").[24] The PRC could dismiss the matter, offer a sanction of a private admonition, or approve the filing of a petition for discipline with the Board.[25] Between May and September 2016, ODC and Abbott engaged in frequent communications and motion practice regarding various issues. These issues included ODC's

efforts to obtain documents relating to Abbott's advice to Jenney about the transfer of the Properties, Abbott's requests that the then-Chief Disciplinary Counsel and the then-Board Chair recuse themselves, and Abbott's requests for a stay pending resolution of his recusal requests.

On July 13, 2016, ODC filed a motion to compel the production of documents from Abbott concerning his advice about the transfer of the Properties. ODC also informed Abbott that it would present a disciplinary petition to the PRC on August 3, 2016, and that Abbott could submit written materials for the PRC to consider by July 26, 2016. ODC agreed later to defer presentation of the petition to the PRC until October.

On July 22, 2016, Abbott filed a complaint against then-Chief Disciplinary Counsel with the Public Integrity Commission ("PIC"). He alleged that there was an appearance of impropriety because she was pursuing the investigation to advance her own judicial ambitions and improperly seeking privileged documents. On August 24, 2016, the PIC dismissed the complaint for lack of jurisdiction.

***8** On September 13, 2016, ODC informed Abbott that it would present a petition for discipline to the PRC on October 5, 2016. ODC also advised Abbott that he had to provide any materials he wished the PRC to consider by September 29, 2016.

On September 16, 2016, Abbott filed three motions with the Board that inappropriately attacked the Vice Chancellor. Abbott alleged, among other things, that:

- Obviously, the Vice Chancellor wanted to mete out

his anger all the more by attempting to harm me as a punishment for daring to do my job in furtherance of his own personal and emotional issues.[26]

• The Court conducted a last minute, surprise "Star Chamber" proceeding, first announced at the end of the site visit, in order to tongue lash me and doctor up the record with conclusory, unsupported, and false *ad hominem* attacks on me.[27]

• The allegation of "vexatious" transfer of title is also a figment of the Vice Chancellor's very active imagination.[28]

• Rather than congratulating and applauding the undersigned counsel for his zealous representation through appropriate and permissible means, the Vice Chancellor's frustration, aggravation, and anger literally caused his emotions to get him carried away. He lashed out at the undersigned counsel and spouted out wildly unsupported and false statements in an effort to gin-up a record for purposes of this personal retribution proceeding.[29]

• The fact that Vice Chancellor went to the lengths he did in attempting to besmirch the reputation of the undersigned counsel through false attack commentary constitutes clear evidence of his ill-intent and bad faith. He concocted a fairytale story in the hopes that he could sell it to someone who would buy his spin and abuse the system by meting out his revenge on undersigned counsel despite the fact that no misconduct of any sort had occurred.[30]

That same day Abbott filed a complaint against the then-Board Chair with the PIC. With the complaint, he included two of the Board filings in which he made numerous inappropriate attacks on the Vice Chancellor.[31] The PIC dismissed the complaint.

On September 20, 2016, the then-Board Chair stayed ODC's motion to compel pending resolution of Abbott's motion to recuse. On September 21, 2016, Abbott filed a complaint for a writ of *certiorari* in the Superior Court, challenging the PIC's dismissal of his complaint against then-Chief Disciplinary Counsel. On September 23, 2016, the Jenneys filed a complaint against then-Chief Disciplinary Counsel with ODC. The Court appointed outside counsel to act as Special Disciplinary Counsel and to investigate the matter.[32]

***9** On September 29, 2016, in anticipation of the October 5, 2016 PRC hearing, Abbott submitted information for the PRC to consider. He also requested a stay of the matter. On September 30, 2016, ODC informed Abbott that it would withdraw its intended presentation to the PRC in light of his pending motion to stay and his request that the PRC stay its consideration of the matter.

On November 29, 2016, Special Disciplinary Counsel recommended that this Court dismiss the Jenneys' complaint based on his opinion that then-Chief Disciplinary Counsel did not violate the ethical rules by seeking discovery of Abbott's advice to the Jenneys regarding transfer of the Properties. This Court accepted the recommendation and dismissed the complaint.

On February 28, 2018, the Superior Court affirmed the PIC's dismissal of Abbott's complaint against then-Chief Disciplinary Counsel.[33] Abbott appealed the Superior Court's decision to this Court.

B.

On March 12, 2018, ODC filed a petition for Abbott's immediate interim suspension pending final disposition of the disciplinary proceeding. ODC alleged that Abbott's false and frivolous filings in this proceeding and other venues had interfered with ODC's disciplinary efforts and caused ODC to stay the disciplinary proceeding. On April 13, 2018, this Court held that consideration of the petition for interim suspension should be stayed while the matters forming the basis for the petition remained pending in the Delaware courts.

On February 25, 2019, this Court affirmed the Superior Court's decision in *Abbott v. Del. State Pub. Integrity Comm'n*.[34] On April 11, 2019, ODC, which had new Chief Disciplinary Counsel, moved to withdraw the petition for Abbott's interim suspension. Instead of moving to lift the stay of the petition, ODC had determined to proceed with investigation and, as warranted, proceedings before the PRC and Board. Abbott objected, arguing that the petition should be dismissed. The Court granted the motion to withdraw the petition.

In September 2019, the new Board Chair held a status conference and set a schedule to complete briefing on ODC's July 2016 motion to compel production of Abbott's advice to Jenney regarding the transfer. In his filings with the Board, which included a motion to dismiss, Abbott continued his inappropriate attacks on the Vice Chancellor and mounted one on this Court. For example, Abbott alleged that:

- ODC was acting in bad faith upon "the vindictive

urging of the emotionally unhinged Vice Chancellor," the "wild ravings of the Angry Vice Chancellor," and the "ravings of an unhinged personality (the 'Maniacal Rant')."[35]

• The Maniacal Rant is unsupported by any evidence or legal analysis. It was simply a conclusory harangue of inflammatory buzzwords, which were carefully selected by the Angry Vice Chancellor to manufacture a record to further his diabolical plot to destroy Abbott for purely personal reasons.[36]

• The ODC foolishly relies upon the absurd and completely unfounded assertions of the Angry Vice Chancellor, whose every statement in this matter is inherently unreliable and non-credible based upon his obviously disturbed state of mind and ulterior motive to harm Abbott.[37]

• The Angry Vice Chancellor's extremely poor attitude and inability to think clearly and cogently is evident.[38]

***10** • The Angry Vice Chancellor hoped to ruin Abbott's legal career based on a doctored up record and referral to the ODC.[39]

• If the ODC were to proceed against Abbott, he needs to take discovery from the Angry Vice Chancellor, including: (1) a deposition *ad testificandum* and *duces tecum*; (2) a physical examination through a psychiatrist and/or medical doctor; (3) document production regarding medications and records regarding any medical and/or any psychiatric condition(s).[40]

• Psychological conditions such as mental transference, delusional episodes, memory lapses, or other disorders that the Angry Vice Chancellor may have suffered in 2015 must be discovered so as to explain why he was unable to competently assess and comment upon Abbott's (appropriate) conduct.[41]

• Disappointingly, the Delaware Supreme Court failed to intervene and promptly discipline the Disgraced Past CDC for her misconduct in that regard [the petition for interim suspension], instead looking a blind eye to corruption that has infected the ODC's dealings in this matter.[42]
• The Supreme Court is simply out to lunch and cannot be expected to exercise any legitimate supervision of the ODC....[43]
On November 14, 2019, the Board Chair granted ODC's motion to compel and denied Abbott's motion to dismiss. On December 9, 2019, the Board Chair denied Abbott's motion for reargument.

On December 16, 2019, ODC notified Abbott that it planned to present a petition for discipline to the PRC on January 8, 2020 for Abbott's violation of Rules 3.4(c), 3.5(d), 8.4(a), and 8.4(d). Abbott requested a postponement of the presentation, to which ODC agreed.

On January 2, 2020, Abbott sent a motion to dismiss the disciplinary proceeding to the Justices by Federal Express. Abbott continued to attack the Vice Chancellor and the Court, alleging, among other things:
• The Vice Chancellor hoped to harm Abbott based on a doctored up record and referral to the ODC.[44]
• Disappointingly, the Delaware Supreme Court failed to intervene and promptly discipline the Disgraced Past CDC for her misconduct in that regard [the petition for interim suspension], instead looking a blind eye to the corruption that has infected the ODC's dealings *vis-à-vis* Abbott for lo these many years now.[45]

On January 2, 2020, Abbott also sent PRC members a motion for recusal of any lawyer members who regularly practiced in the Court of Chancery. The motion contained many of the same inappropriate attacks Abbott had made in previous motions.[46] On January 7, 2020, Abbott filed a motion to recuse the Board Chair. On January 14, 2020, ODC notified Abbott that it planned to present a petition for discipline to the PRC on February 5, 2020 for Abbott's violations of Rules 3.4(c), 3.5(d), 8.4(a), 8.4(c), and 8.4(d).

***11** On January 27, 2020, Abbott filed an action against all of the then-current Justices,[47] then-Chief Disciplinary Counsel, and Deputy Disciplinary Counsel in the United States District Court for the District of Delaware. Abbott asserted federal RICO and 42 U.S.C. § 1983 claims as well as state law claims based on the disciplinary proceeding. He also filed a motion for a temporary restraining order of the disciplinary proceedings, which the District Court denied. Abbott's complaint and exhibits included allegations about the Vice Chancellor that were similar to the inappropriate attacks in Abbott's filings with the Board and PIC.[48] The District Court ultimately dismissed the federal action based on the *Younger* abstention doctrine.[49] The United States Court of Appeals for the Third Circuit affirmed the District Court's decision.[50]

On January 30, 2020, Abbott asked PRC members to stay their consideration of ODC's petition pending resolution of his recusal motions and federal lawsuit. Abbott also submitted materials, including the

January 2, 2020 Motion to Dismiss that attacked the Vice Chancellor and this Court, for the February 5, 2020 PRC hearing that were provided to the PRC panel.

C.

After the filing of the disciplinary petition, Abbott sought discovery and continued to assert claims relating to the disciplinary proceeding in other venues.

1.

On February 5, 2020, the PRC panel determined that there was probable cause that Abbott engaged in professional misconduct and recommended the filing of ODC's petition for discipline ("Petition"). The Petition asserted the following counts:

Count I—violation of Rule 3.4(c) based on Abbott knowingly advising and assisting Jenney to disobey the Consent Order;

Count II—violation of Rule 8.4(a) based on Abbott's violation or attempted violation of Rule 3.4(c) and/or doing so through the acts of another;

Count III—violation of Rule 8.4(c) based on Abbott making affirmative statements to the Court of Chancery and Seabreeze's counsel, including but not limited to statements in his March 16, 2015 Letter, that were contrary to his legal strategy, advice to Jenney, and understanding of the facts and law;

Count IV—violation of Rule 3.5(d) based on Abbott

making degrading statements about the Vice Chancellor and this Court in submissions to the Board, the PIC, and/or this Court; and

Count V—violation of Rule 8.4(d) based on the misconduct alleged in Counts I-IV.

On July 1, 2020, Abbott filed an Answer to the Petition and asserted 96 affirmative defenses. Later that month, he obtained subpoenas for depositions of the Justices, then-Chief Disciplinary Counsel, Deputy Disciplinary Counsel, and former Chief Disciplinary Counsel. He also obtained subpoenas for a deposition of the Vice Chancellor and production of his medical records as well as a deposition of the former Chief Justice and production of his records concerning Abbott's Court on the Judiciary complaint. The recipients moved to quash the subpoenas. Abbott withdrew the subpoenas before the Board Chair could resolve the motions to quash.

***12** On September 14, 2020, the Board Administrative Assistant appointed the Panel and issued a notice of hearing for December 10, 2020. On September 18, 2020, Abbott moved to recuse the Panel Chair based on his legal practice in the Court of Chancery. He also advocated for holding the schedule in abeyance until the motion for recusal was decided.

At an October 5, 2020 status conference and in a subsequent written decision, the Panel Chair denied the motion for recusal, stating that he had retired in March 2018 and had not appeared in the Court of Chancery since then. As to scheduling, Abbott sought a year to take discovery and to litigate the matter

while ODC sought to maintain the December 10, 2020 hearing date. The Panel Chair rejected ODC's position and ultimately set a schedule for Abbott to seek discovery subpoenas and for briefing on expected motions to quash.

In October 2020, Abbott again obtained subpoenas for depositions of the Justices, then-Chief Disciplinary counsel, Deputy Disciplinary Counsel, and former Chief Disciplinary Counsel. He again obtained subpoenas for a deposition of the Vice Chancellor and production of his medical records and a deposition of the former Chief Justice and production of his records concerning Abbott's Court on the Judiciary complaint. He also obtained a subpoena for a deposition and documents of ODC's records custodian and the Board Administrative Assistant. The subpoena recipients filed motions to quash, which the Panel Chair granted in a 118-page decision in February 2021. Abbott filed that decision in the District Court litigation.

On January 18, 2021, Abbott filed another motion for recusal of the Panel Chair. The Panel Chair denied the motion. Abbott filed motions for reargument of the Panel Chair's decisions on the motions to quash and motion for recusal, which the Panel Chair denied.

On May 10, 2021, the Panel Chair entered an order scheduling the portion of the disciplinary hearing on whether Abbott violated the DLRPC for November 8, 2021 to November 12, 2021. The scheduling order also established deadlines for expert reports, discovery, and motions *in limine*. The Panel Chair denied Abbott's subsequent request to extend the dates and later motion to postpone the November 8, 2021

hearing.

2.

On May 10, 2021, Abbott filed an action in the Court of Chancery against the Justices and ODC counsel. Abbott asserted claims similar to the claims he had asserted in his federal action. At the Court of Chancery's request, the Chief Justice designated a Superior Court judge to sit as Vice Chancellor under Article IV, § 13(2) of the Delaware Constitution. The Court of Chancery denied Abbott's motions for a temporary restraining order and expedition, and ultimately dismissed Abbott's complaint based on this Court's exclusive authority in disciplinary proceedings.[51] A panel of Justices designated under Article IV, §§ 12 and 38 of the Delaware Constitution affirmed the Court of Chancery's decisions.[52]

On May 11, 2021, Abbott obtained interrogatory subpoenas for the Justices, the Vice Chancellor, the Board Administrative Assistant, the Clerk of this Court, ODC, and former Chief Disciplinary Counsel. The recipients filed motions to quash the interrogatory subpoenas, which the Panel Chair granted.

***13** To protect the effective functioning of the disciplinary process, this Court enjoined Abbott, on May 18, 2021, from serving or filing any new complaints or actions in State courts or with the Court on the Judiciary, ODC, or any State administrative board arising out of or relating to this disciplinary proceeding ("May 18, 2021 Order").[53] The Court also stayed any pending complaints Abbott had filed

against present or former ODC attorneys and stated that any objections to the conduct of the ODC attorneys or the Panel would be considered when the Court reviewed the Panel's report and recommendations. In late 2021, Abbott sought partial relief from the May 18, 2021 Order, stating that he wished to pursue disqualification and discipline against the Panel Chair. On January 19, 2022, the Court denied the motion, noting that it had already ruled it would consider any objections concerning the Panel, which included the Panel Chair, when it reviewed the Panel's final report and recommendations.

Throughout the summer and fall of 2021, ODC and Abbott litigated motions *in limine* and Abbott's motion to quash ODC's second subpoena directed to him. In October 2021, Abbott obtained subpoenas for the appearances of the Justices, the former Chief Justice, the Vice Chancellor, former Chief Disciplinary Counsel, Deputy Disciplinary Counsel, the Board Chair, the Board Administrative Assistant, the ODC records custodian, and three Court of Chancery employees at the November 2021 hearing. The recipients moved to quash the subpoenas.

On October 25, 2021, Abbott moved to postpone the November hearing. He argued, among other things, that the Panel Chair lacked authority to resolve the motions to quash. ODC opposed the motion. On October 28, 2021, Abbott filed an emergency petition with this Court for enforcement of his subpoenas. On November 1, 2021, the Panel Chair denied Abbott's motion for postponement. Abbott filed a motion for reargument, which the Panel Chair denied. On

November 2, 2021, the Court denied Abbott's emergency petition.[54]

3.

At the November 2021 hearing, which stretched from the originally scheduled five days to seven days, the Panel heard testimony from Seabreeze's counsel, Jenney, and Abbott, as a fact witness and an expert witness. After the hearing, ODC and Abbott submitted briefing and exhibits in support of their positions.

On July 11, 2022, the Panel issued its report and recommendations regarding whether Abbott had violated the DLRPC. As to Rule 3.4(c), the Panel concluded that ODC did not establish by clear and convincing evidence that Abbott had caused the violation of a court order issued under the Court of Chancery Rules. Although the Panel described this as a "close issue" and Abbott's advice to Jenney as "contrary to the spirit of Rule 3.4(c),"[55] the Panel found that, as of March 16, 2015, there was no violation of a court order because the then-current March 3, 2015 Bench Rulings did not require Jenney to complete trimming of the trees and shrubs until April 22, 2015.

Turning to Rule 8.4(a), the Panel found that ODC satisfied its burden of showing that Abbott attempted to cause Jenney to disobey the terms of the Consent Order and March 3, 2015 Bench Rulings by executing the transfer of the Properties. The Panel also found, however, that the Rule 3.4(c) "open refusal" exception applied to Rule 8.4(a) and the March 16, 2015 Letter satisfied this exception, notwithstanding certain

misrepresentations in that letter. As a result, the Panel concluded that ODC had not established a violation of Rule 8.4(a) by clear and convincing evidence.

The Panel next determined that there was clear and convincing evidence that Abbott had violated Rule 8.4(c) by making misrepresentations in the March 16, 2015 Letter. Specifically, Abbott misrepresented that Jenney no longer had any ownership interest in the Properties and that Jenney's obligations under the Settlement Agreement were purely *in personam* without mentioning the expansion of Jenney's obligations to his successors and assigns under the Consent Order.

***14** The Panel also held that there was clear and convincing evidence that Abbott violated Rule 3.5(d) by making improper statements about the Vice Chancellor in submissions to the Board, PIC, and this Court and by making improper statements about the Court in filings with the Board and the Court.

As to Rule 8.4(d), the Panel concluded that there was clear and convincing evidence that Abbott engaged in conduct prejudicial to the administration of justice by making misrepresentations in the March 16, 2015 Letter and by repeatedly making statements that were degrading to a tribunal.

Finally, the Panel addressed and rejected Abbott's arguments concerning subject matter jurisdiction, the statute of limitations, laches, attorney-client privilege, Due Process, the Confrontation Clause, Equal Protection, prosecutorial misconduct, and

RICO.

4.

The Panel Chair set the sanctions hearing for August 24, 2022, scheduled a pre-hearing conference for August 17, 2022, and directed the parties to submit pre-hearing submissions by August 11, 2022. The Panel Chair denied Abbott's motions for an extension of the time to file a motion for partial reargument of the Panel's report and recommendations, partial reargument, and an extension of the sanctions hearing.

In August, Abbott obtained subpoenas for the appearances of the Justices, three former Justices who were members of the Court that imposed discipline upon him in 2007,[56] the Vice Chancellor, current and former ODC counsel, current and former Board Chairs, and the Board Administrative Assistant at the August 24, 2022 hearing. The recipients moved to quash those subpoenas. The Panel Chair granted the motions to quash. Abbott also obtained a subpoena for the Panel Chair to testify at the August 24, 2022 hearing. ODC objected and the Panel Chair concluded that he would not be called to testify.

The Panel held the sanctions hearing on August 24, 2022. The Panel heard testimony from Abbott, his wife, two of Abbott's clients, and a Delaware lawyer who had positive working experiences with Abbott. Abbott argued for a minor sanction such as a private admonition, while ODC sought, at a minimum, a three-year suspension with conditions. The parties

engaged in post-hearing briefing and motion practice.

On January 23, 2023, the Panel issued its report and recommendations on sanctions. The Panel issued a revised report on January 25, 2023. The Panel Majority recommended a two-year suspension. The Panel Chair recommended disbarment.

Applying the factors set forth in the ABA Standards for Imposing Lawyer Sanctions ("ABA Standards"), as approved in February 1986 and as amended in February 1992, the Panel found that Abbott's misrepresentations in his March 16, 2015 Letter violated Rules 8.4(c) and (d), which constituted breaches of a lawyer's duty to the public (ABA Standard 5.0) and the legal system (ABA Standard 6.0). The Panel further found that Abbott's mental state was intentional and knowing. The Panel Majority concluded that Abbott's knowing misconduct caused actual and potential injury to the public, the legal system, and the profession. The Panel Chair concluded that Abbott's misrepresentations caused serious and potentially even greater serious injury to Seabreeze and a significant adverse impact and potentially even more serious adverse impact on the Seabreeze Litigation. The Panel Majority found that Abbott's misrepresentations adversely reflected on his fitness to practice while the Panel Chair found that Abbott's misrepresentations seriously adversely reflected on his fitness to practice.

***15** The Panel determined that the degrading statements, which violated Rules 3.5(d) and 8.4(d), constituted breaches of a lawyer's duty to the public (ABA Standard 6.0) and legal profession (ABA

Standard 7.0). The Panel also found that the statements caused potential injury to the public, to the legal system, and to the profession.

The Panel next considered the presumptive sanction. For the misrepresentations in the March 16, 2015 Letter, the Panel Majority found that Standards 5.13 and 6.12 were most applicable and provided collectively for a presumptive sanction of suspension. The Panel Chair found that Standards 5.11(b) and 6.11 were most applicable and provided for a presumptive sanction of disbarment. For the degrading statements, the Panel agreed that Standard 8.2 was most applicable and provided for a presumptive sanction of suspension.

Finally, the Panel considered the aggravating and mitigating factors to determine the appropriate sanction. The Panel Majority found that the aggravating factors outweighed the mitigating factors, but did not warrant enhanced sanctions in a matter that ultimately arose from a dispute over trees and shrubs and was similar to matters where attorneys were suspended. The Panel Chair found that the aggravating factors and lack of mitigating factors provided for enhanced sanctions, but it was not possible to increase the presumptive sanction of disbarment. If disbarment was not already a presumptive sanction for the Properties transfer misrepresentations, the Panel Chair stated that he would likely recommend a three-year suspension for the degrading statements.

III.

A.

On January 24, 2023, the Supreme Court Clerk docketed the Panel's reports and recommendations in *In re Abbott*, No. 25, 2023, —— A.3d ——, 2023 WL 7401529 (Del. 2023). Abbott sought an extension of the 20-day deadline for the parties to file objections. Noting that this matter had been pending for eight years and stating that there was no hurry, Abbott proposed having 60 days to file objections to the Panel's first report and then another 60 days to file objections to the Panel's second report. He also lodged a motion for recusal of all of the Justices. ODC objected to the schedule proposed by Abbott.

On February 9, 2023, the Court granted in part and denied in part Abbott's motion for an extension. The Court ordered the parties to submit objections of no more than 15,000 words to both reports by March 15, 2023, responses of no more than 15,000 words to the other party's objections by April 14, 2023, and replies of no more than 8,000 words by May 1, 2023. Abbott filed a motion for reargument, which the Court denied.

Abbott purported to serve subpoenas on the Court Clerk, the Board Administrative Assistant, ODC, and current and former ODC counsel for documents he had sought in the Board proceedings. This Court struck the subpoenas as unauthorized by the DLRDP and the Supreme Court Rules and directed that Abbott not serve or file any additional discovery requests in No. 25, 2023.

On March 15, 2023, ODC and Abbott filed objections to the Panel's reports. Abbott's objections were 229 pages long, significantly exceeding the 15,000 word-count limit ordered by the Court. The Court struck the objections and directed Abbott to file objections of no more than 15,000 words, along with a Rule 13(a) certificate of compliance, by March 17, 2023. Abbott, who said he was on vacation March 16 and March 17, 2023, informed the Clerk on March 20th that if the Court did not identify which objections to shorten or delete by March 22nd, he would involuntarily decide what to cut. On March 22, 2023, Abbott filed 72 pages of objections, or 14,978 words according to his certificate of compliance.

***16** On April 12, 2023, Chief Justice Seitz, Justice Vaughn, and Justice Traynor denied the motion for their recusals. Justice Valihura recused herself. Abbott filed a motion for reargument, which the Court denied. This matter was submitted for decision on June 28, 2023.

B.

ODC's objections may be summarized as follows: (i) the Panel erred as a matter of law by not finding clear and convincing evidence that Abbott violated Rules 3.4(c), 8.4(a), and 8.4(d) when he counseled and assisted Jenney to disobey a court order and bench ruling; (ii) the Panel abused its discretion in qualifying Abbott as an expert witness; and (iii) the Panel erred as a matter of law when it misapplied the aggravating factors to the presumptive sanction.

Without considering the objections Abbott improperly incorporated by reference,[57] Abbott's objections may be summarized as follows: (i) ODC failed to prove by clear and convincing evidence that he violated Rules 3.4(c), 3.5(d), 8.4(a), 8.4(c), and 8.4(d); (ii) the Vice Chancellor, the Panel Chair, and ODC attorneys committed misconduct; (iii) the statute of limitations and laches barred ODC's claims; (iv) there were violations of Abbott's rights under the First, Sixth, and Fourteenth Amendments of the United States Constitution; and (v) the Panel misapplied the ABA Standards and Delaware disciplinary cases in recommending a sanction.[58]

IV.

[1] [2]This Court has the " 'inherent and exclusive authority' to discipline members of the Delaware Bar."[59] Although the Panel's recommendations are helpful, the Court is not bound by them.[60] The Court has an obligation to review the record independently and to determine whether there is substantial evidence to support the Panel's factual findings.[61] The Court reviews the Panel's conclusions of law *de novo*.[62]

A.

1.

ODC contends that the Panel erred in failing to find that Abbott violated Rule 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal) by advising and assisting Jenney to disobey the Consent Order and March 3, 2015 Bench Rulings. The source of this

error, according to ODC, was the Panel's reliance on the April 22, 2015 deadline established in the March 3, 2015 Bench Rulings for the trimming of the trees and shrubs. The Panel reasoned that there was no violation of Rule 3.4(c) because, as of March 16, 2015 the deadline for Jenney to trim the trees and shrubs had not yet passed and thus there was no disobedience of a court order. Abbott argues that ODC failed to prove by clear and convincing evidence that he violated Rule 3.4(c).

***17** [3] [4]We must independently review the record to determine if there is clear and convincing evidence to support a finding of knowing misconduct.[63] "Clear and convincing evidence is evidence that produces an abiding conviction that the truth of the contention is 'highly probable.' "[64]

[5]Having considered the evidence presented, the Panel's report and recommendations, and the parties' positions, we conclude that ODC established, by clear and convincing evidence, that Abbott violated Rule 3.4(c) when he advised and assisted Jenney to disobey the Consent Order and March 3, 2015 Bench Rulings by transferring the Properties to his wife for nominal consideration while maintaining his control of the Properties. The Panel's reliance on the April 22, 2015 deadline established in the March 3, 2015 Bench Rulings to find otherwise was misplaced. Although the April 22, 2015 deadline had not passed at the time of Abbott's March 16, 2015 Letter, Jenney was obligated under the Consent Order and March 3, 2015 Bench Rulings to trim the trees and shrubs on the Properties. Contrary to Abbott's suggestion, the passing of the October 31, 2014 deadline for Jenney's

completion of the trimming work under the Consent Order did not mean that Jenney was no longer obligated to perform that work. The Consent Order still contained a time-is-of-the-essence provision. The March 3, 2015 Bench Rulings also required Jenney to trim the trees and shrubs on the Properties.

[6]Through the transfer of the Properties, Abbott intended to make Jenney's compliance with his obligations under the Consent Order and the March 3, 2015 Bench Rulings impossible, even though the April 22, 2015 deadline had not yet passed. The evidence clearly establishes that this was the intended purpose of the transfer. As Abbott advised Jenney, "you are no longer the title owner AND the Settlement Agreement and Consent Order are purely personal obligations of yours that it would then be impossible for you to perform."[65] Jenney admitted that he transferred the Properties as advised by Abbott so that he would not have to comply with the court orders.[66] Abbott intentionally designed the transfer to end the Seabreeze Litigation and to force Seabreeze to start over, thereby depriving Seabreeze of its rights under the Consent Order and March 3, 2015 Bench Rulings.[67] The Court of Chancery's prompt action to ensure that this did not happen as Abbott intended does not erase Abbott's violation of Rule 3.4(c).

[7]It is also clear that Abbott acted knowingly. Under the DLRPC, an attorney acts "knowingly" when he has "actual knowledge of the fact in question."[68] An attorney's "knowledge may be inferred from circumstances."[69] Abbott was well-aware of Jenney's obligation to the trim the trees and shrubs on the Properties under the Consent Order and March 3,

2015 Bench Rulings.[70] He knew that Jenney did not want to comply with those obligations and that Seabreeze was insistent that those obligations be performed soon.[71] Abbott knowingly devised and executed the plan for Jenney to disobey his obligations under the Consent Order and March 3, 2015 Bench Rulings by transferring the Properties to his wife for nominal consideration.[72]

***18** [8]Abbott contends that Rule 3.4(c) applies only to "an obligation under the rules of a tribunal," not a court ruling like the Consent Order or March 3, 2015 Bench Rulings, and that he did not disobey any obligations he had under the Court of Chancery Rules. In making this argument, Abbott points out that the predecessor to Rule 3.4(c) in Delaware included the word "ruling" and that other States' ethical rules expressly provide that a lawyer may not disobey a ruling. This interpretation of Rule 3.4(c) is contrary to our disciplinary cases, disciplinary cases in other jurisdictions, and the ABA Standards.[73]

[9]Abbott also argues that he could not have violated Rule 3.4(c) because he was not subject to the Consent Order or the March 3, 2015 Bench Rulings. We reject this argument. An attorney may object to a court's ruling and preserve a claim of error, but may not "advise a client not to comply" with the court's ruling.[74] This Court has previously found attorneys violated Rule 3.4(c) when they assisted someone other than themselves subject to a court order to disobey that court order.[75] Other courts have also found Rule 3.4(c) violations when a lawyer knowingly advised or assisted a client to disobey a court order.[76]

***19** Although Abbott correctly points out that neither the Consent Order nor the March 3, 2015 Bench Rulings prohibited Jenney from transferring the Properties, he ignores that those orders required Jenney to trim the trees and shrubs on the Properties. So while Jenney did not disobey a court order prohibiting transfer of the Properties, he did disobey a court order requiring him to trim the trees and shrubs on the Properties.

[10]Finally, Rule 3.4(c) makes an exception for "open refusal based on an assertion that no valid obligation exists." This exception is inapplicable here because there was no open refusal before the transfer of the Properties. Although Abbott stated that he had considered whether there was a viable Court of Chancery Rule 60(b) motion in the January 8, 2015 response to Seabreeze's notice to show cause, he went on to state that Jenney would have the trimming work performed. At the January 15, February 23, and March 3, 2015 hearings, Abbott continued to represent that Jenney was taking the necessary steps to complete the trimming work, not that Jenney had no obligation or intention to do so.

2.

[11]ODC also objects to the Panel's failure to find that Abbott violated Rule 8.4(a) (violating or attempting to violate the Rules of Professional Conduct or knowingly assisting another to do so) by violating the Consent Order and March 3, 2015 Bench Rulings directly, inducing Jenney to violate those orders, and directing his non-lawyer assistant to assist in violating the orders by drafting, notarizing, and

recording the deeds. The Panel, again relying on the April 22, 2015 trimming deadline, concluded that ODC had not shown that Abbott violated Rule 8.4(a) by procuring violation of the Consent Order. As previously discussed, the Panel's reliance on the April 22, 20215 deadline was misplaced.

ODC also argued that Abbott attempted to cause Jenney to disobey the Consent Order and March 3, 2015 Bench Rulings by transferring the Properties to his wife. The Panel agreed, but found that the "open refusal" exception of Rule 3.4(c) applies to Rule 8.4(a) and that Abbott's March 16, 2015 Letter constituted an "open refusal" because the April 22, 2015 trimming deadline had not passed. Again, the Panel's reliance on the April 22, 2015 deadline was misplaced.

[12]Abbott argues that Rule 8.4(a) only applies to attorneys who assist or induce other attorneys to violate the DLRPC, but this interpretation of Rule 8.4(a) is incorrect.[77] ODC has shown by clear and convincing evidence that Abbott violated Rule 8.4(a).

3.

[13]Abbott objects to the Panel's conclusion that there was clear and convincing evidence he violated Rule 8.4(c) (engaging in conduct involving dishonest, fraud, deceit or misrepresentation) by making two material misrepresentations in his March 16, 2015 Letter. The Panel found that Abbott violated Rule 8.4(c) by misrepresenting to the Court of Chancery that: (i) Jenney no longer had any ownership interest in the Properties, even though Jenney continued to hold *de facto* ownership rights in the Properties and intended

to reconvey title back to himself; and (ii) stating that Jenney's obligations under the Settlement Agreement were purely *in personam* without disclosing the provisions of Paragraph 17 in the Consent Order.

***20** [14]Abbott contends that these statements were omissions, not affirmative statements as required for violation of Rule 8.4(c). This Court, however, has found that a lawyer's incomplete or misleading statements to a court violate Rule 8.4(c).[78] In addition, Abbott contends that the Petition pleaded affirmative misrepresentations, not misrepresentations by omission. Count III of the Petition alleged that "[b]y making affirmative statements to the Court and opposing counsel, including but not limited to statements [in the March 16, 2015 Letter] ... that were contrary to Respondent's legal strategy, Respondent's advice to his client and/or Respondent's understanding of the facts and law, Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(c))." The Petition sufficiently pleaded, and put Abbott on notice of, the basis for the alleged Rule 8.4(c) violation.

[15]Abbott also argues that his statements in the March 16, 2015 Letter were factually and legally accurate. This argument is without merit. Abbott advised the Court that Jenney no longer had any ownership interest in the Properties, even though he knew that the only purpose of the transfer was for Jenney to avoid his trimming obligations and he had advised Jenney that he could have his wife transfer the Properties back to him in the future. Abbott claims that he did not know who would control the Properties after the transfer, but again, he had advised Jenney

that he could transfer the Properties back to himself in the future. This advice reflects that Abbott knew Jenney, not his wife, would control what happened to the Properties after the transfer. Even if we accepted Abbott's claim that he did not know Jenney would continue to exercise ownership rights over the Properties after the transfer, he made no effort to determine who would actually be in control of the Properties after the transfer. Other than a March 9, 2015 email in which Jenney's wife authorized transfer of the Properties to her, Abbott had no communications with her about what she knew or had in mind regarding the transfer or plans for the Properties after the transfer. As the Panel recognized, "[o]nce a plan is provided and initiated, a lawyer cannot then stick his head in the sand like an ostrich and claim that he was unaware of the exact methods of his client's execution of the plan."[79] Nor may lawyers "stick their heads in the sand and blind themselves to their professional obligations."[80]

Abbott further contends that he was not required to mention the Consent Order in the March 16, 2015 Letter because he did not believe it remained in effect. Abbott, however, had advised Jenney that Paragraph 17 of the Consent Order expanded his obligation to trim the trees and shrubs to his successors, heirs, and assigns and that Seabreeze would rely on that language to challenge the transfer. As discussed by the Panel, Abbott referred to the Consent Order in an earlier draft of the March 16, 2015 Letter, but removed that reference from the final version submitted to the Court of Chancery. It is clear that Abbott deliberately and strategically chose not to mention the Consent Order in the March 16, 2015

Letter.

***21** [16]Finally, Abbott contends that ODC failed to prove the fourth and fifth elements of common law fraud (reliance upon and damage from the misrepresentations) as required by this Court in *In re Lyle*[81] for a violation of Rule 8.4(c). Abbott misreads *Lyle*. In that case, the Court concluded that a public defender who shared a co-defendant's privileged statement with his client did not violate Rule 8.4(c). The Court found that the attorney's conduct was "qualitatively distinguishable" from the conduct of attorneys in cases where it found Rule 8.4(c) violations.[82] The Court approved the Panel's report, which reviewed the elements of common law fraud before finding that the attorney had not deceived anyone or made any false representations, but neither the Court nor the Board held that a Rule 8.4(c) violation requires proof of reliance and damages. ODC proved by clear and convincing evidence that Abbott violated Rule 8.4(c) by making misrepresentations in his March 16, 2015 Letter.

4.

[17]Abbott asserts several objections to the Panel's finding that he violated Rule 3.5(d) (conduct degrading to a tribunal) by making statements degrading to the Vice Chancellor and the Court in submissions to the Board, PIC, and the Court. As discussed by the Panel, this Court has found violations of Rule 3.5(d) (or its predecessor, 3.5(c)) where attorneys: (i) accused a tribunal of reaching decisions based on bias, prejudice, or improper motivations, rather than on the merits;[83] and (ii) used

personal and inflammatory language to attack opposing counsel or the tribunal.[84] Consistent with this precedent, the Panel found that there was clear and convincing evidence that Abbott had violated Rule 3.5(d) by making statements in submissions to the Board, PIC, and this Court that the Vice Chancellor fabricated the record and reached decisions based on mental instability or personal dislike of Abbott instead of the merits. The Panel also found that there was clear and convincing evidence that Abbott violated Rule 3.5(d) by making statements in submissions to the Board and this Court that this Court was turning a blind eye to corruption in the ODC.

Abbott does not dispute that he made the statements, but contends that he did not violate Rule 3.5(d) because: (i) he was acting as a *pro se* litigant, not a lawyer, when he made the statements; (ii) the Board and PIC are not tribunals under Rule 3.5(d); (iii) his statements could not be degrading to a tribunal because the Vice Chancellor and this Court were unaware of the statements; (iv) he made the statements in confidential proceedings and his statements should be immune from discipline; and (v) his statements are protected by the First Amendment. These objections are without merit.

***22** **[18]** **[19]**Acting *pro se* does not exempt an attorney from the DLRPC. DLRDP 7(a) provides that "[i]t shall be grounds for disciplinary action for a lawyer to ... [v]iolate any of the Delaware Lawyers' Rules of Professional Conduct ... whether or not the violation occurred in the course of a lawyer-client relationship." This Court has held that lawyers representing

themselves in disciplinary proceedings remain subject to the DLRPC.[85] As the Panel also highlighted, Abbott presented himself as an attorney in many of the submissions containing the degrading statements by including his law firm letterhead, referring to himself as "undersigned counsel," or including his law firm or Esquire signature designations.[86]

[20]Abbott argues that the Board and PIC are not tribunals because they do not fall within the definition of a tribunal under the DLRPC. The DLRPC define a tribunal as:

> [A] court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.[87]

Although the Board's findings are not binding upon this Court, the Board is authorized to make numerous decisions throughout the disciplinary proceedings that bind the parties during those proceedings.[88] For example, "[a]ll discovery orders by the Chair or Vice Chair of the Board or the chair of a Hearing Panel are interlocutory and may not be appealed prior to the Board's submission to the Court of the final report."[89] Like judges of tribunals, Board members do not participate in proceedings "in which a judge, similarly situated, would be required to abstain" under the Delaware Judges' Code of Judicial Conduct.[90] Finally, this Court has treated the Board like a tribunal in

accepting recommendations that a lawyer who made false statements to the Board violated Rule 3.3(a)(1), which prohibits a lawyer from making false statements of fact or law to a tribunal.[91]

***23** [21]Contrary to Abbott's contentions, the PIC is also a tribunal. The PIC's decisions are binding and are subject to limited judicial review.[92]

[22]Abbott next argues that there was no violation of Rule 3.5(d) because the Vice Chancellor and the Court were unaware of his derogatory statements. His understanding of Rule 3.5(d) is flawed. As the Panel stated:

The text of Rule 3.5(d) does not limit this prohibition of a lawyer's degrading conduct that is aimed only to the tribunal before which the lawyer is then appearing. The underlying policy for Rule 3.5(d) is not to protect the subjective feelings of judiciary members made to them during a proceeding, but to protect the trust and confidence of the judicial system by barring a lawyer's undignified, and discourteous statements about the judiciary.[93]

This Court has affirmed the Board's finding that a lawyer violated the predecessor to Rule 3.5(d) by making "castigating" statements about a Vice Chancellor in her appellate reply brief.[94] Similarly, in *In re Abbott*, this Court discussed and relied upon cases in other jurisdictions where courts found attorneys violated Rule 3.5(d) by making disparaging statements about a lower court's decision.[95]

In addition, Abbott made some of the statements concerning this Court in a motion to dismiss he sent

by Federal Express to each of the Justices in January 2020. He claims that there was no violation of Rule 3.5(d) in the absence of proof that the Justices read the motion, but cites no authority in support of the proposition that a document submitted to a tribunal is not degrading unless there is proof that the judicial officer read the degrading statement. Abbott also does not claim that any of the motions were returned to him or otherwise not delivered.

[23]Abbott contends that his statements are protected by confidentiality and immunity provisions in the DLRDP and PIC statute and therefore cannot violate Rule 3.5(d). This contention is unpersuasive. DLRDP 10 provides that all communications to and from the Board, the PRC, or ODC are "absolutely privileged, and no civil suit predicated on these proceedings may be instituted against any complainant, witness or lawyer."[96] This language provides immunity from civil lawsuits, not disciplinary proceedings for ethical violations. "Disciplinary proceedings are neither civil nor criminal, but are *sui generis*."[97] DLRDP 13 provides for confidentiality of certain disciplinary information, but again, does not immunize a lawyer for ethical violations he commits during his disciplinary proceeding. In fact, this Court has imposed discipline upon attorneys who committed ethical violations during their disciplinary proceedings.[98] Under Abbott's interpretation of Rule 13, a lawyer could engage in professional misconduct during a disciplinary proceeding by destroying evidence or threatening opposing counsel without suffering any professional consequences. Such an interpretation is illogical and unreasonable.

***24** As to the PIC statute, § 5810(h)(1) provides that all proceedings relating to a charged violation remain confidential unless the person charged requests public disclosure or the PIC determines after a hearing that a violation occurred. Section 5810 does not immunize Abbott from any ethical violations he committed in his PIC filings.

[24] [25] [26]Abbott also argues that the absolute litigation privilege protects his statements. The absolute litigation privilege "is a common law rule, long recognized in Delaware, that protects from actions for defamation statements of judges, parties, witnesses and attorneys offered in the course of judicial proceedings so long as the party claiming the privilege shows that the statements issued as part of a judicial proceeding and were relevant to a matter at issue in the case."[99] Statements falling under the absolute litigation privilege are privileged "regardless of the tort theory by which the plaintiff seeks to impose liability."[100]

This Court has not extended the absolute litigation privilege to attorney disciplinary proceedings. Other courts have held that the litigation privilege does not insulate an attorney from discipline for unethical conduct.[101]

Abbott relies on *Cohen v. King*[102] to argue that the absolute litigation privilege precludes professional discipline for his statements, but this reliance is misplaced. In *Cohen*, the plaintiff was an attorney who had been the subject of disciplinary proceedings. During the disciplinary proceedings, the plaintiff filed a grievance complaint against the Chief Disciplinary

Counsel, who asserted that the complaint was without merit. The complaint was dismissed. The plaintiff then filed a lawsuit against the Chief Disciplinary Counsel, alleging that her answer in the disciplinary proceedings contained defamatory statements. The Connecticut court held that the litigation privilege extended absolute immunity to statements made by the respondent to the disciplinary authority and dismissed the complaint. *Cohen* does not stand for the proposition that the litigation privilege insulates Abbott from attorney discipline for his statements.

[27] [28]Finally, Abbott argues that his statements are protected by the First Amendment. The Panel correctly determined that the First Amendment did not protect Abbott's degrading statements. A lawyer's right to free speech is not unlimited. As this Court has observed:

> Based upon the United States Supreme Court's decision in *Gentile*, this Court has held that there are ethical obligations imposed upon a Delaware lawyer, which qualify the lawyer's constitutional right to freedom of speech. Accordingly, members of the Delaware Bar are subject to disciplinary sanctions for speech consisting of intemperate and reckless personal attacks on the integrity of judicial officers.[103]

***25** Abbott relies on cases like *Standing Comm. on Discipline of U.S. Dist. Ct. for Cent. Dist. of Cal. v. Yagman*[104] to argue that he expressed personal opinions or true statements protected by the First Amendment. But this Court has rejected *Yagman* as inconsistent "with the holdings of the Court on the issue of constitutionally protected speech as applied to

lawyers."[105] Instead, this Court has approvingly cited *In re Palmisano*, in which the United States Court of Appeals for the Seventh Circuit held that there must be some factual basis for a lawyer's accusations against a judge before First Amendment protections will apply.[106] There was no factual basis for Abbott's statements that the Vice Chancellor fabricated the basis for Abbott's referral to ODC or acted out of spite or mental instability. Nor is there any factual basis for Abbott's claim that this Court has ignored corruption in the ODC.

[29]Abbott also invokes the *Noerr-Pennington* doctrine, which "provides broad immunity from liability to those who petition the government, including administrative agencies and courts, for redress of their grievances."[107] Because this is not a civil proceeding and Abbott is not being held liable for his statements, *Noerr-Pennington* does not apply here. ODC has shown by clear and convincing evidence that Abbott violated Rule 3.5(d).

5.

[30]ODC has also shown by clear and convincing evidence that Abbott's conduct in connection with the transfer of the Properties and his degrading statements violated Rule 8.4(d) (conduct prejudicial to the administration of justice).[108]

6.

In addition to his objections to specific findings of the Panel as discussed above, Abbott has asserted other objections to the disciplinary proceedings.

[31]Abbott claims, and has claimed throughout the various proceedings, that ODC engaged in a "fishing expedition" against him because the Court of Chancery sent the Seabreeze Litigation record to ODC without any explanation. This claim is unfounded. In the June 10, 2015 letter referring Abbott to ODC and enclosing the record in the Seabreeze Litigation, the first sentence states the "Vice Chancellor issued a bench ruling on May 21, 2015."[109] The transcript of the May 21, 2015 hearing is less than 35 pages, with discussion of Abbott's role in the sham transfer of the Properties starting on page 20. No "fishing expedition" was necessary.

[32]Abbott also argues that ODC failed to prove that the PRC approved the Petition, thus rendering this entire proceeding "infirm."[110] The Panel correctly rejected this argument. As required by DLRDP 9(b), ODC notified Abbott of the PRC meeting and informed him that he could submit materials to ODC that ODC would provide to the PRC. After approval of the Petition, ODC, as required by DLRDP 9(d)(1), filed the Petition with the Board Administrative Assistant and served it upon Abbott. Nothing more is required by ODC as far as the PRC's approval of the Petition.

[33]Abbott next accuses the Vice Chancellor, Panel Chair, and ODC of misconduct. The record does not reflect any such misconduct. The Court on the Judiciary previously dismissed Abbott's complaint alleging judicial misconduct by the Vice Chancellor in the Seabreeze Litigation. As a judicial officer, the Vice Chancellor was supposed to take action when he became aware of reliable evidence indicating the

likelihood of unprofessional conduct by Abbott.[111] The Vice Chancellor's compliance with his ethical obligations does not, as Abbott insists, constitute misconduct.

***26** [34] [35]Abbott's claims of misconduct by the Panel Chair, including denial of his motions for recusal, also fail. These claims are based primarily on Abbott's disagreement with the Panel Chair's rulings, but ruling against a party does not mean a hearing officer is biased or otherwise engaging in misconduct as Abbott believes.[112] Abbott's contention, without any factual basis, that former Chief Disciplinary Counsel arranged for the appointment of the Panel Chair to rig the proceeding against Abbott is also meritless. Nor is there anything sinister in the Panel Chair, a former member of the Board of Bar Examiners, serving as the chair of a panel for a matter before the Board of Bar Examiners while this matter, in a different tribunal, was proceeding. The record reflects that the Panel Chair exercised commendable diligence and patience in resolving the multitude of arguments and attacks made by Abbott.

[36]Abbott also asserts multiple ethical violations and instances of prosecutorial misconduct by ODC attorneys. Underlying most, if not all, of these claims is Abbott's "belief that he should not be under disciplinary investigation, and that the person charged with that task should be disqualified for performing it."[113] This misguided belief is not a legitimate basis for the disqualification of every ODC attorney who ever worked on this case or for a mistrial as Abbott has contended.

[37] [38]As to the attorney-client privilege issues Abbott raises, ODC did not act improperly in seeking his privileged communications with Jenney regarding the transfer of the Properties. The Board Chair and Panel Chair correctly determined that these communications were discoverable under *In re Kennedy*.[114] As the Board Chair and Panel also recognized, Jenney waived the attorney-client privilege for these communications at the April 13, 2015 hearing in the Court of Chancery by voluntarily testifying that Abbott advised him to transfer the Properties so he would not have to comply with the court order.[115]

[39]Contrary to Abbott's contentions, Chief Disciplinary Counsel's reference to other communications between Abbott and Jenney, which the Panel later found to be privileged and inadmissible, in his opening statement did not require a mistrial. Abbott objected to ODC counsel raising matters he claimed were outside the scope of the disciplinary petition, but did not object on the basis of attorney-client privilege. The Panel Chair ruled that Abbott could raise the objection when a witness was testifying, which is what occurred. Abbott has not shown any "manifest necessity" or other basis for a mistrial.[116]

[40] [41]Abbott also asserts statute of limitations and laches defenses. The Panel correctly concluded that these defenses were without merit. Under the DLRDP, there is "no statute of limitations with respect to any proceedings under these Rules."[117] As to his laches defense, Abbott had the burden of proving the delay was unreasonable and prejudice

resulted from the delay.[118] Abbott has not satisfied this burden. Abbott repeatedly sought and obtained postponements, stays, and extensions throughout the proceedings. Most, if not all, of the delay is attributable to Abbott's actions. He has also failed to show prejudice to him from the delay for which he is primarily responsible.

***27** Finally, Abbott asserts multiple violations of his constitutional rights, including his right to confront his accuser (the Vice Chancellor) under the Sixth Amendment, his right to due process under the Fifth and Fourteenth Amendments, and his right to equal protection under the Fifth and Fourteenth Amendments.

[42] [43]There was no violation of Abbott's right to confront his accuser. The Sixth Amendment protects an accused's right to confront witnesses against him in a criminal prosecution. This proceeding was not a criminal prosecution.[119] In addition, the Vice Chancellor explained the reasons for his rulings, as well as why he was referring Abbott to ODC, on the record in the Seabreeze Litigation.

As to Abbott's due process claims, disciplinary proceedings contain "extensive procedural due process protections" for respondents.[120] These protections include: (i) notice of ODC's intent to present a matter to the PRC and the opportunity to submit a written statement for the PRC to consider;[121] (ii) the PRC's determination of whether there is probable cause to support the petition;[122] (iii) if the petition is approved by the PRC, the opportunity to file an answer to the petition;[123] (iv) the ability to compel by subpoena the

production of documents or witness testimony;[124] (v) a hearing that is recorded;[125] and (vi) the opportunity to submit objections to the Panel's report and *de novo* review of the Panel's report and recommendations by this Court.[126]

[44]Abbott argues that he was deprived of due process because the Panel Chair quashed his interrogatory subpoenas, deposition and document subpoenas, and trial subpoenas. Denying a party discovery that they cannot establish any entitlement to is not a due process violation. First, the Panel Chair correctly concluded that the DLRDP do not authorize interrogatories.[127] Second, the DLRDP permit parties to subpoena the testimony of witnesses and the production of "pertinent" documents at a deposition or hearing, not to compel the disclosure of irrelevant, privileged, or otherwise protected information.[128]

[45] [46]Despite the strong policy against discovery of judicial officers, Abbott chose to direct the majority of his subpoenas to current and former judicial officers and to seek disclosure of their mental processes in making or not making certain rulings. As the Panel Chair correctly concluded in his February 22, 2021 decision granting the judicial officers' motions to quash, such discovery is not permitted.[129] The Panel Chair also did not err in finding that Abbott could not compel the production of privileged information in the possession of the Board's Administrative Assistant and current and former Board Chairs.

***28** **[47] [48] [49]**As to Abbott's subpoenas directed to opposing counsel and ODC, the Panel Chair correctly determined that Abbott could not obtain disclosure of

privileged information and had not overcome the prosecutorial privilege by asserting a colorable claim of vindictive prosecution (a violation of due process) or selective prosecution (a violation of equal protection). "[V]indictive prosecution arises from 'specific animus or ill will.' "[130] "There is no vindictiveness as long as the prosecutor's decision is based upon the normal factors ordinarily considered in determining what course to pursue, rather than upon genuine animus against the defendant for an improper reason or in retaliation for exercise of legal or constitutional rights."[131] ODC began investigating Abbott after the Vice Chancellor referred him to ODC for his conduct in the Seabreeze Litigation. ODC investigated Abbott's conduct in the Seabreeze Litigation and prepared a disciplinary petition that the PRC approved for filing. The record is devoid of any credible evidence that ODC's investigation and filing of the disciplinary petition is based upon animus of ODC counsel toward Abbott or retaliation for his exercise of constitutional rights.

[50] [51] [52]Abbott also contends that he was entitled to discovery regarding ODC's selective prosecution of sole practitioners like himself in violation of the Equal Protection Clause. "The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution protects against arbitrary and capricious classifications, and requires that similarly situated persons be treated equally."[132] A *prima facie* case of selective prosecution requires showing: (i) a policy to prosecute that had a discriminatory effect on a protected class; and (ii) was motivated by a discriminatory purpose.[133] To obtain discovery for a selective prosecution defense as Abbott does here, he

is not required to make a *prima facie* case, but must present some evidence tending to show the essential elements of selective prosecution.[134]

[53]The Panel Chair correctly concluded that Abbott failed to make a threshold showing of the essential elements of selective prosecution. Abbott has not shown that sole practitioners are members of a protected class. Nor has he shown ODC had a policy to prosecute having a discriminatory effect on sole practitioners or was motivated to discriminate against sole practitioners. To support his selective prosecution claim, Abbott relies on ODC's dismissal of five disciplinary complaints he filed against opposing counsel who were not sole practitioners. But as the Panel Chair recognized, none of those complaints involved a lawyer found to have committed wrongdoing or referred to ODC by the trial judge like Abbott was. Abbott has not shown selective prosecution by ODC.

7.

[54]Finally, the Panel erred in qualifying Abbott as an expert witness on Rule 3.4(c), Rule 3.5(d), and the First Amendment. Abbott did not have the knowledge, skill, experience, training, or education to qualify as an expert witness on these subjects under D.R.E. 702. The Panel's reasoning that Abbott qualified as an expert because he satisfied the low threshold for expert qualification under D.R.E. 702 and had more knowledge as a lawyer than the lay member of the Panel would make any respondent lawyer an expert witness in a case with a hearing before a Board panel. Abbott could make his arguments concerning the

meaning and history of the DLRPC and the First Amendment without being qualified as an expert. Although the Court rejects the Panel's qualification of Abbott as an expert witness, the Court has nonetheless considered the arguments Abbott made as an expert witness.

B.

[55] [56] [57]We next determine the appropriate sanction for Abbott's violations of Rules 3.4(c), 3.5(d), 8.4(a), 8.4(c), and 8.4(d). "The objectives of the lawyer disciplinary system [in Delaware] are to protect the public, to protect the administration of justice, to preserve confidence in the legal profession, and to deter other lawyers from similar misconduct."[135] Lawyer disciplinary sanctions "are 'not designed to be either punitive or penal.' "[136] "The focus of the lawyer disciplinary system in Delaware is not on the lawyer, but rather on the danger to the public that is ascertainable from the lawyer's record of professional misconduct."[137]

***29 [58] [59] [60]**In determining the appropriate sanction, the Court considers the four factors set forth in the ABA Standards and Delaware precedent.[138] The ABA factors are: (i) the ethical duty violated; (ii) the attorney's mental state; (iii) the extent of the actual or potential injury caused by the attorney's misconduct; and (iv) aggravating factors[139] and mitigating factors.[140] Based on the first three factors, the Court makes an initial determination of the presumptive sanction.[141] The Court then considers the fourth factor to determine whether the presumptive sanction should be increased or decreased.[142] The ABA

Standards do not account for multiple charges of misconduct, but provide that the "ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct."[143]

[61]Abbott objects to what he sees as the Panel's undue reliance on the ABA Standards, but this Court has consistently looked to the ABA Standards for guidance in determining the appropriate sanction for a disciplinary violation.[144] Abbott also argues that the Panel deviated from the four-step framework by adding consideration of the presumptive sanction as an improper, fifth step. He is mistaken. The Panel considered the first three steps to make an initial determination of the presumptive sanction and then considered the aggravating and mitigating factors as set forth in the ABA Standards and Delaware disciplinary cases.

ODC objects that the Panel erred in its application of the aggravating factors to the presumptive sanction and should have recommended disbarment as the appropriate sanction. We address these objections (to the extent necessary) and Abbott's remaining objections (to the extent they are not simply a rehash of his arguments that he committed no violations of the DLRPC) below.

1.

[62]Applying the ABA Standards, Abbott's violations of Rules 3.4(c), 8.4(a), 8.4(c), and 8.4(d) in connection with the transfer of the Properties constitute a breach

of his duties owed to the public (ABA Standard 5.0) and the legal system (ABA Standard 6.0), including abuse of the legal process (ABA Standard 6.2). His mental state was intentional and knowing because he purposefully advised Jenney to transfer the Properties so that Jenney would not have to comply with his obligation under the Consent Order and March 3, 2015 Bench Rulings to trim the trees and shrubs on the Properties.[145] Abbott also advised Jenney that he could transfer the Properties back to himself.[146] Abbott's strategy was designed to benefit Jenney by allowing him to escape obligations he did not want to perform under the Consent Order while staying in the neighborhood and maintaining control of the Properties at a minimal cost.[147] Abbott also intentionally misrepresented the nature and effect of the transfer of the Properties in his March 16, 2015 Letter to the Court of Chancery.[148]

***30** Abbott's violations caused Seabreeze injury[149] and, contrary to the Panel Majority's findings, potentially serious injury.[150] As a result of Abbott's actions, Seabreeze had to spend additional time and incur additional legal fees to enforce rights it had previously bargained for under the 2012 Settlement Agreement and 2014 Consent Order.[151] If Abbott's tactics had worked as he intended, the Court of Chancery would have dismissed the Seabreeze Litigation for mootness and Seabreeze would have been forced to initiate and pursue another legal action against Mrs. Jenney for trimming of trees and shrubs on the Properties.[152]

Abbott's violations also caused significant and potentially serious adverse effects on the Seabreeze

Litigation as well as serious interference and potentially serious interference with the Seabreeze Litigation. Disregard of a court order "seriously undermines the legal system."[153] As a result of Abbott's actions, the Court of Chancery had to expend scarce judicial resources resolving multiple motions and holding multiple hearings relating to the Properties Transfer.[154] If Abbott's tactics had worked as intended, the Court of Chancery would have been burdened with yet another case arising from Jenney's unwillingness to trim trees and shrubs on the Properties.

[63]Under our precedent, Abbott's misrepresentations in the March 16, 2015 Letter to the Court of Chancery concerning a scheme he devised for his client not to comply with a court order adversely reflected—to a significant extent—on his fitness to practice law.[155] Based on the analysis set forth above, the presumptive sanction for Abbott's violation of Rules 3.4(c), 8.4(a), 8.4(c), and 8.4(d) in connection with the transfer of the Properties is disbarment under ABA Standards 5.11,[156] 6.11,[157] and 6.21.[158]

***31** **[64]** **[65]**We agree with the Panel that Abbott's degrading statements in violation of Rules 3.5(d) and 8.4(d) involve breaches of duties owed to the legal system (ABA Standard 6.0) and legal profession (ABA Standard 7.0). The Panel did not address Abbott's mental state, but we find that he intentionally and knowingly made the degrading statements.[159] The record in the Seabreeze Litigation clearly demonstrates why the Vice Chancellor referred Abbott to ODC yet Abbott persistently—and baselessly—stated that the Vice Chancellor fabricated

the record, the Vice Chancellor acted out of spite or mental disability, and this Court ignored ODC's misconduct in pursuing the matter. He made these statements despite being publicly reprimanded in 2007 for making similarly improper statements.[160] At that time, the Court warned Abbott:

> Zealous advocacy never requires disruptive, disrespectful, degrading or disparaging rhetoric. The use of such rhetoric crosses the line from acceptable forceful advocacy into unethical conduct that violates the Delaware Lawyers' Rules of Professional Conduct.[161]

Abbott, however, chose to deploy such degrading rhetoric again.

We also agree with the Panel that Abbott's degrading statements caused potential injury to the legal system and the legal profession. Public trust in the legal system may be undermined if an attorney makes unsupported statements that a judge ruled against him or his client for reasons other than the merits of the case, such as personal dislike or emotional instability. Abbott argues that there can be no injury because his statements were confidential, but he made the degrading statements in multiple venues to be viewed by multiple people. Based on the Court's previous imposition of a public reprimand in 2007 for Abbott's violation of Rules 3.5(d) and 8.4(d), the Panel correctly determined that Standard 8.2 applied. Standard 8.2 provides that suspension is generally appropriate when a lawyer has been reprimanded for similar misconduct and engages in similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

2.

We agree with the Panel's conclusion that the aggravating factors outweigh the mitigating factors. Assuming without deciding that the Panel correctly found that the aggravating factor of prior disciplinary history should not apply here, we note the existence of numerous other aggravating factors, including multiple offenses in a disciplinary proceeding, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law. The aggravating factors of vulnerability of the victim, indifference to making restitution, and illegal conduct, including the use of controlled substances, are not relevant here.

[66]Contrary to Abbott's contentions, his actions in connection with the transfer of the Properties were dishonest. He assisted Jenney's disobedience of his obligations under the Consent Order and March 3, 2015 Bench Rulings while still maintaining control of the Properties and misrepresented Jenney's control over the Properties after the transfer to the Court. He made degrading statements and threatened to create a public spectacle with the selfish motive of pressuring ODC to drop this matter.

***32** **[67]**We reject Abbott's objection that his degrading statements about the Vice Chancellor and this Court between 2016 and 2019 did not constitute a pattern of misconduct. We also reject Abbott's contention that his offenses were not multiplicitous because he did not violate any of the DLRPC. As previously discussed, Abbott did violate the DLRPC in connection with both the transfer of the Properties and the degrading

statements.

Whether Abbott's filing of multiple motions for recusal of Board Chairs and the Panel Chair and service of repetitive subpoenas constitute bad faith obstruction of the disciplinary proceeding is a close question, but ultimately we cannot find that Abbott violated the DLRDP or orders of the Board in this respect.[162] Nor does the aggravating factor relating to deceptive practices apply here. Although Abbott argues that ODC engaged in deceptive practices, this is based on his incorrect position that there was no basis for the disciplinary proceedings.

[68] [69]And it is beyond dispute that Abbott refuses to acknowledge the wrongful nature of the conduct. Indeed, Abbott still insists, despite all evidence to the contrary, that his legal work for Jenney was "Good Lawyering."[163] He also continues to make spurious and unfounded statements about the Vice Chancellor, ODC counsel, and the Panel Chair. Abbott objects that this factor should receive little weight because he is entitled to defend himself, but he could have defended himself without hurling unfounded accusations of corruption and mental illness. As the Court previously warned him, zealous advocacy does not encompass degrading or disrespectful language.[164] Finally, Abbott's substantial experience in the practice of law—twenty-five years of experience as a Delaware lawyer when he was referred to ODC in 2015—is an aggravating factor.

[70] [71]As to the mitigating factors, Abbott cannot rely on the absence of a prior disciplinary record because he was publicly reprimanded for making statements

degrading to a tribunal in 2007. Nor was there the absence of a dishonest or selfish motive.[165] As to personal or emotional problems as a mitigating factor, Abbott objects that the Panel ignored his testimony and his wife's testimony concerning psychological trauma he has suffered as a result of ODC bringing and pursuing these proceedings. We disagree. The Panel correctly recognized that this alleged trauma did not contribute to Abbott's sanctionable misconduct. This objection also rests upon the faulty premise that everyone but Abbott himself is responsible for what has transpired since his actions in the Seabreeze Litigation.

[72]Timely restitution is not relevant here and thus cannot be counted as a mitigating factor. And Abbott has not attempted to rectify the consequences of his misconduct. Again, Abbott has been uncooperative throughout the proceedings and has continued to make degrading statements. Thus, the mitigating factor relating to a lawyer's cooperative attitude has no application here. Abbott objects that he was entitled to defend himself and pursue independent litigation to protect his rights, but fails to acknowledge that it was unnecessary for him to degrade others and waste Board resources with repetitive motions while doing so.

***33** [73] [74]As previously mentioned, Abbott is an experienced Delaware litigator. Consequently, he cannot claim that inexperience mitigates the seriousness of his offenses. Abbott submitted evidence of good character and reputation, but we agree with the Panel that this evidence was insufficient to constitute a mitigating factor. Abbott has not

performed the amount of public service found to constitute a mitigating factor in other disciplinary cases.[166] Like the Panel, we acknowledge that Abbott is an experienced and successful litigator in real estate and land use matters. We also agree with the Panel that this only makes Abbott's misconduct in the Seabreeze Litigation and these proceedings even more unnecessary and senseless.

[75] [76] [77]The mitigating factors relating to physical disability, mental disability, or chemical dependency are not relevant here. The mitigating factor of delay in disciplinary proceedings does not apply because Abbott was primarily responsible for any delays.[167] Imposition of other penalties or sanctions also does not apply. Abbott objects that the psychological trauma he has suffered from these proceedings is more than sufficient punishment, but fails to acknowledge his own personal responsibility for what has occurred. Abbott refuses to acknowledge that he committed any wrongdoing, so remorse is not a mitigating factor. Finally, we reject Abbott's contention that his degrading statements in this proceeding are remote from the degrading statements for which he was disciplined in 2007.

[78]Having considered the aggravating and mitigating factors, the Court concludes that the aggravating factors outweigh the mitigating factors. There is no basis for reducing the presumptive sanction of disbarment. Disbarment is also consistent with Delaware authority. In *McCarthy*, the Court accepted a Board panel's recommended sanction of disbarment for a non-Delaware attorney who failed to inform the court that his client had altered medical records and

failed to take remedial measures after his client's false deposition and trial testimony in a medical malpractice action.[168] As in this case, ABA Standards 5.11(b), 6.11, and 6.21 provided for a presumptive sanction of disbarment and the aggravating factors outweighed the mitigating factors.[169] In fact, there were fewer aggravating and more mitigating factors present in *McCarthy* than here.

VI.

For the reasons set forth above, Richard Abbott is DISBARRED effective immediately. Abbott shall pay the costs of the disciplinary proceeding. ODC is directed to file a petition in the Court of Chancery for the appointment of a receiver for Abbott's law practice and to disseminate this opinion in accordance with Rule 14 of the DLRDP.

IT IS SO ORDERED.

Footnotes

1 Rule 3.5(d) provides that a lawyer shall not "engage in conduct intended to disrupt a tribunal or engage in undignified or discourteous conduct that is degrading to a tribunal."

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

3 Rule 8.4(d) provides that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice."

4 Rule 3.4(c) provides that a lawyer shall not "knowingly disobey an obligation under the rules of a tribunal, except for an

open refusal based on an assertion that no valid obligation exists."

[5] Rule 8.4(a) provides that "[i]t is professional misconduct for a lawyer to ... violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another."

[6] Consent Order ¶ 2, Admitted Hearing Exhibit (hereinafter referred to as "Ex. ——"), Ex. 196 at Ex. 1 ¶ 2.

[7] Id. ¶ 13.

[8] Id. ¶ 17.

[9] Respondent's Response to Petitioner's Motion for Rule to Show Cause Hearing for Respondent's Violation of the July 11, 2014 Consent Order, Ex. 197 ¶ 11.

[10] July 11, 2022 Recommendation of Panel of Board on Professional Responsibility on the Discipline of Richard L. Abbott, Esquire (hereinafter referred to as "July 11, 2022 Recommendation at ——") at 15.

[11] Ex. 52 at 21.

[12] Mar. 7, 2015 Email, Ex. 236.

[13] Nov. 10, 2021 Tr. at 991–92.

[14] Mar. 9, 2015 emails, Ex. 237.

[15] Id.

[16] Id.

[17] Ex. 57.

[18] Apr. 13, 2015 Tr. (Del. Ch.) at 56–57, Ex. 64.

[19] Id. at 61–62. Abbott did not object to this line of questioning at the hearing.

[20] Nov. 10, 2021 Tr. at 1225–27.

[21] Ex. 64 at 112–13.

[22] Jenney v. Seabreeze Homeowners Ass'n, Inc., 116 A.3d 1244, 2015 WL 3824867, at *2 (Del. June 18, 2015) (TABLE).

[23] Court on the Judiciary proceedings are normally confidential. Ct. Jud. R. 17. But as discussed in then-Chief Justice Strine's denial of Abbott's motion for recusal in Abbott v. Del. State Pub. Integrity Comm'n, it could be fairly inferred from Abbott's filings in the Public Integrity Commission ("PIC"), discussed in more detail herein, that he had filed a complaint against the Vice Chancellor in the Court on the Judiciary. No. 155, 2018, Order (Del. Feb. 25, 2019). After learning of Abbott's complaint, ODC contacted the Clerk of the Court on the Judiciary for access to the Court on the Judiciary records. Id. at 6. See also Abbott v. Del. State Pub. Integrity Comm'n, 206 A.3d 260, 2019 WL 937184, at *6-7 (Del. Feb. 25, 2019) (TABLE). The Vice Chancellor consented to waive the confidentiality of the Court on the Judiciary records for the limited purpose of In re Abbott, ODC File No. 112512B. Id.

[24] Delaware Lawyers' Rules of Disciplinary Procedure ("DLRDP") 9(b).

[25] Id.

[26] Sept. 16, 2016 Response in Opposition to Motion to Compel ¶ 9, Ex. 105.

[27] Id. ¶ 14(f) (emphasis in original).

[28] Id. ¶ 30.

[29] Sept. 16, 2016 Motion for Stay and Recusal of Board Chair ¶ 12, Ex. 240.

[30] Id. ¶ 14. See also Sept. 16, 2016 Motion for Stay and Disqualification of ODC Counsel ¶ 15, Ex. 239 (describing the

Vice Chancellor's referral of Abbott to ODC as a "bogus, unfounded, and ill-intended Complaint").

[31] Ex. 241 (enclosing copy of Motion for Stay and Recusal of Board Chair, Ex. 240 and Sept. 16, 2016 Response in Opposition to Motion to Compel, Ex. 105). See also supra nn. 26–29.

[32] This attorney later became Chief Disciplinary Counsel in 2021.

[33] Abbott v. Del. State Pub. Integrity Comm'n, 2018 WL 1110852, at *1 (Del. Super. Ct. Feb. 28, 2018).

[34] 206 A.3d 260, 2019 WL 937184, at *1 (Del. Feb. 25, 2019) (TABLE).

[35] Oct. 4, 2019 Sur-Reply in Opposition to Motion to Compel Lawyer-Client Privileged Documents ¶¶ 1, 5, 14, Ex. 242.

[36] Id. ¶ 18 n.9.

[37] Id. ¶ 25.

[38] Id.

[39] Oct. 4, 2019 Motion to Dismiss ¶ 1, Ex. 243.

[40] Nov. 12, 2019 Reply in Support of Motion to Dismiss ¶ 48, Ex. 122.

[41] Id.

[42] Oct. 4, 2019 Motion to Dismiss ¶ 16, Ex. 243.

[43] Id. ¶ 17.

[44] Jan. 2, 2020 Motion to Dismiss ¶ 1, Ex. 244.

[45] Id. ¶ 26.

[46] See, e.g., Jan. 2, 2020 Motion for Recusal of Certain Members ¶ 12, Ex. 129 ("Rather than congratulating and applauding Abbott for his zealous representation through appropriate and permissible means, the Vice Chancellor's frustration, aggravation, and anger caused him to lose touch with reality. He lashed out at the undersigned counsel and spouted out wildly unsupported statements in an effort to gin-up a record for purposes of this bad faith, personal retribution proceeding.").

[47] At that time, the Justices were Chief Justice Seitz, Justice Valihura, Justice Vaughn, Justice Traynor, and Justice Montgomery-Reeves.

[48] See, e.g., Abbott v. Mette, C.A. No. 1:20-cv-131, Am. Compl. ¶¶ 21–22, 50 (D. Del. Mar. 9, 2020), 2020 WL 3604108 (alleging that the Vice Chancellor "arranged to trump up defamatory and disparaging remarks about Abbott" and had a "purposeful desire to harm Abbott without any factual or legal basis"); Am. Compl. Ex. D at 1, 6 (a letter Abbott submitted to the PRC that referred to an "utterly frivolous complaint by a Vice Chancellor who let his emotions get carried away," "[t]he subjective personal opinion of a Vice Chancellor stated in conclusory hyperbole is nothing more than a judicial rant," and the Vice Chancellor "hijack[ing] the lawyer disciplinary system to mete out his personal dislike of my litigation approach.").

[49] Abbott v. Mette, 2021 WL 1168958, at *4–5 (D. Del. Mar. 26, 2021).

[50] Abbott v. Mette, 2021 WL 5906146, at *1 (3d Cir. Dec. 14, 2021).

[51] Abbott v. Vavala, 2022 WL 453609, at *3, 13 (Del. Ch. Feb. 15, 2022).

[52] Abbott v. Vavala, 284 A.3d 77, 2022 WL 3642947, at *7 (Del. Aug. 22, 2022) (TABLE).

[53] In re Abbott, 267 A.3d 995, 2021 WL 1996927 (Del. May 18, 2021) (TABLE).

[54] The Court issued a lengthier decision with its reasoning on January 19, 2022.

[55] July 11, 2022 Panel Recommendation at 91.

[56] In re Abbott, 925 A.2d 482, 489 (Del. 2007).

[57] Supr. Ct. R. 14; Ploof v. State, 75 A.3d 811, 822–23 (Del. 2013). These objections may include claims for violations of federal civil and Delaware RICO statutes that Abbott raised in his federal and Court of Chancery complaints. Both this Court and the District Court held that Abbott could raise the substance of these claims in the disciplinary proceeding. Abbott, 2022 WL 3642947, at *3; Abbott, 2021 WL 1168958, at *2. The Panel considered the facts underlying Abbott's RICO claims, which were based on essentially the same factual allegations and defenses as in the disciplinary proceeding, and concluded that Abbott had not shown any professional or judicial misconduct or constitutional violations. Abbott has not properly asserted any objections to the Panel's handling of his RICO claims and has therefore waived those claims.

[58] The Court has considered these objections notwithstanding Abbott's flagrant violation of its Feb. 9, 2023 order establishing the word count limits and deadlines for the objections.

[59] In re Froelich, 838 A.2d 1117, 1120 (Del. 2003) (citing In re Benson, 774 A.2d 258, 262 (Del. 2001)).

[60] In re Nadel, 82 A.3d 716, 720 (Del. 2013).

[61] Abbott, 925 A.2d at 484.

[62] Id.

[63] In re Koyste, 111 A.3d 581, 588 (Del. 2015).

[64] In re Bailey, 821 A.2d 851, 863 (Del. 2003).

[65] Mar. 7, 2015 Email, Ex. 236.

[66] See supra Section I.D.

[67] See supra Sections I.C., I.D.

[68] DLRPC R. 1.0(f).

[69] Id.

[70] See supra Sections I.B., I.C., I.D.

[71] See id.

[72] See supra Sections I.C., I.D.

[73] See, e.g., In re Woods, 143 A.3d 1223, 1226 (Del. 2016) (describing failure to comply with the terms of a court order as a violation of Rule 3.4(c)); In re Tonwe, 929 A.2d 774, 778 (Del. 2007) (lawyer knowingly violated Rule 3.4(c) by flouting an order to cease and desist unauthorized practice); In re Shearin, 765 A.2d 930, 937 (Del. 2000) (holding that an attorney violated Rule 3.4(c) when she disobeyed a court order that enjoined her and her client from interfering with another party's title to certain property and from holding themselves out as having an ownership interest in the properties); Iowa Sup. Ct. Att'y Disciplinary Bd. v. Baldwin, 857 N.W.2d 195, 211 (Iowa 2014) (recognizing that this rule applies to court orders and rules); ABA Standards 6.2 (including court orders in discussing sanctions for failure to obey any obligation under the rules of the tribunal).

[74] Maness v. Meyers, 419 U.S. 449, 458, 95 S.Ct. 584, 42 L.Ed.2d 574 (1975). See also In re Ford, 128 P.3d 178, 182 (Alaska 2006) ("An attorney may challenge a court order by motion, appeal, or other legal means, but may not simply disregard it."); Restatement (Third) of the Law Governing

Lawyers § 94(2) (Am. Law Inst. 2000) (providing that lawyer may not assist a client in conduct that violates a court order unless the lawyer reasonably believes the conduct constitutes a good faith effort to determine the scope of a court order or that the client can assert a non-frivolous argument that the conduct will not violate a court order).

[75] In re Martin, 105 A.3d 967, 971–72, 975 (Del. 2014) (concluding that there was clear and convincing evidence that attorney violated Rule 3.4(c) by assisting suspended attorney in his practice of law in violation of the order suspending the attorney); In re Kingsley, 950 A.2d 659, 2008 WL 2310289, at *4-5 (Del. June 4, 2008) (TABLE) (disbarring non-Delaware attorney whose failure to respond to ODC's petition was deemed an admission of, among other things, the allegation that he violated Rule 3.4(c) by performing legal work for an accountant after the accountant was subject to a cease and desist order not to engage in the unauthorized practice of law).

[76] See, e.g., In re McCarthy, 668 N.E.2d 256, 258 (Ind. 1996) (holding that attorney violated Rule 3.4(c) by preparing a quitclaim deed conveying marital property in violation of a restraining order against his client); Iowa Sup. Ct. Att'y Disciplinary Bd. v. Vandel, 889 N.W.2d 659, 666–67 (Iowa 2017) (concluding that there was Rule 3.4(c) violation where attorney failed to answer disciplinary petition and therefore admitted allegation that she advised her client to deny visitation to her ex-husband despite visitation schedule in dissolution decree).

[77] In re Davis, 974 A.2d 170, 175 (Del. 2009) (holding lawyer violated Rule 8.4(a) by causing staff members to notarize documents when the lawyer did not sign the documents in the notary's presence); State v. Grossberg, 705 A.2d 608, 612–13 (Del. Super. Ct. 1997) (revoking attorney's pro hac admission after he gave statements violating court order and Rule 3.6 and arranged for his client and parents to do interviews during which they made statements that he could not have made under Rule 3.6).

[78] See, e.g., In re Favata, 119 A.3d 1283, 1287-90 (Del. 2015) (finding Rule 8.4(c) violations where lawyer made statements that he intended the defendant to overhear, told the trial judge that he was not communicating with the defendant, and failed to correct those false statements); In re Poliquin, 49 A.3d 1115, 1133 (Del. 2012) (finding Rule 8.4(c) violations where lawyer failed to disclose a previous admonition and failed to correct his counsel's statements that he had performed within expectations of the judicial system since admission to the Bar at a rule to show cause hearing).

[79] July 11, 2022 Panel Recommendation at 28 n.79.

[80] In re Beauregard, 189 A.3d 1236, 1251 (Del. 2018).

[81] 74 A.3d 654, 2013 WL 4543284, at *8 (Del. Aug. 23, 2013) (TABLE).

[82] Id. at *2.

[83] Abbott, 925 A.2d at 486 (holding that attorney violated Rule 3.5(d) by suggesting in a reply brief that the judge would rule on a basis other than the merits of the case); In re Ramunno, 625 A.2d 248, 250 (Del. 1993) (finding that attorney violated Rule 3.5(c) when he "engaged in an insolent colloquy with the trial judge ... which, implicitly if not explicitly challenged the court's integrity" and stating that disparagement of a court's integrity is "unacceptable by any standard").

[84] Abbott, 925 A.2d at 484-85 (concluding that attorney's statements in Superior Court briefs referring, among other things, to opposing counsel's "fictionalized" account of a hearing, the tribunal's "imaginary, make-believe set of reasons" for its findings, and appointment of "a group of monkeys" to the tribunal violated Rule 3.5(d)); In re Shearin, 721 A.2d 157, 162, 165 (Del. 1998) (finding Rule 3.5(c) violation where the attorney

suggested in appellate reply brief that there were rumors the Vice Chancellor had been bribed by the opposing party). See also In re Johnston, 316 Kan. 611, 520 P.3d 737, 779, 792 (2022) (finding attorney violated Rule 3.5(d) where she, among other things, accused court, bar, and others of engaging in collusion and racketeering without providing any evidence and accused judge who directed her to self-report to disciplinary authority as acting so contrary to the record that the allegations had appearance of retaliatory harassment).

85 In re Hurley, 183 A.3d 703, 2018 WL 1319010, at *3–5 (Del. Mar. 14, 2018) (TABLE) (accepting Board panel's finding that an attorney violated Rule 4.4(a) (respect for third persons) in his response on behalf of himself to disciplinary complaint); In re Lankenau, 158 A.3d 451, 2017 WL 934709, at *1 (Del. Mar. 9, 2017) (TABLE) (accepting Board panel's finding that attorney violated Rule 3.3(a)(1) (candor to tribunal) when he failed to disclose he did not give complete and accurate testimony in previous disciplinary proceeding); In re Kennedy, 503 A.2d 1198, 1202, 1208–09 (Del. 1985) (affirming Board panel's finding that attorney who was representing himself in a disciplinary proceeding violated the predecessor to Rule 4.4(a) by threatening the attorney who referred him during the disciplinary proceeding). See also Barrett v. Va. State Bar ex rel. Second Dist. Comm. 272 Va. 260, 634 S.E.2d 341, 345 (2006) ("It would be a manifest absurdity and a distortion of these Rules [of Professional Conduct] if a lawyer representing himself commits an act that violates the Rules but is able to escape accountability for such violation solely because the lawyer is representing himself.").

86 See, e.g., Exs. 105 at 19–20, 243 at 12, 244 at 17.

87 DLRPC 1(m).

88 DLRDP 2(c) (describing the Board's power to conduct hearings and issue orders and the Panel chair's power to decide scheduling, evidentiary, and procedural matters); DLRDP 12(g)

(describing powers of Board Chair, Board Vice Chair, and Panel Chair to decide discovery disputes).

89 DLRDP 12(g).

90 DLRDP 2(d).

91 In re Lankenau, 2017 WL 934709, at *1; In re Vanderslice, 116 A.3d 1244, 2015 WL 3858865, at *1, 9 (Del. June 19, 2015) (TABLE).

92 29 Del. C. § 5810; 29 Del. C. § 5810A.

93 July 11, 2022 Panel Recommendation at 121.

94 In re Shearin, 721 A.2d at 162.

95 925 A.2d at 485–87.

96 DLRDP 10.

97 DLRDP 15(a).

98 See, e.g., Hurley, 2018 WL 1319010, at *3–5 (accepting Board panel's finding that an attorney violated Rule 4.4(a) (respect for third persons) in his response on behalf of himself to disciplinary complaint); Lankenau, 2017 WL 934709, at *1 (accepting Board panel's finding that attorney violated Rule 3.3(a)(1) (candor to tribunal) when he failed to disclose he did not give complete and accurate testimony in previous disciplinary proceeding).

99 Barker v. Huang, 610 A.2d 1341, 1345 (Del. 1992).

100 Id. at 1349.

101 See, e.g., Hawkins v. Harris, 141 N.J. 207, 661 A.2d 284, 288 (1995) (recognizing that the absolute litigation privilege "does not protect against professional discipline for an attorney's unethical conduct"); Ruberton v. Gabage, 280

N.J.Super. 125, 654 A.2d 1002, 1007 (1995) ("It must be emphasized that the absolute privilege ... applies to claims of tortious conduct; it does not apply to a claim of unprofessional conduct, or to summary contempt proceedings against the offending attorney.").

[102] 189 Conn.App. 85, 206 A.3d 188 (2019).

[103] Shearin, 765 A.2d at 938 (citations omitted). See also Gentile v. State Bar of Nevada, 501 U.S. 1030, 1081-82, 111 S.Ct. 2720, 115 L.Ed.2d 888 (1991) (O'Connor, J., concurring) ("Lawyers are officers of the court and, as such, may legitimately be subject to ethical precepts that keep them from engaging in what otherwise might be constitutionally protected speech."); In re Guy, 756 A.2d 875, 877-79 (Del. 2000) (affirming the Board's conclusion that attorney had violated Rule 8.2, in the course of representing a criminal defendant, based upon his written assertions in a letter to a Superior Court Judge that the Judge acted with racial bias against him).

[104] 55 F.3d 1430 (9th Cir. 1995).

[105] Shearin, 765 A.2d at 938.

[106] Id. (citing In re Palmisano, 70 F.3d 483 (7th Cir. 1995)).

[107] Hanover 3201 Realty, LLC v. Village Supermarkets, Inc., 806 F.3d 162, 178 (3d Cir. 2015).

[108] See, e.g., In re Koyste, 111 A.3d 581, 588-89 (Del. 2015) (lawyer's knowing disobedience of court order and directing his non-lawyer assistant to violate the order violated both Rule 3.4(c) and 8.4(d)); Abbott, 925 A.2d at 486–87 (lawyer's degrading statements violated Rules 3.5(d) and 8.4(d)); Shearin, 765 A.2d at 939 ("Violations of court orders constitute conduct prejudicial to the administration of justice.").

[109] Ex. 73.

[110] Mar. 22, 2023 Pro Se Respondent/Third Party Petitioner's Objections to the Proceedings, Recommendations, & Misconduct of ODC Counsel and Board Panel Chair at 24.

[111] Judges' Code of Jud. Conduct R. 2.15 ("A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer.").

[112] See, e.g., Gattis v. State, 955 A.2d 1276, 1284 (Del. 2008) (recognizing that a judge's adverse rulings or critical remarks do not ordinarily support a bias or appearance of impropriety claim).

[113] Abbott, 2019 WL 937184, at *8.

[114] 442 A.2d 79, 92–93 (Del. 1982) (holding attorney could not invoke the attorney-client privilege to prevent this Court's Censor Committee from conducting an audit of the attorney's financial records for compliance with guidelines on retention of client funds).

[115] DRE 510(a) ("A person waives a privilege conferred by these rules ... if such person ... intentionally discloses or consents to disclosure of any significant part of the privileged or protected communication or information.").

[116] Banther v. State, 977 A.2d 870, 890 (Del. 2009).

[117] DLRDP 26.

[118] In re Tenenbaum, 918 A.2d 1109, 1111–12, 1127 (Del. 2007).

[119] See supra n.97 and accompanying text.

[120] Abbott, 2019 WL 937184, at *5.

[121] DLRDP 9(b)(1).

[122] Id. 9(b)(3).

[123] Id. 9(d).

[124] Id. 12(a)(2).

[125] Id. 9(d)(4).

[126] Id. 9(e); In re Martin, 105 A.3d 967, 974 (Del. 2014) (de novo review).

[127] DLRDP 12 cmt. ("Former section (c) concerning interrogatories has been eliminated."); DLRDP 15(b) (providing "that discovery procedures shall not be expanded beyond those provided in Rule 12").

[128] DLRDP 12(a)(2).

[129] See, e.g., Evans v. J.P. No. 19, 652 A.2d 574, 577 (Del. 1995) ("[E]xamination of a judge's mental process would be destructive of judicial responsibility and undermine the integrity of the judicial process."); Brooks v. Johnson, 560 A.2d 1001, 1002 (Del. 1989) ("Persons performing adjudicatory functions are not subject to examination in furtherance of the litigation objectives of the parties."); United States v. Roth, 332 F.Supp.2d 565, 567 (S.D.N.Y. 2004) (recognizing that "the overwhelming authority from the federal courts in this country, including the United States Supreme Court, makes it clear that a judge may not be compelled to testify concerning the mental processes used in formulating official judgments or the reasons that motivated him in the performance of his official duties."); State ex rel. Kaufman v. Zakaib, 207 W.Va. 662, 535 S.E.2d 727, 735 (2000) (holding "judicial officers may not be compelled to testify concerning their mental processes employed in formulating official judgments or the reasons that motivated them in their official acts.").

[130] In re Kelly, 283 A.3d 580, 2022 WL 3270230, at *9 (Del. Aug. 10, 2022) (TABLE) (quoting State v. Wharton, 1991 WL 138417, at *10–11 (Del. Super. Ct. June 3, 1991)).

[131] United States v. DeMichael, 692 F.2d 1059, 1061 (7th Cir. 1982).

[132] Sisson v. State, 903 A.2d 288, 314 (Del. 2006).

[133] Drummond v. State, 909 A.2d 594, 2006 WL 2842732, at *2 (Del. Oct. 5, 2006) (TABLE).

[134] Wharton, 1991 WL 138417, at *5.

[135] In re Bailey, 821 A.2d 851, 866 (Del. 2003).

[136] In re Landis, 850 A.2d 291, 293 (Del. 2004) (quoting In re Garrett, 835 A.2d 514, 515 (Del. 2003)).

[137] In re Fountain, 878 A.2d 1167, 1173 (Del. 2005).

[138] Beauregard, 189 A.3d at 1251; In re Steiner, 817 A.2d 793, 796 (Del. 2003).

[139] Aggravating factors include prior disciplinary offenses, dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding, submission of false evidence or false statements during the disciplinary process, refusal to acknowledge wrongful nature of conduct, vulnerability of victim, substantial experience in the practice of law, indifference to making restitution, and illegal conduct, including the use of controlled substances. ABA Standards 9.22.

[140] Mitigating factors include absence of a prior disciplinary record, absence of a dishonest or selfish motive, personal or emotional problems, timely good faith effort to make restitution or to rectify consequences of misconduct, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, inexperience in the practice of law, character or reputation, physical disability, mental disability or chemical dependence, delay in disciplinary proceedings, imposition of other penalties or sanctions, remorse, and remoteness of prior offenses. ABA Standards 9.32.

[141] Steiner, 817 A.2d at 796.

[142] Id.

[143] ABA Standards, II.

[144] Fountain, 878 A.2d at 1173.

[145] The ABA Standards define "intent" as "the conscious objective or purpose to accomplish a particular result" and "knowledge" as the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." ABA Standards, III Definitions. See also supra Sections I.C., I.D.

[146] See supra Section I.C.

[147] See supra Sections I.C., I.D.

[148] See supra Section IV.A.3.

[149] The ABA Standards define "injury" as "harm to a client, the public, the legal system or the profession which results from a lawyer's misconduct." ABA Standards, III Definitions. ABA Standards 6.11 and 6.21 include serious injury to a party.

[150] The ABA Standards define "potential injury" as the "harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct." ABA Standards, III Definitions. ABA Standards 6.11 and 6.21 include potentially serious injury to a party.

[151] See supra Section I.D.

[152] This would have included serving Mrs. Jenney, which Abbott and Jenney discussed how to make difficult. See supra Section I.C.

[153] Tonwe, 929 A.2d at 780.

[154] See supra Section I.D.

[155] In re McCarthy, 173 A.3d 536, 2017 WL 4810769, at *2, 7 (Del. Oct. 23, 2017) (TABLE) (approving Board panel's recommendation of disbarment where attorney failed to disclose to the court that his client had altered medical records); Vanderslice, 2015 WL 3858865, at *14 (approving Board panel's recommendation of disbarment where attorney misappropriated client fees and failed to disclose the full extent of his misappropriation during disciplinary proceedings).

[156] ABA Standard 5.11(b) provides that "[d]isbarment is generally appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice."

[157] ABA Standard 6.11 provides that "[d]isbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding."

[158] ABA Standard 6.21 provides that "[d]isbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding."

[159] A violation of Rule 3.5(d) does not require intent. Ramunno, 625 A.2d at 250 ("[I]t is irrelevant whether Mr. Ramunno intended to cause disruptive effect. Instead, the sole question before the Court is whether Mr. Ramunno's rude and uncivil behavior was degrading to the court below.").

[160] Abbott, 925 A.2d at 485–86 (holding Abbott violated Rule 3.5(d) and 8.4(d) when he made statements about opposing counsel fabricating legal grounds and implying the trial court might rule on a basis other than the merits of the case). In August 2022, Abbott moved to vacate the sanction—public reprimand—imposed in this 2007 case. The Court denied the motion, concluding that even if Superior Court Civil Rule 60(b) applied as Abbott contended, he had not shown a basis for relief under Rule 60(b)(1), (b)(4), and (b)(6). Abbott also rehashed many of the same arguments that he had raised in his 2007 motion for reargument, which the Court had denied.

[161] Id. at 489.

[162] To ensure the effective functioning of the disciplinary process, the Court had to enjoin Abbott from filing additional complaints against disciplinary counsel and initiating new actions in State court related to these proceedings in 2021. Abbott, 2021 WL 1996927, at *1–2.

[163] March 22, 2022 Pro se Respondent/Third Party Petitioner's Objections to Proceedings, Recommendations & Misconduct of ODC Counsel and Board Panel Chair at 32, 57.

[164] Abbott, 925 A.2d at 488.

[165] See supra Section IV.B.2.

[166] See, e.g., In re Tenenbaum, 918 A.2d 1109, 1115, 1137 (Del. 2007) (accepting Board panel's recommended sanction of disbarment, which included finding that the lawyer's record of substantial public and community service, including significant work with Community Legal Aid Society and participation in national and State bar association sections and committees, was a mitigating factor).

[167] See supra Section IV.A.6.

[168] 2017 WL 4810769, at *2–5. By devising the scheme for his client to escape his court-ordered obligations, Abbott

actually played a more active role than the disbarred attorney in McCarthy.

169 Neither ABA Standard 6.11 nor 6.21 applied in the Shearin cases that the Panel Majority relied upon to recommend suspension.

APPENDIX B
TO PETITIONER'S PETITION
FOR WRIT OF *CERTIORARI*

THE SUPREME COURT OF THE STATE OF DELAWARE

OFFICE OF DISCIPLINARY COUNSEL, **CONFIDENTIAL**	:
Petitioner,	:
v.	No. 25,2023
RICHARD L. ABBOTT, ESQUIRE,	:
Respondent/ Third-Party Petitioner,	:
v.	:
KATHLEEN M. VAVALA, DAVID A. WHITE, LUKE W. METTE, COLLINS J. SEITZ, JR., JAMES T. VAUGHN, JR., TAMIKA R. MONTGOMERY-REEVES, GARY F. TRAYNOR, and KAREN L. VALIHURA,	:
Third-Party Respondents.	:

PRO SE RESPONDENT/THIRD PARTY PETITIONER'S OBJECTIONS TO PROCEEDINGS, RECOMMENDATIONS & MISCONDUCT OF ODC COUNSEL AND BOARD PANEL CHAIR[7]

Introduction & Legal Standard[8]

This is a nearly 8 year old attack campaign (the "Star Chamber Proceeding") launched against *Pro Se* Respondent Richard L. Abbott, Esquire ("Abbott") by Petitioner Office of Disciplinary Counsel ("ODC") based on personal hatred and vindictiveness. The Star Chamber Proceeding was initiated based on the hyperbole and exaggeration expressed by The Honorable Sam Glasscock, III (the "Vice Chancellor") in a Hatfield versus McCoy style neighborhood dispute. Abbott has been pilloried, victimized, impugned, and abused by a succession of ODC counsel whose sole aim has been to destroy Abbott and his legal career by concocting charges that cannot be proven and by fixing and rigging the Star Chamber Proceeding.

A. The "Abbott Rule" Requires *De Novo* Consideration Of Factual & Legal Errors

The special "Abbott Rule" applicable to this Court's review of the Board Panel Recommendation on Liability has been set by prior Supreme Court

[7] Abbott files this abbreviated version of his March 15, 2023 submission of the same name under protest, without prejudice, and with a full reservation of rights.

[8] Abbott hereby incorporates by reference the Factual Findings at App. 4, which is the Appendix to this filing that is submitted contemporaneously herewith.

precedent: 100% *de novo* in all respects. *See In re: Abbott*, 925 A.2d 482, 486 (Del. 2007)(en Banc)(ignoring the Board Panel Recommendation Report's finding of fact that Abbott did not suggest any bias by the Court, instead concluding otherwise without explanation of why substantial evidence did not support the fact finding). Interestingly, *In re: Abbott* failed to include, as is normally the case, a copy of the Board Panel Recommendation (which totally exonerated Abbott).

B. The Board Panel Plant, Conspiracy & Cover-Up[9]

Board Panel Chair Randolph K. Herndon, Esquire (the "Board Panel Plant") was installed based upon a conspiracy between 2 or more of him, Luke W. Mette, Esquire ("Mette") [10], Kathleen M. Vavala, Esquire ("Vavala"), and/or Karlis Johnson ("Johnson"). He was selected for the express purpose of railroading Abbott, covering up the corruption that brought about the charges against Abbott, and abusing his position to deny Abbott a fair trial.[11] Indeed, the Board Panel Plant previously expressed

---

[9] Further points regarding this subject are contained in App. 1, App. 9, § III L., App. 13, and Trial Exhibits 161 and 171. Citation to "Trial Exhibit __" herein refers to the exhibits introduced at the November 2021 Trial.

[10] Mette even implied that the Supreme Court "ushered lawyers out of the Bar" at the first teleconference on October 5, 2020.

[11] At the Sanction Hearing, the Board Panel Plant asked if the ODC believed disbarment was warranted, evidencing his clear bias in this minor infraction case (ODC did not even suggest that Sanction). Trans. II at 313-14. This case is not even suspension-worthy, so why would he be concerned whether disbarment could be imposed? He did not ask Abbott about his position that the hypertechnical violations recommended warranted an Admonition.

his dislike of Abbott and his desire to have Abbott ushered out of the Delaware Bar. *See* Exhibit E and F (he "advocated to get Abbott thrown out of the Bar," was "assigned…as a tool to rig the outcome," and "spearheaded a campaign to have…Abbott…purged from the Bar").[12]

Throughout the course of the Star Chamber Proceeding, the Board Panel Plant denied Abbott all fair treatment, all discovery, all trial witnesses, a fair and impartial Board Panel, and a full and fair hearing.[13] Abbott hereby incorporates by reference every filing that he has made regarding the Board Panel Plant and his rulings as proof that Abbott was denied even a minimum modicum of fundamental fairness and Due Process.[14] The record establishes

---

[12] Citation to "Exhibit ___" (lettered exhibits) are to "*Pro Se* Respondent's Sanction Hearing Exhibits" dated August 24, 2022.

[13] Abbott incorporates by reference:
1) Motion For Reargument Of Initial Case Scheduling Order dated October 12, 2020; 2) Respondent's Reply In Support Of His Motion For Reargument Of Initial Case Scheduling Order dated October 15, 2020; 3) Letter to Board Panel Plant dated November 11, 2020; and 4) Letter to Board Panel Plant dated November 17, 2020. *See also* T2348-2349 (Trial Transcript from November 2021). These documents show Board Panel Plant bias from the outset.

[14] *See* Abbott's filings, all of which are hereby incorporated by reference, regarding:
(1) filings regarding all written and deposition discovery dated November 30, 2020, March 1, 2021, June 30, 2021, July 22, 2021, and August 12, 2021;
(2) filings regarding all Abbott Trial Witnesses dated October 28, 2021, November 5, 2021, and August 22, 2022;
(3) the Complaint to the Court on the Judiciary against the Board Panel Plant dated May 18, 2021, *See* Trial Exhibit 161 and Ap. 1;

that the Board Panel Plant consistently ruled contrary to the law – *i.e.* not based on the merits. [15]

In the Summer of 2020, Mette hand-picked the Board Panel Plant in conjunction with Johnson. Mette was acquainted with the Board Panel Plant and also insured his installation as Board Panel Chair in proceedings before the Board of Bar Examiners ("BBE") involving a prospective Bar Member by the name of Brooks Witzke. [16]

Abbott refers to the explanations contained in App. Exs. G and H for a detailed description of all of the bases for the Board Panel Plant to be removed and this action dismissed, the contents of which are hereby incorporated by reference.[17]

---

(4) "Trial Transcript Evidence of Herndon Bias Against Abbott & In Favor Of The ODC" at Exhibit N to the "Appendix To *Pro Se* Respondent's Post-Trial Memorandum" dated April 18, 2022;
(5)"Respondent's Opening Brief In Support Of His Motion *In Limine* To Exclude Certain Non-Expert Evidence" dated August 31, 2021; and
(6) "Respondent's Reply In Support Of His Motion *In Limine* Regarding Non-Expert Evidence" dated October 5, 2021.

[15] Herndon had a chance to rebut the evidence; he was called as a witness by Abbott to be questioned about his Board Panel Plant status. Trans. II at 280-285. But Herndon hid behind the mirage of being a Judge subject to DRE Rule 605, even though he is clearly not a Judge. *Id*.

[16] Mette referred to Delaware Bar Applicant Brooks Witzke as "Richard Abbott, Jr.," and stated that his entry into our Bar should not occur since he would be just as much "trouble" as "mule kick" Abbott was. The Board Panel Plant agreed with Mette's use of Abbott as a derogatory adjective, which shows bias against Abbott.

[17] Citations herein to "App. Ex. __" are to the lettered exhibits contained in the "Appendix To *Pro Se* Respondent's Post-Trial Memorandum & Memorandum On Related Subjects" dated April 18, 2022.

The Board Panel Plant also exhibited his prejudice against Abbott at trial pursuant to: 1) numerous inappropriate comments critical of Abbott and posing loaded and ODC-favorable questions aimed at harming Abbott[18]; (2) rulings which were mostly adverse to Abbott; and (3) silent eye contact and head-nodding communication with the ODC. The Board Panel Plant insured that Abbott received only a "Soviet-Style Show Trial." [19]

Finally, the Board Panel Plant showed his bias via his: 1) Inquisition Theory; 2) Perfection Theory; and 3) Always Wrong Theory.[20] Under his three novel, illogical posits: (1) only evidence regarding Abbott's conduct was relevant and should be allowed and considered; (2) Abbott had to be 100% right on every matter; and (3) virtually every Abbott legal argument – totaling 100 or more – was denied.

C. The Only Misconduct Proven Was That Of The Vice Chancellor, Weidman & The ODC[21]

Uncontested trial evidence established that 2 individuals committed different forms of misconduct: 1) the Vice Chancellor was guilty of Judicial Misconduct; and 2) Weidman was guilty of Lawyer

---

[18] App. Ex. N contains a list of 22 non- exclusive examples with transcript page citations.

[19] With approximately 3,000 members of the Delaware Bar, the appointment of the same lawyer as Chair of 2 Supreme Court Panels involving the most controversial matters in Bar history was no coincidence.

[20] The Board Panel Plant also concocted numerous absurd legal theories for deciding matters against Abbott – *e.g.* bizarre claims that the Delaware Freedom of Information Act created a judicial privilege against discovery and that he was a Judge.

[21] ODC Misconduct is discussed in Section B. hereinbefore, App. 7, and App. 8 at § III.B.

Misconduct. *See e.g.* T1220-1227, T1258-1280, T1288-1327, T1339-1388, and Trial Exhibits 27, 34, 37, 39, 40, 42, and 52. [22] The ODC focused virtually all of their efforts on lying and cheating in an attempt to spin a false narrative about Abbott. At the end of the day, the ODC: 1) came up empty in its attempt to nail Abbott; and 2) failed to rebut Abbott's extensive evidence establishing the Vice Chancellor's Judicial Misconduct, Weidman's Lawyer Misconduct, and the ODC's Prosecutorial Misconduct.

D. Lawyer Seitz Showed Abbott How To Counsel A Client On Methods To Potentially Avoid A Court Judgment

Abbott testified at trial regarding the lesson he learned from now Chief Justice Collins J. Seitz, Jr. in litigation styled *Acierno v. New Castle County*, in which advice was provided by then Lawyer Seitz to his County client on how it could possibly moot an adverse Court Order entered by United States District Court Judge Sue L. Robinson that held the County's Unified Development Code ("UDC") breathed new life into a previously expired subdivision plan for land owned by Acierno. *See* Trial Exhibits 183 and 184, T1399-1407, and T1761-1763. Based on such advice, an Ordinance was approved by the County Council, on which Abbott served at the time, and the UDC was retroactively amended so as to moot Judge Robinson's Order.

Abbott acted fully within the bounds of ethical propriety.[23]

---

[22] Citations herein to "T___" are to the pages of the November, 2021 Trial Transcript.

[23] Indeed, lawyers advise clients all the time on ways to potentially avoid Court judgments, including pursuant to Bankruptcy and "Tanking" an LLC. *See* T1407-1408.

E. The Denials Of All Discovery, All Trial Witnesses & All Abbott Motion *In Limine* Objections Were In Error

The Board Panel Plant erred in denying all of Abbott's discovery, trial witnesses, and Motion *In Limine* objections. Abbott hereby incorporates by reference his submissions in those regards referred to in footnote 5 *supra*. and App. 12.

I. Recommendation I Is Rife With Legal & Factual Errors; No Violations Were Proven[24]

A. Summary Of Lack Of Proof Of The Alleged Charges[25]

The Alleged Petition contained 5 Charges, 3 of which were standalone Charges (the "3 Foundational Charges") and 2 Charges which were dependent on 1 or more of the 3 Foundational Charges (the "2 Catch-All Charges"). The 3 Foundational Charges were: (1) Count I, alleging a violation of DLRPC Rule 3.4(c); (2) Count III, alleging a violation of DLRPC Rule 8.4(c); and (3) Count IV, alleging a violation of DLRPC Rule 3.5(d).[26] As for the 2 Catch-All Charges: (1) the Count II charge was founded entirely on the Count I charge; and (2) the Count V charge was founded upon the 3 Foundational Charges.

---

[24] References herein to Recommendation I are to the Recommendation dated July 11, 2022.

[25] No record evidence proved that the Preliminary Review Committee ("PRC") ever approved the ODC Petition for Discipline (the "Alleged Petition").

[26] "DLRPC" is shorthand for the Delaware Lawyers' Rules of Professional Conduct.

The evidence adduced at trial failed to establish any of the 3 Foundational Charges by Clear and Convincing Evidence,[27] for the following reasons:

B. Count I: Alleged Abbott Violated DLRPC Rule 3.4(c) By Knowingly Disobeying An Obligation Under The Rules Of A Tribunal[28]

1. No Proof Abbott Knowingly Disobeyed Anything.
2. No Proof Abbott Violated Any Court Rule.
3. No Proof Abbott not subject to "Open Refusal" Safe Harbor.
4. Alleged Petition paragraph 36 avers that Abbott advised and assisted his client "to disobey the Consent Order" as the sole predicate act.
5. Frailties in the predicate act include:

a. Abbott did not advise or assist Jenney in disobeying the Consent Order; he gave his client advice on how to potentially avoid the Settlement Agreement and Consent Order (if it was in force).

b. There was no obligation Abbott had under the Rules of the Court of Chancery that were disobeyed.

c. Standard precepts of statutory construction prohibit the attempt to convert the phrase

[27] Recommendation I was not based upon a logical Deductive Reasoning Process; it relied upon a plethora of *post hoc*, tortured constructions of clear and unambiguous DLRPC Rule language, some examples of which are listed in App. Ex. M.

[28] Although Recommendation I finds no violation of Rule 3.4(c), it does so for the wrong reasons. Abbott objects to the faulty rationale.

"rules of a tribunal" into the phrase "ruling of a tribunal."[29]

C. Count III: Alleged A Violation Of DLRPC Rule 8.4(c): Conduct Involving Dishonesty, Fraud, Deceit, Or Misrepresentation Of Fact

1. Alleged Petition paragraph 40 contains the predicate acts: "Affirmative statements to the Court and opposing counsel, including but not limited to statements contained in [Abbott's] March 16, 2015 Letter, that were contrary to 'Abbott's' legal strategy, advice to his client and/or understanding of the facts and law."

2. Abbott's March 16, 2015 Letter (the "Abbott Letter") contains no false "Affirmative statements"; it accurately advised transfer of title to the 2 Properties (the "Ownership Transfer").

a. The Abbott Letter accurately stated that Mr. Jenney was no longer legally the owner.

b. The Abbott Letter legally argued that Mr. Jenney was relieved of his *in personam* obligations under the Settlement Agreement.

3. The Board Panel's finding is in error; it is founded on 2 alleged omissions (the "Phantom 6th Charge"), not on "Affirmative statements."

4. The Phantom 6th Charge is Unconstitutional and was based on the specious Law=Fact Theory, the Crystal Ball Theory, and the Hiding In Plain Sight Theory.

---

[29] Notably, Rule 3.4 in Virginia, North Carolina, and Texas expressly provide that a lawyer may not disobey a "ruling." The predecessor to Rule 3.4(c) in Delaware included "ruling," but a 1985 amendment deleted the term.

a. The Board Panel cannot make up a new charge *post hoc* and *ad hoc*. *See Kosseff v. Bd. of Bar Examiners*, 475 A.2d 349, 352 (Del. 1984)(pre-hearing notice of charges required by Due Process).

b. The Law=Fact Theory erroneously contends that Abbott's 2 affirmative legal arguments can be transmuted into factual omissions.

c. The Crystal Ball Theory inanely posits that Abbott had to predict the future regarding the 2 Properties.

d. The Hiding In Plain Sight Theory absurdly contends that a well-known Consent Order could magically disappear by lack of mention of it.

5. The Abbott Letter contained no "Affirmative statements" that would constitute Dishonesty, Fraud, Deceit, or Misrepresentation.

a. Abbott never affirmatively stated anything factually inaccurate.

6. "*Lyle* Denial" was required; no proof of Court Detriment or Reliance was shown by the ODC. *In re: Lyle*, 74 A.3d 654, *7-8 (Del. 2013)(TABLE)

D. Count IV: Alleging That Abbott Violated DLRPC Rule 3.5(d) By Engaging In Undignified Or Discourteous Conduct That Is Degrading To A Tribunal

1. The ODC failed to prove the elements of: 1) Lawyer; 2) Degradation; and 3) Tribunal.

a. Abbott acted *Pro Se*, not in capacity of Lawyer (one engaged in practice of law).

b. No Degradation: statements were legally Confidential and Absolutely Privileged

(Message In A Bottle That Can Never Be Found).

c. The Board: not a Tribunal (it cannot render a final judgment; it only recommends).

d. Charge not based on Board as Tribunal anyway.

2. Paragraph 42 of the Alleged Petition contains the predicate acts for the charge, citing to "paragraphs 26-34 hereof."

3. Paragraphs 26 through 28 refer to Abbott's Complaint to the Court on the Judiciary against the Vice Chancellor.

a. Rule 17 of the Court on the Judiciary Rules provides that all records and proceedings are Confidential.

b. Rule 19 of the Court on the Judiciary Rules provides that communications to the Court relating to a Judge's misconduct or disability "shall be absolutely privileged and no suit predicated thereon may be brought against any complainant."

c. Nothing contained in paragraphs 26 through 28 of the Petition was admissible or could be used against Abbott (as the complainant).

4. Paragraphs 29 and 30 of the Alleged Petition aver that Abbott attacked the Vice Chancellor in written submissions to the Board, the Delaware State Public Integrity Commission ("PIC"), and the Delaware Supreme Court.

a. No filing was made with the Supreme Court; the filing was with the Board.

b. The PIC filing is strictly Confidential.

c. No one knows about or may rely on submissions to the Board; they are strictly Confidential and Absolutely Privileged.[30]

5. Paragraph 31 of the Alleged Petition contains 31 written statements by Abbott.

a. Paragraphs 31(a) through (k) and (m) through (ee) (30 of the 31 statements) are all Absolutely Privileged and Protected Board communications.

b. Paragraph 31(l) relies upon a written submission to the PIC, but it contains nothing disparaging.

6. Paragraph 32 of the Petition contains 7 Absolutely Privileged submissions to the Board.

a. Two (2) statements were in a document allegedly filed with the Supreme Court, but which were not submitted to the Clerk or otherwise filed with the Supreme Court; the Motion to Dismiss submission was on its face submitted to the Board

b. ODC alleged the Motion to Dismiss could not be decided by the 5 Justices, establishing it was not submitted to a Tribunal.

c. Both of Abbott's statements were absolutely true, which is an absolute defense.

d. All statements were made by Abbott in his *Pro Se* capacity, not as a "lawyer" so as to be subject to DLRPC Rule 3.5(d).

e. DLRDP Rule 10 provides that all communications to the Board and the ODC

[30] That includes the Absolute Litigation Privilege and Abbott's 1st Amendment Rights. *See* § V, *supra*.

related to lawyer misconduct or disability "shall be absolutely privileged."[31]

f. The Board is not a "tribunal" as that term is defined by DLRPC Rule 1.0(m), so it is not covered by Rule 3.5(d).

g. No degradation of the Vice Chancellor was proven; the Confidential & Absolutely Privileged statements are not known to him, the public, or anyone else.

h. The Comments to DLRPC Rule 3.5 establish that proscribed conduct is limited to proceedings of the Tribunal at issue, which in this case was the Vice Chancellor (not proceedings before the PIC and the Board [which is not a "tribunal"]).

7. Paragraphs 33 and 34 deal with a submission to the Board, which for the reasons stated hereinbefore are not capable of forming the basis for a violation of DLRPC Rule 3.5(d).

a. The submission was inadmissible.

b. Abbott's right to maintain Confidentiality and immunity via the Absolute Privilege and his 1st Amendment rights render his *Pro Se* statements Absolutely Privileged and Protected Speech.

8. Policies and procedures applied by the PIC render submissions to it completely Confidential; no one will ever know of the one (1) non-disparaging, truthful statement.

a. The confidentiality policy of the PIC was followed pursuant to 29 *Del. C.* § 5810(h)(3): "[t]he chairperson of the Commission shall,

[31] "DLRDP" is shorthand for the Delaware Lawyers' Rules of Disciplinary Procedure.

with the approval of the Commission, establish such procedures as in the chairperson's judgment may be necessary to prevent the disclosure of any record of any proceedings or other information received by the Commission or its staff… ."

b. The purpose of Rule 3.5(d) is to insure that a lawyer appearing before a tribunal does not make verbal or written statements perceptible to the tribunal that are undignified or discourteous (thus the Rule's name: "Impartiality And Decorum Of The Tribunal").[32]

c. Nothing Abbott said, wrote, or did in the Court of Chancery proceedings before the Vice Chancellor is alleged to have constituted a violation of Rule 3.5(d).

9. All documents submitted by Abbott were marked "Confidential" and they could not be disclosed or relied on.

a. The ODC did not request or receive permission to use Abbott's Confidential and Absolutely Privileged statements; the statements should not have been admitted into evidence.[33]

[32] Rule 3.5(d) is not a "Thought Police" provision which allows prosecution of statements made: 1) in private; 2) outside one's capacity as a "lawyer"; or 3) that the tribunal can never be aware of.

[33] Abbott incorporates by reference his inadmissibility argument in this regard contained in his Motion *In Limine* filing dated August 31, 2021 and his Reply in support thereof dated October 5, 2021.

10. None of Abbott's statements are rude, crude, or vulgar, as required to prove a violation. [34]

E. Failure To Prove The 3 Foundational Charges Dooms The 2 Catch-All Charges

Since the ODC failed to prove Counts I, III, and IV by Clear and Convincing Evidence, Abbott cannot be found to have violated the 2 Catch-All Charges (Counts II and V).

F. Further Details Re: Errors In Recommendation I; The ODC Abysmally Failed To Meet Its High Burden Of Proof: Clear & Convincing Evidence

Recommendation I is erroneous in the following more specific respects:

1. It failed to discuss how the ODC met its Burden of Proof by Clear And Convincing Evidence to establish the satisfaction of all elements of Counts III and IV.

2. It is based solely upon "*Pro Se* Respondent's Post-Trial Memorandum & Memorandum On Related Subjects" dated April 18, 2022 (the "Post-Trial Memo")[35] without consideration of attachments thereto and App. D, F, G, H, K, M, and O. *See* Recommendation I at 3-5, n.1. All of those documents are hereby incorporated by reference.

3. It overlooked that the Ownership Transfer was not a "sham transaction." *See e.g.* Recommendation I at 5. The 2 Deeds complied with

[34] The statements also fail to rise to the egregious level of threats and profanity normally required to breach Rule 3.5(d). *See e.g. State v. Mumford*, 731 A.2d 831, 833 (Del. Super. 1999).
[35] *See* App. 5.

25 *Del. C.* § 121 – they were not invalid and were never rescinded.[36]

4. It overlooked that: (1) the 2 Alleged Omissions constituted legal, not factual, points (*in personam* and ownership interest); and (2) even if the legal contentions could be transmogrified into factual assertions, they were accurate based upon the contents of 2 Deeds and 1 Settlement Agreement.[37] Recommendation I suggested uncharged omissions, not the charged affirmative statements.[38]

5. It erred on a *supra*-legal "*de facto* ownership" theory. Recommendation I at 97. Abbott was charged with affirmatively misstating that Mr. Jenney was no longer the owner of the 2 Properties, but the Abbott Letter enclosed the 2 Deeds and accurately advised of the ownership change.

6. It erred by incorrectly alleging that "legal title was transferred from Jenney to his wife with the understanding that it would be reconveyed to Jenney after the litigation was over." Recommendation I at 7. The undisputed trial evidence established that there was no pre-planned reconveyance to Mr. Jenney; he was only advised that it was possible for the 2 Properties to be reconveyed by his wife in the future.[39] And Mr. Jenney confirmed

---

[36] The provisions of 6 *Del. C.* Ch. 13 do not permit the unwinding of the Ownership Transfer. Abbott analyzed and confirmed such before completing it.

[37] In addition, Abbott was protected by DLRPC Rule 1.6 regarding any failure to disclose Mr. Jenney's plans (if Abbott knew them) based on the Lawyer-Client Privilege.

[38] At pages 28 and 29, Recommendation I avers that Abbott "did not disclose," "did not inform," and "did not identify," not that Abbott made "affirmative statements" that were false.

[39] It is self-evident that real property many be reconveyed in the future.

Abbott had no knowledge of how the 2 Properties were dealt with post-transfer. T946-949 and T989-992.

7. It overlooked that no "half-truth" was charged in Count III (a half-truth is an omission, not an affirmative statement).

8. It wrongly contended that Abbott intentionally failed to disclose the Consent Order. Recommendation I at 100-101. Abbott presented unrefuted testimony that the Consent Order was not mentioned since it was his legal opinion it was not in effect. T2200-2206 and T2245-2247. *See also* T1158-1160.

9. It overlooked the purpose and intent of DLRPC Rule 3.5(d). The genesis of Rule 3.5(d) was DR 7-106, entitled "Trial Conduct," which provided in subsection (C)(6) that "[i]n appearing in his professional capacity before a tribunal, a lawyer shall not: [e]ngage in undignified or discourteous conduct which is degrading to a tribunal." DLRPC Rule 3.5, entitled "Impartiality And Decorum Of The Tribunal," retained this language. Comment [4] and Comment [5] to Rule 3.5 indicate that subsection (d) applies to conduct before the Tribunal whom the conduct is aimed at. The theory that Rule 3.5(d) can be violated by statements unknown to the Vice Chancellor, the Supreme Court, and the general public is belied by legislative history and the plain meaning of the Rule.

10. It fictitiously suggested that Abbott's statements about the Vice Chancellor and Supreme Court "caused the Board to expend considerable time to wade through the improper statements and reach a decision based on the merits presented by the motions and/or pleadings." Recommendation I at 9. That allegation is without any evidentiary support. More importantly, the Alleged Petition does not aver that

Abbott caused any prejudice in proceedings before the Board.

11. It incorrectly concluded that Abbott was the cause of 4+ years of delay. Recommendation I at 10.[40] It also ignored numerous facts in the chronology regarding the ODC's extensive delay of 4½ years. Recommendation I at 41-56. Undisputed evidence established that over 1 year elapsed from the time that the ODC opened a file in the matter until it advised Abbott on 3 separate occasions that it intended to proceed to the PRC with the 3 Charges.[41] Aaronson refused to Stay the proceedings and the Board Chair never entered a Stay. It was not until over 3 years later that Mette proceeded with the brand new 4 Charges against Abbott in December of 2019 (followed by Mette's "piling on" of the vindictive 5th Charge in January of 2020).

12. It failed to note the undisputed fact that the Lawyer/Client Privilege issue did not forestall pursuit of charges before the PRC based on the ODC's own actions post-Petition, to-wit: in Summer of 2021, just months before the November 2021 Trial, the ODC pursued additional Lawyer/Client Privilege documents from Abbott and engaged in Motion to Compel practice.

13. It overlooked the undisputed fact that Abbott was never found in Contempt by the Vice Chancellor or the subject of any contempt hearing.

---

[40] Indeed, the Superior Court held that there was no "real inability to go forward" and that ODC elected to hold up "in an abundance of caution." *Abbott v. Delaware State Public Integrity Com'n*, Super. Ct. C.A. No. N16A-09-009, Transcript at p. 46, Wharton, J. (Bench Ruling May 1, 2017).

[41] The 3 Charges were later abandoned by Jennifer Kate Aaronson ("Aaronson").

14. It ignored that: Abbott presented undisputed testimony at Trial that his use of a boilerplate signature block and law letterhead was done unintentionally. Recommendation I at 48, 50, 51, and 54 and *Cf.* T2027-2034 and T2331-2336. Abbott never stated that he was acting as a lawyer in any proceedings; he acted *Pro Se* and specifically stated that fact.

- Abbott never represented himself since he is a single human being. And no *Pro Bono* or compensated Lawyer-Client relationship existed between Abbott and himself.[42]
- Abbott's infrequent use of the standard conventions referring to oneself as "undersigned counsel" and "Esquire" is a legally ineffective form versus substance argument. *See e.g.* Recommendation I at 73, n.267. Abbott was not acting as a "lawyer" since he was not engaged in the practice of law in Board Chair matters.

15. It failed to acknowledge that Abbott presented uncontested evidence at Trial establishing the truthful and/or opinion-based nature of all of the statements regarding the Vice Chancellor (37 in all).

16. It failed to analyze and decide whether the new, novel rulings contained therein may be applied against Abbott retroactively. Recommendation I rendered multiple interpretations of Rule 3.5(d) that were issues of first impression. Constitutional Due Process requires that a recommendation be rendered on whether those novel

[42] ODC queried Abbott at Trial as to whether he was being paid to defend himself in the disciplinary proceedings, to which Abbott answered "No."

legal questions are applicable retrospectively. *See Stoltz Mgt. Co., Inc. v. Consumer Affairs Bd.*, 616 A.2d 1205, 1210 (Del. 1992). "Fair Warning" must be provided regarding what constitutes a legal violation. *See Bouie v. City of Columbia*, 378 U.S. 347, 350-51 (1964). New interpretations of lawyer disciplinary rules applied retroactively, would operate "like an *ex post facto* law, such as Art. I, (s) 10, of the Constitution forbids." *Id.* at 353.[43]

17. It overlooked the fact that Abbott's assertion of the Lawyer/Client Privilege based on his Chancery work had no bearing on whether Abbott was acting as a lawyer in the Star Chamber Proceeding. *See* Recommendation I at 67-68.

18. It ignored undisputed evidence that the ODC has a policy and practice of discriminatory treatment based upon lawyers' associational status. Undisputed evidence established that on 5 separate occasions the ODC completely ignored slam-dunk ethical violations committed by lawyers based upon their associational status (big law firms or government and actions of a Judge). Abbott also established that he was being targeted based on associational status.

19. It incorrectly asserted that the Gag Order enjoined Abbott's action filed in the Court of Chancery. Recommendation I at 87. The Supreme Court has held to the contrary. *Abbott v. Vavala*, 284 A.3d 77 (Del. 2022)(TABLE).

20. It overlooked the fact that DLRDP Rule 7(a) does not support the proposition that a lawyer proceeding *Pro Se* is still acting as a "lawyer."

---

[43] *See also In Re Ruffalo,* 390 U.S. 544, 551 (1968)(lawyer discipline cases are *quasi*-criminal for purposes of Federal Constitutional rights).

Recommendation I at 109-113. DLRDP Rule 7(a) is a procedural rule, not a substantive ethical rule that impacts the application of the DLRPC. *See* Supreme Court Rules 61 and 62, Order adopting the DLRPC dated September 12, 1985, the Preamble to the DLRPC, and Order dated March 9, 2000 adopting the DLRDP (as Board Rules).

21. It overlooked the fact that the case of *In re: Hurley* held that: (1) Rule 3.5(d) only "concerns decorum when addressing the Court"; and (2) Rule 8.4(d) does not cover written communications which were "private in nature" and did not have "any direct impact on the administration of justice." Abbott's statements were private, not public, and no proof was presented by the ODC that any Board Chair, the PIC, or the Supreme Court were burdened by the statements.

22. It overlooked the fact that other case law decisions it relied upon cannot replace DLRPC language. *See* Recommendation I at 111. Abbott need not have looked past the plain meaning of the language contained in Rule 3.5(d).

23. It overlooked the fact that the Board Chair does not constitute a "Tribunal" under the law. Recommendation I at 115 *et seq*. DLRDP Rule 9(e) provides that the Board, through its Board Chair and Board Panel, is only empowered to issue a "report and recommendation," not a "binding legal judgment," which is required to qualify as a Tribunal.

24. It improperly relied upon *In re: Vanderslice* on the Tribunal issue. That case was based on DLRPC Rule 3.3(a), which applies to non-Tribunals via Rule 3.3(a).

25. It ignored Abbott's argument that the ODC failed to prove a violation of Rule 3.5(d) since the

Rule requires proof that the Tribunal can perceive the alleged degradation. *See* Recommendation I at 120-124. No degradation occurred in the instant action.

26. It failed to acknowledge that the block quote on page 123 shows Rule 3.5(d) does not apply; it is admitted that Rule 3.5(d) only covers "behavior towards the Tribunal."

27. It overlooked the fact that there was no proof that members of the Supreme Court received or read the Motion to Dismiss and that the submission was to the Board. Recommendation I at 124-125. In addition, Recommendation I improperly shifted the Burden of Proof to Abbott on that subject.

28. It applied improper burden-shifting regarding a factual basis for Abbott's statements. Recommendation I at 130-135. Trial evidence established that: (1) the Vice Chancellor gave preferential treatment to Weidman, despite his wildly out of control statements and fraudulent procurement of 2 separate Court Orders; (2) the only vexatious conduct which occurred in the litigation was committed by Weidman; (3) the unplanned gathering called by the Vice Chancellor after previously planned proceedings had concluded was for purposes of making defamatory statements about Abbott; and (4) the Vice Chancellor copiously overlooked such ethical misconduct by Weidman and even covered it up.

29. It restated the invalid theory that the 2 Deeds transferring title from Mr. Jenney to his wife were a "sham transaction." *See* Recommendation I at 133. The Deeds are valid, thereby precluding the

possibility that they could constitute a "sham" as a matter of law.[44]

30. It ignored evidence tending to prove that: (1) the Supreme Court did nothing despite having full knowledge of the ODC's corrupt pursuit of this Star Chamber Proceeding; (2) agreed with the ODC that its obvious dismissal of the specious Petition for Interim Suspension against Abbott could be called a "withdraw"; and (3) the Delaware Lawyer Discipline System Unconstitutionally discriminates against lawyers based upon their associational status. All of these facts were the basis for Abbott's statements regarding the Supreme Court, and their absolute truth is an absolute defense.

31. It ignored the plain meaning of the language contained in DLRDP Rules 10 and 13. Recommendation I at 136-137. DLRDP Rule 10 provides that communications to the Board "shall be absolutely privileged." Abbott is immune from prosecution.[45] And the Confidential statements were inadmissible.

32. It overlooked the confidential nature of submissions to the PIC. Recommendation at 137-138. 29 *Del. C.* § 5810(h) "prohibits public disclosure of PIC complaints," and the subsection (2) exception does not

---

[44] The Board Panel can't seem to get over the fact that the Ownership Transfer was perfectly permissible and legal, the personal, subjective, beliefs of the Board Panel Members to the contrary notwithstanding. Indeed, it is this unfounded notion that drove many of the erroneous findings in Recommendation I. The entirety of Recommendation I is, therefore, founded on a false premise.

[45] The Board Panel Plant relied upon the Absolute Privilege of Rule 10 to deny Abbott discovery and trial witnesses, so his assertion that there is no Rule 10 Absolute Privilege is disingenuous. *See e.g.* T124-125.

apply since Abbott was not the respondent and did not take a statutory appeal (he challenged the dismissal of his complaint against Aaronson via common law Writ of *Certiorari*).

33. It ignored the fact that Abbott could not have prejudiced the administration of justice since he made no affirmative misrepresentations to the Vice Chancellor and did not engage in undignified or discourteous conduct which could cause the Vice Chancellor to feel degraded.[46] *See* Recommendation I at 138 *et seq*.

34. It ignored the fact that there was no proof of PRC approval of any charges against Abbott. Recommendation I at 141-142. DLRDP Rule 3(c) requires "a disposition sheet recording the actions taken by the [PRC] panel." And DLRDP Rule 9 renders this entire Star Chamber Proceeding infirm absent proof that the PRC actually approved any charges against Abbott.

35. It overlooked the fact that Abbott's request for the matter to be Stayed was denied by the ODC. Recommendation I at 146-148. *Laches* therefore bars the Rule 8.4(c) charge.

36. It ignored the undisputed record evidence that Abbott received no Due Process regarding the defamatory statements lobbed at him by the Vice Chancellor. *See* Recommendation I at 164. The theory that Abbott "was afforded the same due process rights provided to litigants in the Court of Chancery" is belied by the undisputed facts; Abbott was ambushed at the surprise meeting.

---

[46] Indeed, Abbott's uncontested Trial testimony established the truth of all of the statements about the Vice Chancellor. *See e.g.* T1885-1917.

37. It overlooked Abbott's evidence of Vindictive, Selective, and Demagogic Prosecution based upon the bringing of the spurious 5th Charge as a retaliatory attack on Abbott, the increase from 3 Charges to 4 Charges, and the bogus Petition For Interim Suspension.[47] *See* Recommendation I at 170-172. Recommendation I conceded an "upping the ante" retaliatory exercise is sufficient to establish Vindictive Prosecution. The 5 Charges were brought without reasonable belief that they could be established; they failed to state a claim.

38. It ignored the 1st & 4th Amendment Unconstitutionality of the Corrupt System, the violation of Abbott's 6th Amendment Right to Confront his Accuser, and the 5th/14th Amendment Due Process of law arguments.

Word count limitations prevent further argument on Recommendation I. Abbott incorporates by reference App. 8 regarding legal support for his Objections to Recommendation I. In particular, Abbott notes that Recommendation I erred in failing to declare a Mistrial based on Prosecutorial Misconduct and failed to find Abbott was protected from prosecution for the statements by 1st Amendment Free Speech and Petition rights.

[47] The 5th Charge's status as a vindictive measure is all the more clear based upon the fact that it was not pursued until January of 2020, over 4½ years after the Vice Chancellor's complaint was improvidently taken up by the ODC.

II. The Sanctions Recommendation Ignored The Applicable Legal Standard & Undisputed Evidence[48]

A. Over-Arching, Big Picture Defects In Recommendation II[49]

1. Erroneous Attempt To Conflate The Abbott Letter With The Ownership Transfer & Falsely Contend That Subsequent Litigation Was Based On The 2 Alleged Omissions

The Board Panel repeatedly and erroneously attempts to transmogrify the Ownership Transfer with the Abbott Letter/2 Alleged Omissions. *See* Recommendation II at 3, 8, 21, 41, 57, 59, 89, 90, and 114. The Panel Majority rightly concluded that the Ownership Transfer was completely valid and permissible. Recommendation II at 103. But the Panel Majority cannot let go of its fixation on the Ownership Transfer, implying that there was somehow something untoward about it; they unfoundedly allege that the Ownership Transfer was tainted with "dishonest motive" and for the purpose of "circumventing a Court Order." *Id* at 103-104. The Board Panel uses semantics and *ipse dixit* to paint a false picture in order to make it appear Abbott did something wrong in the Court of Chancery proceedings; that is why they concocted the Phantom 6th Charge, which is legally, logically, factually, and procedurally invalid. The record establishes that the 2 Alleged Omissions generated no issues in the litigation; the Ownership Transfer did.

---

[48] Further Arguments regarding Objections to Recommendation II are contained in App. 9, which is incorporated herein.

[49] References herein to "Recommendation II" are to the Sanctions Recommendation dated January 23, 2023.

2. Recommendation II Treats The ABA Standards As Mandatory Versus Suggestive, Concocts A New Step 4 & Ignores Prior Delaware Lawyer Sanctions[50]

Recommendation II rotely applies the ABA Standards' inapplicable presumptive sanction provisions without consideration of where that leads them; it fails to follow the 4-Step Analysis the Supreme Court has held to apply. Indeed, recommending a 2-year Suspension or Disbarment of Abbott for minor infractions evidences just how off-track the Board Panel got in its hyper-reliance on, and misapplication of, the ABA Standards. In addition, prior lawyer discipline cases establish that the appropriate Sanction is a Private Admonition or Public Probation in this matter.

One of the fundamental defects in the ABA Standards is the fact that they exclude the possible Sanction of Public Probation, despite the fact that Public Probation is one of the Sanctions that must be considered under DLRDP Rule 8. Thus, the Board Panel's misguided analysis and over-reliance on the ABA Standards renders their suggested Sanctions without legal merit.

Uncontroverted record evidence establishes that the Ownership Transfer is what drove further Court litigation; the 2 omissions alleged to exist in the Abbott Letter (the "2 Alleged Omissions") played no

[50] References herein to the "ABA Standards" are to the American Bar Association Standards For Imposing Lawyer Sanctions.

role in the litigation. And the statements are a secret "Message In A Bottle That Can Never Be Found." So to suggest that a 34 year member of this Bar who is recognized as a skilled litigator and has made significant Community, Bar, and Public Service contributions during his long and storied career should be effectively kicked out of the Bar for circumstances that no one in the world knows about or could be harmed by, including anyone in the public, the Bar, or the Bench, is the height of absurdity. Recommendation II constitutes an impermissible penal and punitive sanction suggestion, which should be rejected by the Court.

3. The Board Panel's Attempt To Belatedly Justify Its Erroneous Assertion That Abbott Could Be Found In Violation Of The Phantom 6th Charge Based Upon A *Post Hoc* Attempt To Call "Omissions" In The Abbott Letter "Affirmative Statements" Should Be Rejected

In what amounts to an after-the fact attempt to avoid the obvious invalidity of the Board Panel's concoction of the Phantom 6th Charge, they falsely assert that the 2 Alleged Omissions were actually "affirmative statements." Recommendation II at 16-17, 20-21, 22, 23, 26, and 41. The Board Panel admitted, however, that 1 of the 2 Alleged Omissions was indeed based on an alleged omission, as opposed to an affirmative statement ("Respondent…engaged in a half-truth by referencing the Settlement Agreement but *failing to disclose the Consent Order*."). Recommendation II at 55. And the Board Panel originally found in Recommendation I that the Abbott Letter failed to disclose – *i.e.* omissions, rather than

affirmative statements. The attempt to label the 2 Alleged Omissions as Affirmative Statements fails.

Recommendation II also concocted a new theory for the Phantom 6th Charge – that Mr. Jenney maintained some "equitable" interest in the 2 Properties –establishing all the more that the Board Panel concocted the Phantom 6th Charge. Recommendation II at 16, 21-22, and 41.[51] The desperate lengths that the Board Panel went to justify the extra-legal Phantom 6th Charge is pitiful. Count III should be dismissed.

4. The "Message In A Bottle That Can Never Be Found" Cannot Be Degrading; No Rule Violation Could Exist, But Regardless There Was No Potential Or Actual Injury Since Everything Is Confidential And/Or Absolutely Privileged

Recommendation II is based upon the faulty premise that statements made by Abbott that were filed solely with the Board and, in one instance, with

[51] The Board Panel even went so far as to cite new decisional authority in an obvious attempt at a *post hoc* rationalization for its unfounded theory that Abbott's truthful statement that ownership of the 2 Properties had been transferred to Mrs. Jenney could somehow miraculously be contorted into a falsehood. Recommendation II at 22-24. The Board Panel cited to the inapposite decision in *Levin v. Smith*, 513 A.2d, 1292 (Del. 1992) for the proposition that Mr. Jenney may have held "equitable ownership," despite the fact that the decision cited stands solely for the proposition that a father's promise to create a trust regarding real estate in favor of his kin could override the existence of legal title ownership in the name of one child. That holding is unrelated to the question of whether Abbott accurately stated that Mr. Jenney was divested of an ownership interest in the 2 Properties pursuant to the 2 Deeds. Obviously, the Board Panel has a guilty conscience - "thou dost protest too much."

the PIC, could cause degradation injury (in spite of the fact that those statements are cloaked with Confidentiality and Absolute Privilege). Recommendation II at 10-12, 76, 93-95. And Recommendation II fails to address Abbott's argument that he proceeded under the reasonable, well-founded belief that his Non-Lawyer (*Pro Se*), Confidential, Absolutely Privileged statements could not be used against him. *See e.g.* Recommendation II at 141-142. No actual or potential Injury was proven by the ODC.

5. A Mystery Decision Discussed Is Not Cited & Must Be Ignored

Recommendation II also fails to provide information regarding a "*McCarthy*" decision that would enable Abbott to respond to it. Recommendation II at 71-74 and 179-182. The unidentified *McCarthy* decision cannot be relied upon since no citation to the case is provided.

6. The Panel Majority Erroneously Relied On The *Shearin* Case

The Panel Majority concluded that this matter was equivalent and no more egregious than the facts in *In re: Shearin*. Recommendation II at 176. But the far more egregious facts in that decision are highly distinguishable from those at bar since the Ms. Shearin: 1) was acting as a "lawyer"; 2) directly disobeyed a Court Order that forbade her from transferring title to property; and 3) publicly disparaged then Vice Chancellor Steele with allegations that she presented no proof of.

7. Recommendation II Is Erroneously Founded On The Fixation With Using Hyperbole &

Misrepresentations About Abbott's Perfectly Legal, Permissible Act Of Advising A Client On How To Potentially Avoid A Court Judgment

The Board Panel continues to delusionally focus their attention on their subjective belief that an attorney cannot advise a client on how to potentially avoid a Court Judgment. Recommendation II uses false and exaggerated terminology to trump-up a faux theory that such actions by Abbott were somehow wrong. Recommendation II at 3, 21, 22, 37, 41, 42, 69, 74, 92, and 114-115. Personal, stylistic differences with the way that one approaches litigation does not a violation or heightened sanction make. The Board Panel allowed their non-legal beliefs to make a mountain out of a molehill in this matter.[52]

Abbott counseled his client on the pros and cons of different potential approaches to the litigation (just like Chief Justice Seitz did in *Acierno v. New Castle County*). Such advice was provided only after it became evident to both Mr. Jenney and Abbott that Weidman was wildly out of control and acting in a fraudulent and unethical fashion and that the Vice Chancellor was unwilling to do anything to stop it. The litigation would not likely have ended absent Abbott's Good Lawyering.

[52] That is also why the Board Panel unfoundedly alleged that the Abbott Letter was the basis for further litigation and caused or could have potentially caused any injury. They simply cannot get over the fact that Abbott acted in a perfectly permissible fashion as a matter of fact and law, so they simply made up the Phantom 6th Charge based on their personal predilections. The Ownership Transfer drove further litigation, not the 2 Alleged Omissions.

8. Recommendation II Erroneously Relies Upon A New Theory About Mrs. Jenney; Recommendation I Was The Only Bite At The Apple On Liability That The Board Panel Gets - It Cannot Attempt To Justify Its Unjustified Phantom 6th Charge & Multitudinous Errors In Recommendation I

The Board Panel also attempts to modify Recommendation I in Recommendation II, presenting the brand new theory that Abbott had some duty to advise Mrs. Jenney (despite the fact that all she had to do was agree to receive transfer of title and Abbott obtained that consent). Recommendation II at 45-57. Because this issue was never raised in the Liability phase of the case, the entire content of those 13 pages of Recommendation II should be stricken and disregarded.

If Abbott had had a full and fair opportunity to respond to those unfounded allegations, however, he would have been able to testify that: 1) he confirmed with Mr. Jenney that he had advised his wife of precisely what was going on in the case and why the transfer of title to the 2 Properties to her was being effectuated; and 2) Mr. Jenney advised that there were no circumstances that would cause a transfer of title to his wife to be a problem based upon any prenuptial agreement, trust, or otherwise.[53]

The inability of the Board Panel to get past the fact that the Ownership Transfer was valid and

[53] Evidence presented at Trial essentially established these facts. T938-940 and T1759-1760.

permissible so terminally taints their ability to reason rationally that their conclusions are fatally flawed.

9. Recommendation II Erred In Its "Duty" Analysis; The Public, Profession & Court Do Not & Cannot Know Of The Phantom 6th Charge Or The Statements

The 2 Alleged Omissions could not violate any duty to the public or the legal system. *See* Recommendation II at 35. And the statements did not breach duties to the legal system or the legal profession. *Id*. at 36. The public, the legal system, and the legal profession do not, and cannot ever, know of the Phantom 6th Charge or the statements.

The Phantom 6th Charge is pure make believe; Abbott was charged with making Affirmative Statements, not based on the 2 Alleged Omissions. And the statements are the "Message In A Bottle That Can Never Be Found." Zero (0) duties were breached under the unrefuted factual record.

With no Duty shown to have been at risk, there can be no potential or actual Injury. So even assuming *arguendo* that DLRPC Rule violations were proven, the circumstances do not warrant anything beyond a minor Sanction (like an Admonition or Probation).

10. The Board Panel Confuses The Mitigating Factor Of Full & Free Disclosure **Or** Cooperative Attitude & Ignores The Significant Evidence Of Abbott's Good Character And Reputation

Recommendation II confuses Abbott's vigorous defense and exercise of his Constitutional rights to Due Process and to pursue Redress of Grievances through appropriate litigation with lack of

cooperation and full disclosure. Recommendation II at 153-159. In an obvious admission of bias in favor of the ODC, the Board Panel accuses Abbott of being tough on the ODC in this litigation. *Id*. at 159. The ODC is the one on a mission to destroy Abbott's legal career in this matter, based solely on personal animus and retributive intent.[54]

a. Full & Free Disclosure Was Shown

Abbott has abided by rulings, met deadlines (some of which were unreasonable), responded to questions, and done what he was legally required to do. There is no evidence that Abbott disobeyed any rulings of the Board, failed to meet any deadlines, or did anything other than act within the bounds of the law. Abbott established Full & Free Disclosure. Consequently, Abbott easily satisfied this mitigating factor.

b. Good Reputation & Character Were Shown

Abbott also readily established his Good Reputation and Good Character. The Board Panel failed to address Abbott's resume which was submitted as Trial Exhibit 165. Recommendation II at 160-164. It establishes Abbott's multi-decade contributions of public service, community service, and service to the Bar. Abbott spent considerable time donating his time to public office, legal education

[54] This type of ODC misconduct has been evident in all 3 Chief Disciplinary Counsel in office during the past 8 years, as well as Ms. Vavala. The ODC has consistently lied, cheated, harassed, and acted with the utmost bad faith in pursuing Abbott based upon their single-minded desire to destroy Abbott's legal career due to their personal hatred of him.

seminars, civic associations, and the publication of scholarly articles.

Abbott also presented the testimony of 3 long-term clients, who all attested to Abbott's good character and reputation. The Board Panel's theory that their testimony should be given little weight since they were not aware that Abbott was being pursued in this Star Chamber Proceeding is pure folly. The factor looks to overall character and reputation of Abbott (which is excellent under the undisputed record).

11. Recommendation II Whiffed On Pattern Of Misconduct, Delay In Proceedings, Remoteness Of Prior Offenses, Vice Chancellor Standard & Psychological Abuse Factors

a. No Pattern Of Misconduct Was Shown

Recommendation II suggests that Abbott's statements in numerous filings with the Board (and one with the PIC) in 2016 and 2019 establish a Pattern of Misconduct. Recommendation II at 131-133. Notably missing from the analysis, however, is the fact that there was a 3-year gap between statements from 2016 and those in 2019. The mere fact that there were numerous statements does not constitute a "pattern." Indeed, virtually all of the comments were regarding the Vice Chancellor, which in every instance are 100% true and/or constituted Abbott's explanations of his litigation strategy. No "pattern" was established.

b. The Board Panel Ignores The Facts & Creates More Fictions; The ODC Delayed Over 4½ Years

In what amounts to a repetitive ignorance of reality, the Board Panel continues to assert that Abbott somehow miraculously caused the ODC to sit on its hands and do nothing for the 4½ years that it delayed in pursuing charges against Abbott. Recommendation II at 165. The fact that Abbott requested Stays of Proceedings is irrelevant. All such Stays were vigorously opposed by the ODC and no Stay was ever entered by a Board Chair. Meanwhile, 4½ years went by due to ODC inaction and the bogus Petition for Interim Suspension.

c. 11 Years Is Remote; The Board Panel Mis-Cited Abbott's Offense

In yet another error, the Board Panel alleged that Abbott's prior offenses occurred in 2007, despite the fact that the decision in *In Re Abbott* establishes that they occurred in 2005. Recommendation II at 174. So there was 11 to 14 years between that prior offense and the allegation that Abbott violated Rule 3.5(d) in 2016 and 2019. 11 and 14 years is certainly remote in time.

d. The Board Panel Completely Ignored The "Vice Chancellor Standard" Which Abbott Asserted As A Mitigating Factor

Nowhere in Recommendation II does the Board Panel discuss Abbott's argument that the virtual immunity granted to Weidman for his extremely disruptive and unethical actions established a standard that entitled Abbott to no Sanction. Weidman fraudulently procured 2 Court Orders, caused extensive waste of party and judicial resources, threw the entire litigation in the Court of Chancery into total chaos, and conducted himself in a

highly unprofessional and uncivil fashion. Despite Weidman's serious misconduct, the Vice Chancellor disregarded it and covered it up. Thus, the Vice Chancellor's standard – total immunity for lawyers that appear before him – must likewise be accorded to Abbott; the Vice Chancellor set the standard. The Vice Chancellor's standard establishes that no Sanctions should be imposed upon Abbott since he did nothing that remotely resembles the ethical misdeeds of Weidman.

e. The Board Panel Failed To Properly Acknowledge Abbott's Establishment Of The Special Circumstances Mitigating Factor Of Psychological Abuse

The Board Panel poo-poos Abbott's extensive, undisputed evidence that 8 years of psychological abuse have caused him great harm and mental distress, despite there being no legitimate basis for the ODC to ever open a file in this matter. Recommendation II at 165-173.

In sum, the evidence of record establishes that: 1) the Vice Chancellor cited to no basis for filing a complaint against Abbott with the ODC in June of 2015; 2) the ODC did not move the matter forward for 1 year; 3) the ODC concocted the 3 Charges, which they ultimately dropped; 4) Aaronson vindictively pursued the specious Petition for Interim Suspension in 2018, which was dropped in 2019; and 5) the 4 Charges were asserted in December 2019 and were swiftly followed by the retributive 5th Charge in January of 2020.[55] Abbott's uncontested Hearing

[55] Abbott also noted that he is being abused by the Board Panel pursuant to their concocted Phantom 6th Charge and by the Board Panel Plant due to his fatal tainting of the Star Chamber

evidence established that he had lost thousands of hours of sleep, thousands of hours of time, thousands of dollars in costs and expenses, lost family time, and near constant stress and strain which negatively impacted both his professional and personal life for over 7 years. Such literal torture by the ODC, in a matter that should have been rejected as unfounded from the get-go, establishes beyond *peradventure* that Abbott has suffered psychological abuse to support a Mitigating Factor.

Proceeding in order to slant it to achieve his pre-ordained conclusion to Disbar Abbott.

12. The Board Panel Erred On The Mental State Analysis; Less Than Negligent Conduct Is All That Was Shown & No Suggestion On Rule 3.5(d) Was Made

The Board Panel also committed legal error in suggesting, on the 2 Alleged Omissions, that Abbott acted Knowingly and Intentionally. Recommendation at 41-57. But they did not address the Mental State regarding the Rule 3.5(d) charge. *Id*.

Abbott was under the reasonable belief that: 1) his conduct in the Star Chamber Proceeding was being undertaken in a *Pro Se* capacity, not as a Lawyer; 2) the Board was not a Tribunal; 3) his submissions to the Board and to the PIC were Confidential; and 4) filings with the Board were subject to Absolute Privilege. In addition, based upon the legislative history of, and express language in, DLRPC Rule 3.5, the Rule was reasonably read to only cover conduct that could be known to the Vice Chancellor and the Supreme Court; the statements could not be "degrading" to them since they were wholly unaware of them. Thus, it could not have been reasonably anticipated that Rule 3.5(d) applied, so that a finding of even a Negligent Mental State on that charge could not be made.

The *post hoc* Phantom 6th Charge, based on the erroneous Law=Fact Theory, Crystal Ball Theory, and Hiding In Plain Sight Theory, also fails to warrant a finding that Abbott was even Negligent. Abbott advised the Court that title had been transferred, which was 100% truthful. And because the Consent Order was not in effect and was well-known to all, there was no evidence of any Intentional or Knowing deception in failing to mention it. So even assuming

arguendo that the Crystal Ball Theory and the Hiding In Plain Sight Theory have any legal or logical validity, which they do not, the evidence established less than a Negligent Mental State.[56]

B. Recommendation II Should Be Disregarded In Its Entirety; It Is Not Based On A Proper 4-Part Analytical Approach & It Is Excessive

Not surprisingly, the Board Panel Plant dissented from the Panel Majority's Sanctions suggestion, showing that he indeed reached a pre-determined conclusion from the outset of this proceeding to seek Abbott's expulsion from the Bar. And the ODC's over-the-top recommendation of a 3 year suspension and the absurd disbarment recommendation of the Board Panel Plant are obviously what drove the other 2 members of the Board Panel to come back with a blatantly unfounded suggestion of a 2-year Suspension. Recommendation II is fatally tainted by Board Panel Plant bias and prejudice.

---

[56] Notably, "[m]ere knowing conduct does not constitute a violation of Rule 8.4(c)." *In re Lyle*, 74 A.3d 654 (Del. 2013)(TABLE). Instead, proof of Intentional conduct in accordance with a 5-part test is required: "(1) a false representation of material fact; (2) the knowledge or belief that the representation was false, or made with reckless indifference for the truth; (3) the intent to induce another part or refrain from acting; (4) the action or inaction taken was in justifiable reliance on the representation; and (5) damage to the other party as a result of the representation." *Id*. Most, if not all, of the elements required to be proven and proof of an Intentional Mental State were not established by Clear And Convincing Evidence by the ODC. Therefore, the erroneous Crystal Ball Theory and Hiding In Plain Sight Theory, which are the bases for the Phantom 6th Charge, give rise to no Sanction whatsoever.

Additionally, the Board Panel erred as a matter of law by applying a 5-Step Sanction analysis, rather than the legally established 4-Step Analysis. The 4th (and final) Step is Aggravating vs. Mitigating Factors. But the Board Panel added a new 4th Step – Presumptive Sanction – before concluding its analysis with the 5th Step of Aggravating v. Mitigating. In deviating from the legal standard, the Board Panel fatally erred.

First, the only component of the ABA Standards that the Court has adopted in the past is the 4-part framework: (1) the ethical duty violated; (2) the lawyer's mental state; (3) the extent of actual or potential injury caused by the lawyer's misconduct; and (4) aggravating and mitigating factors. *In re: Lankenau*, 138 A.3d 1151, 1156 (Del. 2016).[57] Instead of following the well-settled standards for analyzing an appropriate sanction, however, the Board Panel Plant and the other 2 Panel members erred in wedding their analysis to the presumptive sanction provisions of the ABA Standards.[58] Consequently, Recommendation II misapplied the law and should be disregarded. Recommendation II at 96-125 (4th Step – Presumptive Sanction) and at 126-174 (5th Step – Aggravating vs. Mitigating Factors).

Second, it is well-settled that lawyer discipline is not designed to be either punitive or penal in nature. *In re: Lankenau* at 1159. Yet the Board Panel made Recommendations that are wildly excessive

---

[57] The lack of any discussion or suggestion regarding the Mental State Factor *vis-à-vis* the Rule 3.5(d) charge is fatal to the validity of the Sanction suggested for that charge.

[58] One can readily see how the Board Panel Plant engaged in exaggerations, overblown fiction, and wholesale speculation in order to reach his pre-ordained conclusion of Disbarment.

based on the minor infractions suggested. No harm was, or could have been, caused to anyone, whether it be the Public, the Courts, the Bar, or the Client. Suggesting that Abbott's legal career should be destroyed pursuant to a 2 year Suspension or, as the Board Panel Plant inanely proposes, a total Disbarment is beyond over-the-top.[59] The unwarranted sanction suggestions contained in Recommendation II establish that it is founded solely on a desire to punish Abbott and act in a penal fashion; it should be rejected *in toto*.

Third, this Court should utilize its "wide latitude in determining the form of discipline" to "ensure that it is appropriate, fair, and consistent with…prior disciplinary decisions." *In re: Lankenau* at 1159. Here, the sanction suggestion is widely variant from this Court's past decisions, which under even more egregious circumstances have resulted in Probation, Public Reprimand, or a Short Suspension. Lengthy Suspensions are reserved for serious criminal conduct and cases involving a great numerosity of violations that harm clients (who are the number 1 duty for lawyers). Indeed, in *In re: Lankenau* the lawyer was only suspended for 18 months despite his commission of 8 separate violations that included criminal offenses and theft of client funds. The minor infractions at issue in this

[59] The Rule 3.5(d) charge is the proverbial "Message In A Bottle That Can Never Be Found," since no one in the world will ever be able to know about circumstances that have been raised in this proceeding, thereby foreclosing the possibility that there could be any harm. And the Rule 8.4(c) charge was unproven, but even the Phantom 6th Charge had no potential adverse effect; future acts *vis-à-vis* the 2 Properties and failure to mention the well-known Consent Order are the height of hyper-technical violations that are *Damnum Absque Injuria*.

case, which caused no actual or potential harm and no one will ever know about, cannot conceivably warrant any suspension let alone a 2-year suspension that would destroy Abbott's legal practice.

Additional decisions supporting the sanction of Admonition or Public Probation include:

- In *In re: Howard*, 765 A.2d 39 (Del. 2000), this Court imposed a 3-year Suspension based on highly publicized drug convictions (*i.e.* serious criminal conduct).
- A 3-year Suspension was imposed in *In re: Steiner*, 817 A.2d 793 (Del. 2003) for criminal convictions for 2 counts of vehicular assault and 1 count of driving under the influence.
- A 1-year Suspension was imposed where an attorney pilfered funds from multiple client trust accounts (*i.e.* criminal offenses of theft). *In re: Vanderslice*, 55 A.3d 322 (Del. 2012).
- An attorney received a 1-year Suspension for committing 10 acts of misconduct which harmed clients, the disciplinary process, and made false Court filings. *In re: Tos*, 576 A.2d 607 (Del. 1990).
- A 1-year Suspension was also imposed for about 10 or more acts of misconduct harming clients and Courts, a conflict of interest, and false submissions to the Court. *In re: McCann*, 669 A.2d 49 (Del. 1995).
- Only a 1-year Suspension was imposed in *In re: Shearin*, 721 A.2d 157 (Del. 1998) for violations committed in: (1) making false statements to a Court; (2) public disrupting or degrading comments towards a tribunal; (3) counseling a client to engage in conduct which was known to be criminal or fraudulent; (4) bringing non-meritorious claims before Courts; (5) failing to

make reasonable efforts to expedite litigation; and (6) offering falsified evidence.[60]

- In *In re: Poliquin*, 49 A.3d 1115 (Del. 2010), a Suspension of 6 months and 1 day was imposed based on serious violations regarding misrepresentations to the Court and missed client deadlines, despite the fact that the lawyer had been previously disciplined via: (1) a private admonition; (2) a 1-year suspension; and (3) a public reprimand and 2-year probation.

- A 3-month Suspension was imposed in *In re: Pankowski*, 947 A.2d 1122 (TABLE)(Del. 2007) for an attorney's failure to consult with the client about pleading content, failure to respond to the client, failure to inform the client of Court Orders, forgery of a client's signature and falsely notarizing the signature, failure to conduct an adequate investigation and prepare and file a motion for a criminal client, charging that client an excessive fee, and breaching the client's trust by taking money without authorization.[61]
- A 30-day Suspension and an 18 month period of Probation with conditions was imposed where an attorney engaged in representation where he had a conflict of interest, took a $1,500 retainer fee before it was earned, failed to enter

[60] If a 1-year suspension for those serious, multitudinous offenses committed by the lawyer only warrant a 1-year suspension, it is evident that a zero (0) year suspension is in order under the circumstances here present.

[61] If those serious violations of the public trust, the client trust, duty to the Courts, and duty to the Bar merit only a 3 month suspension, it is clear that the circumstances in this case do not justify any suspension.

into a written engagement agreement, and failed to return the retainer fee when representation was terminated; despite 2 prior Public Reprimands of the lawyer. *In re: O'Brien*, 26 A.3d 203 (Del. 2011).

These cases establish that Abbott's minor infractions, which could cause no one any harm since no one will ever find out about them, do not warrant a suspension at all; Public Probation or Admonition would be consistent with past discipline decisions.

C. The Legal Standards For Deciding Any Sanction; ABA Standards Are Only A Guide & The DLRDP Is In Play

Here, Abbott's less than negligent mental state and the lack of any injury or potential injury militate in favor of a recommendation at the bottom of the severity level of available Sanctions. And because numerous mitigating factors outweigh any aggravating circumstances, that preliminary finding of a low level Sanction is appropriate.

The ABA Standards are "a theoretical framework to guide the courts in imposing sanctions." They are "guidelines which give courts the flexibility to select the appropriate sanction in each particular case… ." They are not "analogous to criminal determinate sentences." And presumptive sanctions are not part of the 4-Step analysis; they are merely suggestions.

Notably missing from the ABA Standards, however, is the Sanction of Public Probation. DLRDP Rule 8(a)(4) provides that the Sanction of Public Probation is one step above a Public Reprimand and one step below a Suspension. Thus, the ABA Standards fail to comport with the DLRDP in a

significant way; they cannot be applied the way the Board Panel did.[62]

D. Overwhelming Evidence Of ODC Psychological Abuse Of Abbott, The Board Panel Plant, Proof Of Good Reputation & ODC Lies Was Presented

1. ODC Psychological Abuse Of Abbott For 7+ Years Has Caused Abbott To Suffer More Than Enough

Jill Abbott presented uncontraverted hearing testimony about the serious Psychological Abuse that the ODC had caused for over 7 years to Abbott. Trans. II at 48-86.[63] This Psychological Abuse by the ODC was explained as taking a great toll on Abbott's psyche, his family life, and his ability to enjoy life. *Id.* Consequently, it is uncontested that Abbott has suffered for over 7 years to a degree that has caused him great harm and injury to his mental state, family life, and ability to enjoy normal components of human life.

Abbott explained the chronology of events that caused him to suffer severe Psychological Abuse at the hands of Weidman, the Vice Chancellor, and the ODC for over 7½ years. Trans. II at 171-183, 198-202, 220-221, 244-246, and 249-250. Abbott also provided undisputed testimony on the Psychological Abuse caused to him by the Board Panel Plant. Trans. II at 117-125, 133-134, 138-139, 140-141, and 145.

---

[62] Discussion of the Duty, Mental State, Injury and Mitigating Factors components of the ABA Standards is contained in App. 14.

[63] Citations herein to "Trans. II at __" are to the pages of the Sanctions Hearing Transcript dated August 24, 2022.

E. Abbott Established His Good Character And Reputation; Abbott Is An Excellent Lawyer & A Positive Role Model

Abbott presented the testimony of 3 long-term clients who Abbott has performed various types of legal work for: Rick Romero, Dennis Silicato, and D. Stephen Parsons, Esquire. Trans. II at 102-107, 185-187, and 191-193. All 3 unanimously agreed that Abbott was honest, responsive, effective, and provided excellent legal services. *Id*. Combined with Abbott's uncontested testimony at Trial, it was established that Abbott is a fine lawyer who is skilled at his practice and carries a reputation that places him in the upper echelon of Delaware lawyers.[64]

No rebuttal of Abbott's evidence was attempted by the ODC, rendering Abbott's case uncontested. The Mitigating Factor Good Character and Reputation was established.

Word count limitations prevent Abbott from fully presenting this Argument. But the contents of App. 6, which are hereby incorporated by reference, do so.

[64] Abbott testified about Trial Exhibit 165 and his contributions to public service, community service, and service to the Bar. Trans. II at 222-223 ("I think I did more before age 40 in terms of public service than most lawyers do in their entire lifetime.").

F. Abbott Established That The ODC Was Lying When It Alleged That Abbott Did Not Tell The Truth

Word count limits prohibit Abbott from explaining in detail all of the ODC lying and cheating. Further exposition on the subject is in App. 7.

F. A Veritable House Of Cards Position Is Taken By Recommendation II; 15 Faulty Premises Render The Submission Completely Meritless

1. First Faulty Premise – Letter = Transfer By 2 Deeds - **NO**

a. Letter Cannot Be Conjoined With Transfer

No one relied upon the 2 Alleged Omissions to their detriment. Further litigation involved the Ownership Transfer. The Abbott Letter caused zero (0) actual or potential harm. The Consent Order was known to all and what Mrs. Jenney did with the 2 Properties in the future was unknown to all.

b. 2 Alleged Omissions ≠ Ownership Transfer – So No Harm

The Ownership Transfer was accomplished pursuant to the 2 Deeds; the 2 Alleged Omissions were not an issue in the litigation. The validity of the 2 Deeds was not questioned. Title was transferred in a legally operative fashion; use of the term "sham" is contrary to the facts and law.

2. Second Faulty Premise – Presumptive Sanctions Must Be Applied As A New Step 4 of 5 In The Sanctions Analysis - **NO**

a. Precedent: Presumptive Sanctions Are Not Part of 4-Step Analysis

Contrary to the Board Panel's erroneous position that Presumptive Sanctions must be applied as a brand new 4th Step in the Sanction analytical process, Delaware Supreme Court precedent establishes a different approach. The first 3 factors of the 4-factor test – Rule Violation, Duty, Injury - are initially analyzed, after which the 4th factor – any Aggravating and Mitigating circumstances - is applied to determine whether a greater or lesser sanction is called for. *In Re: Figliola*, 652 A.2d 1071, 1076 (Del. 1995). Recommendation II erroneously applied presumptive Sanction provisions in the ABA Standards that do not apply and are mere suggestions and then considered Aggravating and Mitigating factors, rendering the Board Panel's suggested Sanctions without any legal merit.

b. 5.0, 6.0 And 8.0 Of ABA Standards Are Inapplicable

The Board Panel heavily relied on ABA Standards 5.0, 6.0, and 8.0. Recommendation II at 96-125. But ABA Standards 5.0, 6.0, and 8.0 state that they only apply: 1) "[a]bsent aggravating or mitigating circumstances"; and 2) after "application of the factors set out in Standard 3.0." (the 4-Step analysis). In addition, 5.0, 6.0, and 8.0 are only "generally appropriate," not mandatory

If Aggravating and Mitigating factors are present, as they are here, then Presumptive Sanctions in ABA Standards 5.0, 6.0 and 8.0 do not apply. Regardless, 5.0, 6.0, and 8.0 are mere suggestions and they do not take the Sanction of Probation into account. Consequently, the presumptive sanctions do not apply and Recommendation II is legally erroneous in its entirety.

3. Third Faulty Premise – Hyberbolic Statements & Plauditory Statements = Proof Of Abbott Serious Misconduct - **NO**

a. Facts & Circumstances Here Do Not Show Anything Serious

Statements that are a Message In A Bottle That Can Never Be Found and hairsplitting omission allegations which no one ever could or did detrimentally rely upon are the height of hypertechnical in nature. At most, they could be violations in the abstract. But in the real world they ultimately make no difference since they caused no one any harm (nor could they have). Indeed, the minor infractions are the essence of the Latin term *Damnum Absque Injuria* (a wrongful act which occasions no legal remedy).

b. The Panel Concocted The Phantom 6th Charge & Applied Illogical Law=Fact, Crystal Ball & Hiding In Plain Sight Theories

The Board Panel had to literally make up the Phantom 6th Charge to find anything wrong with Abbott's conduct during the course of the Chancery proceedings, which establishes that the ODC failed to meet its Burden of Proof to establish Alleged Petition Count III since it charged affirmative statements by Abbott (not omissions as the Board Panel created out of thin air).

c. Abbott Secret Statements Are Unknown to World

– Insider Baseball & Never Be Known to Bar, Courts & Public - Message In A Bottle That Can Never Be Found

One cannot be degraded if they do not have any knowledge of supposedly degrading statements. The term "degrading" has a causation element – *i.e.* it must be possible for degradation to occur. The Vice Chancellor is unaware of the statements, no proof exists that the Supreme Court is aware of them, the public is certainly not aware, members of the Bar are unaware, and the legal system cannot ever be exposed to them - they are completely Confidential and Absolutely Privileged.

4. Fourth Faulty Premise – Chicken Little Hysteria Warranted - **NO**

a. Use of Inapplicable Terms

In an effort to escalate this minor matter into a big deal, Recommendation II used overblown adjectives and marched out a veritable "parade of horribles" in an attempt to make the proverbial "mountain out of a molehill." But it is undisputed and indisputable that Abbott did not breach any duties to the 2 most important audiences per the ABA Standards: the Client and the Public. And neither the Legal Profession nor the Legal System are aware of Abbott's secret statements and the Phantom 6th Charge.

So no harm to any of the 4 audiences that the ABA Standards are aimed at protecting occurred; no Duty was breached. The violations recommended were of a minor nature; Recommendation II's attempt to over-inflate the level of seriousness falls flat.

5. Fifth Faulty Premise – Intentional Or Knowing Mental State & Injury - **NO**

a. Evidence Shows Minor Infraction At Worst

Uncontested Sanction Hearing evidence presented by Abbott shows that his Mental State was less then Negligent and there was no actual or potential Injury to anyone. Only a minor Sanction is justified under the circumstances here present.

6. Sixth Faulty Premise - Rule 3.5(d) – Mere Recitation & Conclusory Statements Make It So - **NO**

a. Wrong – Need to Provide Examples of Harm

Recommendation II relied on mere *ipse dixit* for the proposition that there was Injury or potential Injury to the public, the legal system, and the legal profession. The public is blissfully ignorant of Abbott's statements and the 2 Alleged Omissions. And the legal system and the legal profession are also without any knowledge thereof. Since no factual examples of how Injury was or could be caused to any of those 3 audiences, it is apparent that Injury was not established.

7. Seventh Faulty Premise (Rule 8.4(c)) – Sham & 2 Alleged Omissions Caused Serious Harm - **NO**

a. Wrong Again – Panel Concocted Law=Fact, Crystal Ball & Hiding In Plain Sight Theories – Vice Chancellor, Public, Bar & Legal System Know Nothing About Omissions Or Statements

b. Ownership Transfer – Perfectly Legal & Permissible

c. Ownership Transfer Spurred Case Activity, Not Alleged Omissions: No Injury From 2 Alleged Omissions

The mere fact that other persons have subjective, stylistic differences with Abbott's litigation

approach is nothing more than personal opinion; no Injury or Potential Injury was proven by the ODC.

8. Eighth Faulty Premise – No Mitigating Factors - **NO**

a. Abbott – Established 7 Weighty Mitigating Factors

As Abbott summarized in his argument at the conclusion of the Sanction Hearing, seven (7) significant Mitigating Circumstances were proven by him:

(1) No Dishonest Or Selfish Motive;
(2) Full Disclosure To The Board;
(3) Abbott's Character and Reputation as an Excellent Lawyer;
(4) 4½ Years of Delay in Disciplinary Proceedings Due To ODC;
(5) Remoteness of the Prior Offense: 15 Years Ago;
(6) The ODC Double Standards & The Vice Chancellor's Standards: Lawyers Like Weidman Who Commit Very Serious Offenses Are Let Off Scot-Free; and
(7) Special Circumstances of Psychological Abuse of Abbott for 7½ Years by Weidman, The Vice Chancellor, The ODC, and The Board Panel Plant.[65]

Perhaps the most significant Mitigating Factor is the extreme Psychological Abuse Abbott has endured pursuant to 7½ years of *ad hominem* attacks, harassment and haranguing by Weidman, the Vice Chancellor, and, mostly, the ODC. Abbott has certainly suffered more than any other lawyer in

[65] Trans. II at 285-308.

Delaware Bar history based on false and derogatory attacks by Weidman, the Vice Chancellor, and the ill-motivated ODC counsel.

Abbott had no dishonest or selfish motive since any infraction was an honest mistake. Abbott also complied with all disclosure requirements involving the Board. And Abbott easily established his excellent character and reputation as a Delaware lawyer and that 4½ years of inexcusable delay in the Star Chamber Proceeding were the sole fault of the ODC. Abbott's prior offense was over 15 years ago. And the well-established Double Standards applied by the ODC based upon lawyer associational status and by the Vice Chancellor (based on his blatant favoritism and immunization of the unethical Weidman versus his castigation of Abbott for doing nothing wrong) was proven without contest.

The ODC told Abbott for numerous months in 2016 that 3 Charges would be brought against him, and then they were dropped. The ODC next filed a frivolous Petition for Interim Suspension against Abbott, which it held over his head for more than a year before it too was dropped. Then the ODC brought a Bad Faith 5th Charge against Abbott for his mere request for the professional courtesy of a 2 week extension to file a lengthy submission to the PRC due to family holiday vacation plans and other client commitments in the 2 weeks he was allowed by the ODC's abrupt scheduling announcement. To top it all off, the Board Panel then adopted a Phantom 6th Charge against Abbott, which is Unconstitutional under Due Process protections of the Delaware and United States Constitutions, 7+ years later. The bottom line is that Abbott has suffered enough, and a

Sanction of a minor nature, if any at all, is in order under the circumstances.

9. Ninth Faulty Premise – Dishonest Or Selfish Motive - **NO**

a. *Lyle* Denial - Precludes Violation of Rule 8.4(c)

b. Mistake At Most

c. Consent Order Not In Effect

d. Abbott – No Planned Re-Conveyance Or Knowledge Of Future Control Of 2 Properties

e. If Forgot to Use Term "Title" Before "Ownership" – Not Any Intentional Or Knowing Act

No record evidence supports the theory that Abbott acted to benefit himself or that Abbott was motivated to be dishonest. In the 7 years after the date of the Abbott Letter, no one was ever able to establish any inaccuracy in it. It took the Board Panel's concoction of the Phantom 6th Charge based on supposed omissions (not Affirmative Statements as charged) for there to even be a Rule 8.4(c) discussion necessary at the Sanctions stage.

The 2 Alleged Omissions constitute a minor oversight at the most. Abbott has explained that he did not include reference to the Consent Order because it was his reasoned legal opinion that it was no longer in play since it had elapsed due to the failure of Mr. Jenney to meet the October 2014 deadline to complete work at the 2 Properties, leaving the Settlement Agreement as the sole remaining operative legal document. And the uncontraverted Trial evidence established that Abbott had no idea what might happen in the future with respect to Mrs. Jenney's ownership and use of the 2 Properties, nor that Abbott had any knowledge of what actually

occurred after title to the 2 Properties was transferred via the 2 Deeds.

Abbott acted within the bounds of the law to zealously represent his client based upon the client's decision on which options to select in litigation. That is Good Lawyering, not a fault.

10. Tenth Faulty Premise – Multiple Offenses All Judged Same - **NO**

a. 2 Alleged Omissions Not Serious
b. No Harm From Statements – Secret Forever
c. Catchall Charge – No Independent Foundation (8.4(d) not a standalone charge)
d. Really Just 2 Minor Infractions - Setting Aside Histrionics & Insatiable Desire to Destroy Abbott

The suggestion of 3 violations by Abbott does not mean that all 3 Charges should be given heavy weight since:

(1) the Rule 8.4(d) Catchall Charge is just a tack-on that goes with virtually every case that is ever brought by the ODC (little weight);
(2) the hypertechnical Phantom 6th Charge is deserving of low weight in light of its multiple legal infirmities and lack of injury or potential injury to anyone; and
(3) the Rule 3.5(d) Charge is likewise of low weight due to the fact that there is and could be no injury since the statements constitute a Message In A Bottle That Can Never Be Found.

11. Eleventh Faulty Premise – Obstruction Of Disciplinary Proceeding - **NO**

a. Abbott Not Obstructed Anything
b. No Violation of Procedural Rules

c. Abbott Has Exercised 1st Amendment Rights to Free Speech And Petition Government & Filed Well-Pled Submissions

d. Aaronson Delayed & Got Fired – Incompetent
   - No action 6/15 to 6/16
   - No action 9/16 to 3/18
   - Filed Frivolous Petition for Interim Suspension – no action 3/18 to 5/19

e. Asserted Lawyer-Client Privilege Per Client

f. Filed Well-Founded Motions for Recusal
   - Appearance of Impropriety Standard = Very Low

g. Lawsuits – Irrelevant to Board Proceedings

h. Abbott Professional & Cooperative – Justifiably Fought Bogus 7+ Year Campaign of ODC Harassment & Haranguing
   - ODC Should Not Have Ever Started Matter
   - Just ODC Anger – For Abbott Fighting ODC Corruption

The attempt to punish Abbott for vigorously and zealously defending himself in this Star Chamber Proceeding is without merit.

12. Twelfth Faulty Premise – ODC Not Engage In "Deceptive Practices" In Disciplinary Process - **NO**

a. Abbott Did Not Misrepresent Extension Request

– Exhibit D & Trial Exhibit 126
   - Asked for 2 weeks due to insufficient time to prepare lengthy PRC submission
   - After 4½ year delay – ODC advised 12/17/19 of 1/8/20 PRC

- Abbott Vacation 12/21/19 to 12/29/19 + 1/1/20
- Only 2 Days to Meet 12/31 Deadline (12/20 & 31)
- Trial Monday 12/30
- Tied Up 12/18
- Brief Due in Chancery 12/20
- Time Needed to Clear Up Client Matters by 12/20
- Response was filed & was lengthy & comprehensive – Trial Exhibit 136

➢ Another *Eg*. Of ODC Lying & Cheating

b. Abbott Not Deceptive re: Complaints v. Unethical Attorneys
   - ODC: No Cite for Block Quote on p.21
   - Abbott Clearly Stated 2 Bases for Complaints at Transcript pp. 1716-1721
   - ODC Taking 2-Page Testimony Out Of Context
   - 5 Page Transcript Excerpt Leaves No Doubt – 2 Reasons for Complaint v. Unethical Attorneys

c. ODC Is One Guilty of Deceptive Conduct
   - *See egs*. Post-Trial Submission at Proposed Findings – paras. 8, 9, 13, 31, 35-39, 92-93, 106-109, 150, 303, 307, 309 (19 ODC Lies)
   - *See also* – White Opening Statement Laced with Privileged, Inadmissible Prejudicial Statements of Abbott

13. Thirteenth Faulty Premise –Lack Of Admission Conduct Wrongful: **Not Worth Much Weight**

a. Factor Deserving of Little Weight

b. Every Attorney Denying DLRPC Violations Denies Charges & Most Attorneys Caught Red-Handed & Must Be Contrite

c. 8.4(c) Not Violated Per Count III Charge
   – No Affirmative Misrepresentation & No Proof Detrimental Reliance on 2 Alleged Omissions
d. Abbott Believed *Pro Se*, 1st Amendment, No One Consciously Degraded, Non-Tribunal, Confidential & Absolute Privilege Protected Speech
e. Can't Punish for Zealous Defense Against Weak Charges Alleged

Why would Abbott admit that he did anything wrong when he did not? At most, Recommendation I asserts minor violations which cause no Injury and were less than Negligent in nature. Abbott believed in good faith that he had the right to criticize the Vice Chancellor for his Judicial Misconduct in light of the various forms of Absolute Privilege, Confidentiality, and Constitutional Protection that he was entitled to (particularly given his *Pro Se*, non-lawyer status). And Abbott certainly will not admit a wrong for the Phantom 6th Charge; it was concocted *post hoc* by the Board Panel and is not what was alleged in Alleged Petition Count III. Given the weak nature of the Recommendation I findings of Rule violations as a matter of fact and law, the Supreme Court should accord this supposed aggravating factor very little weight.

14. Fourteenth Faulty Premise – Experience As Lawyer - **Worth Little Or No Weight**

a. American University Law Review, Vol. 48, Issue 1 (1998) at p. 50 Makes Point:
   - "Justifications for treating substantial experience in the practice of law as an

aggravating factor are weak in many cases."

- Use of the factor is "in many cases essentially retributive."
- An attorneys' potentially greater knowledge and experience does not justify routinely enhancing the sanction.
- The Factor and the ABA Standards' lack of explanation on how & when to use it "invites unfair and inconsistent results."

b. Factor Should Be Given Little Weight

The issue of Experience need not rotely be applied as an Aggravating Factor. It is worthy of minor weight. No reasonable lawyer would find that the Abbott Letter contains anything but 100% truthful statements and the issues of first impression *vis-à-vis* the statements could not have been reasonably expected.

15. Fifteenth Faulty Premise – This Case Is Remotely Similar to *Shearin* - **NO**

a. *Shearin* Directly Disobeyed Court Order Forbidding Her From Transferring Title to Church Property

b. *Shearin* **PUBLICLY** Disparaged Then Vice Chancellor Steele

c. *Shearin* filed Lawsuit Held Frivolous

d. *Shearin* Had Zero (0) Basis for Her Allegations

e. Abbott – Not Do a., b., c., or d.

- The System is Unconstitutional & Corrupt – Herndon has done ODC bidding to prevent Abbott from showing extent of corruption

- But Abbott presented significant, undisputed evidence of a broken System – where decisions are made based on associational status, not merits
- And Abbott is a far better attorney & solid member of Bar + *Shearin* Had No Mitigating Factors

The *piece de resistance* in the personal attack campaign against Abbott is the attempt to morph Abbott into K. Kay Shearin. *First*, Abbott's conduct bears no resemblance at all Shearin's direct disobedience of Court Orders and wildly unfounded public allegations regarding then Vice Chancellor Steele. *Second*, Abbott did not engage in frivolous filings in the Court of Chancery action. The shameful attempt to smear Abbott with the likes of Ms. Shearin is all the more evidence of the insulting, offensive, personally disparaging motive of the evildoers at the ODC and the Board Panel Plant, who have an insatiable appetite to destroy Abbott's legal career based purely on personal animus and vengefulness.

16. Conclusion; 4 Weak Aggravating Factors vs. 7 Weighty Mitigating Factors – Only A Minor Sanction Is Justified

The ODC failed to establish 5 of 9 alleged Aggravating Factors. The ODC could only show low weight factors of Experience, Prior Discipline, Lack of Wrongful Conduct Admission, and Multiple Offenses. Indeed, due to the Catchall Charge under Rule 8.4(d) – Prejudice To Administration of Justice – virtually every disciplinary case has Multiple Offenses. And Abbott admitted no wrong since he did no wrong – *i.e.* no lawyer who has numerous valid defenses admits a

wrong. Plus, Abbott's Experience as an excellent attorney and model citizen should count in his favor, not against him. And the Prior Discipline is a factually unfounded and legally invalid decision: 1) the deferential Substantial Evidence standard was not applied to the Board Panel's Recommendation in Abbott's favor; 2) new, misleading, out-of-context fact-finding was undertaken; and 3) Abbott was denied Due Process via lack of any Sanctions process as required by law.

H. The Duty At Issue Would, At Most, Be To The Legal System & Little To No Harm Befell It Or Could Have

Recommendation I's suggestion that Abbott violated DLRPC Rule 3.5(d) and Rule 8.4(c) has nothing to do with the client, the public, or the profession: 1) Mr. Jenney was 100% satisfied and pleased with Abbott's "excellent" representation; 2) the public and the Bar are unaware of, and unaffected by, any of the matters at issue in this proceeding; and 3) there has been no allegation of any harm caused to another lawyer.[66] Instead, the two (2) Foundational Charges and the single Rule 8.4(d) Catch-All Charge address a duty to the legal system. In particular, the duty would focus on the Vice Chancellor and members of the Supreme Court.

As for the Vice Chancellor, he has absolutely no idea that the statements were ever made by Abbott since they are Confidential and unavailable to him. In addition, no proof was presented that the Supreme

[66] The Ownership Transfer, not the 2 Alleged Omissions, constituted the basis for further litigation. Nor could the 2 Alleged Omissions cause any harm; no one had a Crystal Ball and the Consent Order was not Hidden In Plain Sight.

Court ever received, opened, or read the Motion to Dismiss to the Board, so that the undisputed evidence shows they are likewise unaware of the 2 statements the Petition alleged violate Rule 3.5(d). Regardless, that Board filing has no effect; Abbott is cloaked with DLRDP Rule 10 Absolute Privilege. So, there was no duty ever breached since the "legal system" members at issue were not consciously aware of the statements.

Nor did the 2 Alleged Omissions violate any duty to the Vice Chancellor. The Vice Chancellor did not act based on them. Instead, the Vice Chancellor granted Weidman's motion (as legally erroneous as it was) to add Mrs. Jenney as an additional party Defendant (post-judgment). Notably, the Vice Chancellor never mentioned the 2 Alleged Omissions (probably because they are absurd constructs), thereby establishing that the Abbott Letter *per se* had no impact.

I. The Limited Duty, Less Than Negligent Mental State, And Lack Of Proof Of Actual Or Potential Injury Militate In Favor Of A Private Admonition

This case is the quintessential example of "insider baseball." And even the insiders are sworn to secrecy and/or have no knowledge of what has transpired relative to the Law=Fact Theory, Crystal Ball Theory, Hiding In Plain Sight Theory, and Message In A Bottle That Can Never Be Found. The lack of any breach of Duty, less than Negligent Mental State, and lack of actual or potential Injury all weigh in favor of a Sanction on the lower end of the scale of Sanction severity.

Nothing in Recommendation I suggests that Abbott's facilitation of the Ownership Transfer

violated any ethical rule (all the Board Panel can muster is rash *ipse dixit*). And Recommendation I reaches conclusions which are the height of hyper-technicality. But Recommendation I does not support a Sanction greater than a Private Admonition. While only a suggestion, § 6.14 of the ABA Standards supports the Admonition Sanction based upon the facts here present.

Seven (7) Significant Mitigating Factors were proven. *See* pages 285-308 of the Sanction Hearing Transcript and *infra*. Since the 7 weighty Mitigating Factors far outweigh the 4 weak Aggravating Factors, the Sanction of Private Admonition is appropriate.

Word count limitations prevent further development of Abbott's legal arguments. Instead, he herein incorporates App. 9.

III. The Board Is Not A "Tribunal"

The Rule 3.5(d) charge may depend in part on whether the Board constitutes a Tribunal as that term is defined in DLRPC Rule 1.0(m). Because the Board, and single members and panels thereof, are not capable of rendering a final judgment, the Board does not qualify as a Tribunal.

Word count limitations prevent Abbott from expounding further on this point, so he instead incorporates App. 10 by reference.

IV. Jenney Did Not Waive The Lawyer-Client Privilege

Abbott objects to all rulings in the Star Chamber Proceeding regarding the subpoenaing and admissibility of his communications with Mr. Jenney which were protected by the Lawyer-Client Privilege. Abbott incorporates by reference all written

submissions to the Board Chairs and the Board Panel Plant on the Lawyer-Client Privilege, which include: 1) Response In Opposition To Motion To Compel made on September 16, 2016; 2) *Sur*-Reply In Opposition To Motion To Compel Lawyer-Client Privileged Documents made on October 4, 2019; 3) Motion For Reargument made on November 21, 2019; 4) Argument III in Respondent's Opening Brief In Support Of His Motion *In Limine* To Exclude Certain Non-Expert Evidence dated August 31, 2021; and 5) Argument V in Respondent's Reply In Support Of His Motion *In Limine* Regarding Non-Expert Evidence dated October 5, 2021.

Additionally, Recommendation I erroneously concluded that no exceptions to Waiver of the Privilege applied for the reasons set forth in App. 11, which is herein incorporated by reference.

V. 1st Amendment Protections, Court Rules, Statutory Confidentiality Provisions & The Litigation Privilege Render Abbott Immune From Prosecution For Any Statements

A. The 1st Amendment Cloaks Abbott's Statements With Blanket Constitutional Protection; The ODC Charge Is Barred

U.S. Supreme Court case law establishes that "disciplinary rules governing the legal profession cannot punish activity protected by the First Amendment." *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1054 (1991). And "First Amendment protection survives even when the attorney violates a disciplinary rule he swore to obey when admitted to the practice of law." *Id*.

The 1st Amendment to the U.S. Constitution provides that citizens of the United States possess the Freedom of Speech, and government may not abridge that freedom. Therefore, Rule 3.5(d) must be interpreted in a fashion that jibes it with Abbott's 1st Amendment free speech rights.

In Delaware, it has been held that "criticism of a judge…in the performance of his duties is within the purview of the right to free speech guaranteed by the First and Fourteenth Amendments to the U.S. Constitution." *State v. Payne*, 329 A.2d 157 (Del. Super., 1974). The Superior Court noted, however, that 1st Amendment free speech rights do not immunize a litigant from reviling a judge during courtroom proceedings. *Id.* at 158. Similarly, the U.S. Supreme Court has held that "in the courtroom itself, during a judicial proceeding, whatever right to 'free speech' an attorney has is extremely circumscribed." *Gentile*, *supra.* at 1071. Accordingly, decisional law authority draws a line of distinction between speech limitations that may be imposed upon a lawyer during the course of public proceedings in litigation versus the acts of a lawyer *qua*-citizen in private. As for the latter, full 1st Amendment rights to Freedom of Speech apply.

Under the circumstances at issue, Abbott was not acting as a lawyer or in a public proceeding when he made the statements that the Rule 3.5(d) charge was based upon. Instead, Abbott was proceeding *Pro Se*, as a private citizen, and in a private, confidential matter. Thus, his statements constitute Constitutionally protected Free Speech and cannot form the basis for DLRPC liability.

All of Abbott's statements were made in Confidential communications, which DLRDP Rule

13(a) prohibited the dissemination of to any third parties, including the Preliminary Review Committee and the Board. Court on the Judiciary Rules and Statutory requirements governing the PIC also rendered Abbott's statements in those venues completely Confidential and/or Privileged. No one other than a few people were aware of the statements; they were private and non-public.

Even in public, attorney speech is protected by the 1st Amendment where the statements are true or an expression of opinion. *Berry v. Schmitt*, 688 F.3d 290, 303-304 (6th Cir. 2012), citing *Standing Committee On Discipline etc. v. Yagman*, 55 F.3d 1430, 1438 (9th Cir. 1995). Here, Abbott presented uncontraverted evidence that his statements regarding the Vice Chancellor were personal opinion and/or true. The ODC did not prove Abbott's statements were false or non-opinion. As a result, Abbott cannot be prosecuted for the statements since they are cloaked with 1st Amendment Free Speech protection.

Attorney speech may only be limited in certain discreet situations: 1) in the courtroom in a judicial proceeding; 2) in a pending case outside the courtroom; 3) before a court in a non-courtroom setting; and 4) while soliciting business and advertising. *Greenberg v. Haggerty*, 491 F.Supp. 3d 12, 26-27 (E.D. Pa. 2020), citing and quoting *Gentile*, *supra*. at 1071-73. Otherwise, professional speech is entitled to full 1st Amendment protection. *Greenberg* at 27, citing *Nat'l Institute Of Family and Life Advocates v. Becerra*, ___ U.S. ___, 138 S. Ct. 2361, 2371 (2018). Abbott's Private, Confidential statements are imbued with full Freedom of Speech

protections under the 1st Amendment, and he is immune from prosecution based on his statements.

B. Confidentiality & Privilege Provisions Also Shield Abbott From Prosecution For His Statements

1. Rules Bar Abbott's Prosecution For The Statements

Pursuant to DLRDP Rule 10, "[a]ll communications to and from the Board, PRC, or the ODC relating to lawyer misconduct or disability…shall be absolutely privileged." Abbott's submissions to the Board were therefore absolutely immune from prosecution based on the protections afforded to him by DLRDP Rule 10.

Delaware Court on the Judiciary Rule 17 provides that all records of the Court shall be confidential. Rule 19(a) of that Court establishes an Absolute Privilege for "Communications to the Court" that are "relating to misconduct," which is precisely what Abbott's statements regarding the Vice Chancellor were. So Abbott is absolutely immune from prosecution regarding statements about the Vice Chancellor in his submissions to the Court on the Judiciary.

The charge against Abbott also alleges that he submitted certain statements to the PIC. But it is established by statute that Abbott's submissions to the PIC were Confidential. 29 *Del. C.* § 5810(h) provides that PIC proceedings shall be maintained as confidential. So Abbott's non-public, confidential statements to the PIC are fully protected by his 1st Amendment right to Free Speech and cannot form the basis for any violation of the DLRPC.

Count IV also alleges Abbott made 2 statements to the Supreme Court. The filing in question, however, was made with the Board (rendering them Absolutely Privileged), by Abbott in his *Pro Se* capacity, and expressly Confidential. Thus, those 2 statements cannot be relied upon to prove a violation of DLRPC Rule 3.5(d) by law.

2. The Absolute Litigation Privilege Also Prohibits Abbott's Prosecution

Delaware has recognized the Absolute Litigation Privilege. *Paige Capital Management, LLC v. Lerner Master Funds, LLC*, 22 A.3d 710, 715 (Del. Ch. 2011). The Litigation Privilege applies even where statements are made maliciously or with knowledge of their falsity. *Sheehan v. AssuredPartners, Inc.*, 2020 WL 2838575, *16, LeGrow, J. (Del. Ch., May 29, 2020).

Additionally, it has been held that an "[a]ttorney who is the subject of a grievance proceeding is a party to a *quasi*-judicial proceeding, and, therefore, relevant statements made by the attorney are shielded by the litigation privilege." *Cohen v. King*, 206 A.3d 188, 192 (Conn. App. 2019). The Court also held that the Litigation Privilege applied to statements of attorneys who are the subject of the grievance proceedings. *Id.* The Court noted that application of absolute immunity to statements of participants in such *quasi*-judicial proceedings furthers the purpose of the Litigation Privilege: a public interest in allowing persons to speak freely outweighs the risk of abuse pursuant to false or malicious statements, furthering the public policy of encouraging participation and candor in the *quasi*-judicial proceedings. *Id.* at 191.

The Absolute Litigation Privilege immunizes Abbott's statements that the ODC relied upon for Rule 3.5(d) the charge brought. Abbott's ability to freely speak regarding the improper actions of the Vice Chancellor advance the salutary purpose of disclosing inappropriate judicial conduct. So too do Abbott's statements regarding the legally unfounded "withdraw" of a Petition for Interim Suspension brought against him by the ODC, which was allowed by 3 members of the Delaware Supreme Court (despite the obvious applicability of Superior Court Civil Rule 41 regarding "dismissal"), similarly advances the policy purpose of the Litigation Privilege: the truth.

Lawyers that represent themselves *Pro Se* in disciplinary proceedings should not have to proceed with the fear that anything critical they say can be twisted by the ODC into additional charges. The charge brought by the ODC against Abbott cannot prevail as a matter of law since Abbott is absolutely immune from prosecution based upon the Litigation Privilege.

VI. Abbott Was Improperly Denied Discovery & Trial Witnesses That Had Relevant Evidence In Support Of His Defenses

Word count limitations prevent Abbott from presenting a full argument on these Objections. So instead, Abbott hereby incorporates by reference all filings regarding this subject, including App. 12.

Conclusion

Based on the foregoing, the Court should: 1) reject Recommendation I since the ODC failed to prove Abbott committed any violations by Clear and Convincing Evidence; and 2) reject Recommendation II since the ODC failed to prove anything more than a Private Admonition, or at most a Public Probation, were warranted.

/s/ *Richard L. Abbott*

Richard L. Abbott
724 Yorklyn Road, Suite 240
Hockessin, DE 19707
(302) 489-2529
rich@richabbottlawfirm.com

Pro Se Respondent/Third-Party Petitioner

Dated: March 22, 2023

APPENDIX C
TO PETITIONER'S PETITION
FOR WRIT OF *CERTIORARI*

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

FOURTEENTH AMENDMENT

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United State and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX D
TO PETITIONER'S PETITION
FOR WRIT OF *CERTIORARI*

BOARD ON PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF THE STATE OF
DELAWARE

OFFICE OF DISCIPLINARY COUNSEL,
Petitioner,
v. No. 112512-B
RICHARD L. ABBOTT,
Respondent.

ANSWER TO PETITION FOR DISCIPLINE

THIRD AFFIRMATIVE DEFENSE

49. The claims contained in the Petition are barred based upon violation of Abbott's right to Freedom of Speech pursuant to the 1st Amendment to the United States Constitution and Article I, § 5 of the Delaware Constitution.

FOURTH AFFIRMATIVE DEFENSE

50. The claims contained in the Petition are barred based upon violation of Abbott's right to Freedom of Association pursuant to the 1st Amendment to the United States Constitution and Article I, § 5 of the Delaware Constitution.

FIFTH AFFIRMATIVE DEFENSE

51. The claims contained in the Petition are barred based upon violation of Abbott's right to be free from Invidious Discrimination under the 14th Amendment to the United States Constitution.

SIXTH AFFIRMATIVE DEFENSE

52. The claims contained in the Petition are barred based upon violation of Abbott's right to be free from Disparate Treatment under the 14th Amendment to the United States Constitution.

EIGHTH AFFIRMATIVE DEFENSE

54. The claims contained in the Petition are barred based upon violation of Abbott's right to Due Process of Law pursuant to the 5th and 14th Amendments to the United States Constitution and Article I, §§ 7 and 9 of the Delaware Constitution.

NINTH AFFIRMATIVE DEFENSE

55. The claims contained in the Petition are barred based upon violation of Abbott's right to petition government for redress of grievances pursuant to the 1st Amendment to the United States Constitution and Article I, § 16 of the Delaware Constitution.

ELEVENTH AFFIRMATIVE DEFENSE

57. The claims contained in the Petition are barred based upon violation of Abbott's right to be free from the invalidity of the Rules relied upon based upon the Constitutional Void for Vagueness Doctrine.

EIGHTEENTH AFFIRMATIVE DEFENSE

64. The claims contained in the Petition are barred based upon the Absolutely Privileged nature of statements alleged.

TWENTY-NINTH AFFIRMATIVE DEFENSE

75. The claims contained in the Petition are barred based upon failure to allege predicate acts sufficient to establish the elements of the offenses alleged.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

95. The claims contained in the Petition are barred based upon the Unconstitutionality of the applicable charges alleged on the grounds that they are Void for Vagueness.

SIXTY-SIXTH AFFIRMATIVE DEFENSE

113. The claims contained in the Petition are barred based upon their Retaliatory Intent and Purpose.

SEVENTY-SECOND AFFIRMATIVE DEFENSE

119. The claims contained in the Petition are barred based upon the purpose of DLRPC Rule 3.4(c) - to protect judicial officers in a public forum where they cannot respond - which is not alleged in the Petition and did not occur.

NINETIETH AFFIRMATIVE DEFENSE

137. The claims contained in the Petition are barred based upon the obvious "hatchet job" the Petition is intended to carry out based upon the pre-ordained conclusions reached by the ODC to attack Abbott based upon his status as a sole practitioner and target of a Judicial Officer.

NINETY-THIRD AFFIRMATIVE DEFENSE

140. The claims contained in the Petition are barred based upon any other defenses that may arise during the course of discovery in this action.

NINETY-FOURTH AFFIRMATIVE DEFENSE

141. The claims contained in the Petition are barred based upon the Unconstitutionality, under the Equal Protection Clause of the U.S. Constitution, of the Delaware Lawyer Discipline System which targets sole practitioners on supra-legal grounds and applies a highly lenient standard to large law firm and government lawyers.

NINETY-FIFTH AFFIRMATIVE DEFENSE

142. The claims contained in the Petition are barred, based upon the Unconstitutionality under the Equal Protection Clause of the U.S. Constitution, of the Delaware Lawyer Discipline System which targets lawyers disfavored by a judge on supra-legal grounds and applies a highly lenient standard to lawyers favored by a judge.

NINETY-SIXTH AFFIRMATIVE DEFENSE

143. The claims contained in the Petition are barred, based upon the Unconstitutionality under the 1st Amendment Freedom of Association Clause of the U.S. Constitution, of the Delaware Lawyer Discipline System which targets sole practitioners on supra-legal grounds and applies a highly lenient standard to large law firm and government lawyers.

WHEREFORE, Respondent Richard L. Abbott, Esquire respectfully requests that the Board recommend that this action be dismissed with prejudice and that a recommendation be made concluding that the Petition was brought in Bad Faith and violates the United States and Delaware Constitutions.

Richard L. Abbott, Esquire
724 Yorklyn Road, Suite 240
Hockessin, DE 19707
(302) 489-2529
Dated: July 1, 2020

APPENDIX E
TO PETITIONER'S PETITION
FOR WRIT OF *CERTIORARI*

BOARD ON PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF THE STATE OF DELAWARE

OFFICE OF DISCIPLINARY COUNSEL,	:	
Petitioner,	:	
v.	:	No. 112512-B
RICHARD L. ABBOTT, ESQUIRE,	:	
Respondent.	:	

PRO SE RESPONDENT'S POST-TRIAL MEMORANDUM & MEMORANDUM ON RELATED SUBJECTS

A. The ODC Cannot Rewrite The DLRPC After-The-Fact & The Supreme Court May Only Amend The DLRPC Formally Via Rule-Change

The United States Supreme Court has established that in criminal proceedings the law alleged to have been violated must provide a defendant with "fair warning" in order to pass muster under Constitutional Due Process scrutiny, pursuant to the 5th and 14th Amendments to the United States Constitution. Ex. 163. And lawyer discipline actions are quasi-criminal for U.S. Constitutional protection purposes. Thus, the language of the 5 Rules upon which the alleged charges against Abbott were based say what they mean, and mean what they say (in plain English). Any attempts by the ODC to twist, contort, or "interpret" the language in the DLRPC in a fashion

which is contrary to the plain meaning thereof or which is based upon supposed persuasive authority that was issued after Abbott's conduct occurred would be Constitutionally infirm.

It is abundantly clear that the ODC hates Abbott and will stop at nothing, including persistent lying and cheating in this proceeding, in a single-minded effort to destroy Abbott based upon that personal hatred and their thirst for revenge. The ODC is best described as "a bully with a badge." But that badge does not give them license to lie, cheat, and change the DLRPC Rule language post hoc. Applying the clear and unambiguous meaning of the Rules that the alleged charges against Abbott are based upon leads to the inevitable result of total and complete exoneration, the ODC's attempts to rewrite the Rules ex post facto notwithstanding.

The Vice Chancellor's differences with Abbott were limited solely to personal, subjective stylistic disagreements with Abbott's perfectly legal and permissible approach to the litigation. Abbott did absolutely nothing wrong. And the Vice Chancellor's attempts to doctor-up a transcript pursuant to a hastily called, unplanned gathering, at which he engaged in false and hyperbolic remarks to besmirch Abbott, proves nothing. Abbott's recollections, documents, and transcripts presented at trial showed the abusive, obstreperous, discriminatory, and personally motivated misconduct of the Vice Chancellor. Such proof also evidenced the fact that Abbott took and responded to such improper mistreatment like a professional should; Abbott acted with the utmost ethical propriety and in a fashion consistent with the great traditions of the Delaware Bar. Unfortunately, the Vice Chancellor did not

conduct himself consistent with such high standards and traditions, instead meting out unwarranted punishment at Abbott and blanket protection of his favored lawyer, Weidman. Regardless, the Vice Chancellor's personal animus and stylistic differences do not a violation of any DLRPC Rule make, thereby establishing that Abbott is entitled to a recommendation from the Board Panel that all alleged charges be DISMISSED.

It should come as no surprise that the ODC was unable to meet its Burden of Proof by Clear and Convincing Evidence on any of the 5 Charges since they failed to state a claim on their face. The predicate acts alleged in the 3 Foundational Charges fail to allege numerous elements of DLRPC Rules 3.4(c), 3.5(d), and 8.4(c). All of the arguments hereinbefore as to how the ODC failed to satisfy the elements of the 3 Foundational Charges at trial apply with equal force to the lack of requisite elemental allegations at the Petition's inception.

Abbott's advice to Jenney on how to potentially avoid an in personam settlement agreement and judgment does not constitute Abbott's violation of any Court Rules. The "Message In A Bottle That Can Never Be Found" and lack of proof that any Tribunal member referenced in Abbott's statements was aware of them combine to make it legally impossible to prove any disruptive, discourteous, or degrading effect on those Tribunal members occurred. And the ODC's case regarding supposed dishonesty, fraud, deceit, or misrepresentation by Abbott toward the Vice Chancellor fell flat on its face – there was zero, zip, nil, zilch evidentiary support.

The fact that this prosecution was brought without any reasonable belief that Abbott's guilt on any charge

could be established is cemented by the failure of the supposed Petition to state any claim of a DLRPC violation against Abbott. Abbott should be found not guilty on all Counts.

I. The Invalidity Of The Entire Delaware Lawyer Discipline System & This Sham Prosecution Of Abbott Violate Abbott's Rights Under Federal And State Laws And Constitutions

Abbott has been advised that his only means of obtaining redress for illegal conduct of the 5 members of the Delaware Supreme Court, Mette, Vavala, and White under Federal and State Racketeering laws and the Federal Civil Rights Act is to request that this Board Panel recommend that valid claims have been asserted as a matter of law, so that the Supreme Court may engage in appropriate litigation of those claims post-recommendation. That conclusion has been rendered by the Federal Courts and the Delaware Court of Chancery. See App. Exs. Q, R., and S. And although the Chancery decision is currently on appeal to the Delaware Supreme Court in an action styled Abbott v. Vavala, Supr. Ct. No. 60, 2022, the Court of Chancery said it lacked subject matter jurisdiction over Abbott's claims because: 1) he has an adequate remedy pursuant to this proceeding via Supreme Court final decision powers; and 2) the May 2021 Supreme Court Order extraordinarily demands that Abbott pursue those claims in this action. Consequently, it is incumbent upon the Board Panel to fully review all of the allegations and make a determination as to whether Abbott has well-pled claims that will then be adjudicated by the Supreme

Court in some type of unique and heretofore unknown process.

In Appendix Exhibits A and B, Abbott has included the final versions of Complaints that were the subject of both Federal and State Court proceedings. The Complaints in the cases, which are very similar, set forth sufficiently alleged causes of action for injunctive and declaratory relief in order to: 1) invalidate the entire System; and 2) foreclose further prosecution of this bad faith, unfounded action against Abbott. Specific facts are presented in support of the necessary elements needed in order to state a claim for violations of: 1) the Federal Racketeering Influenced And Corrupt Organizations Act ("Federal RICO"); 2) the Federal Civil Rights Act, 42 U.S.C. § 1983, based upon numerous United States Constitutional violations which render the System and this action Unconstitutionally infirm ("Section 1983"); and 3) the Delaware Racketeer-Influenced and Corrupt Organizations Act found at 11 Del. C. Ch. 15 ("State RICO"). These allegations must be taken as true for purposes of the Board Panel's analysis in rendering a recommendation for the Supreme Court's consideration.

In each instance, the Courts sidestepped the merits of Abbott's claims. App. Exs. Q, R, and S. In the Federal Court action, the decision was to Abstain from considering the claims due to Abbott's ability to bring them in this proceeding. Similarly, the Court of Chancery decided that the claims asserted by Abbott in that action could only be pursued before the Delaware Supreme Court. Abbott believed his Federal and State RICO and § 1983 claims were not cognizable in this process, but the Courts have held

otherwise (including our Supreme Court – App. Ex. C).

Abbott has relied on Mail Fraud violations as the requisite underpinning for the Federal RICO and State RICO claims. And a multitude of additional facts allege that the Defendants' use of the mails was made for purposes of carrying out the Scheme to attack Abbott, not for meritorious reasons. In addition, allegations of violations of the 1st, 5th, and 14th Amendments' Free Speech, Freedom of Association, Due Process, and Equal Protection clauses has been well-pled for purposes of the § 1983 claims.

All combined, there are at least 3 legal grounds for imposition of injunctive relief. Irreparable harm would otherwise result to Abbott from: 1) this blatantly Unconstitutional and illegal prosecution; and 2) being subjected to a System which is systemically corrupt and Unconstitutional. The Board Panel should consider the pleadings and recommend that the claims herein be decided pursuant to subsequent suis generis Supreme Court litigation.

II. The ODC' Claims Against Abbott Are Barred Based Upon Defenses Of Selective Prosecution, Vindictive Prosecution, And Similar Unconstitutionally Discriminatory Prosecution

The uncontraverted trial evidence established that the ODC prosecuted Abbott based upon non-meritorious purposes only, including: 1) Selective Prosecution; 2) Vindictive Prosecution; 3) Demagogic Prosecution; and 4) Unconstitutional Discrimination based on associational status and class-based

considerations. These and related defenses constitute absolute defenses to Abbott's prosecution, thereby resulting in the need for a finding of Acquittal. Indeed, the fact that the ODC has been attacking Abbott with 3 rounds of charges and a bogus Petition for Interim Suspension for 7 years now, without any meritorious basis but based instead on personally retributive grounds, forecloses this prosecution. Consequently, the ODC's claims fail and should be DISMISSED.

A. Selective Prosecution Was Proven By Abbott

To establish Selective Prosecution, 2 elements must be shown: 1) the policy to prosecute or enforce the law had a discriminatory effect; and 2) it was motivated by a discriminatory purpose. Here, that standard is easily met under the circumstances: 1) undisputed evidence was presented at trial regarding the ODC's policy and practice to target solo practice lawyers and lawyers who are disfavored by a judge and that those were the grounds for ODC's 7-year attack campaign to try to destroy Abbott as a lawyer; and 2) the ODC's prosecution of Abbott was motivated by the discriminatory purposes, which contravene Abbott's 1st Amendment Freedom of Association rights to practice law alone and to be free from reprisals from a judicial officer due to personal animus. In turn, such policies and practices constitute a violation of Abbott's 5th and 14th Amendment rights to Equal Protection of the Laws; he has been disparately treated on class-based grounds.

Evidence aplenty was presented regarding multiple examples of lawyers that possessed the ODC-favored associational status of big law firm membership or

government employment being given a pass despite clear-cut ethical violations by the six (6) lawyers (5 Abbott complained about, and Aaronson). These examples included lawyers that outright lied to the Court and got away with it due to them being in favor with the judicial officer and/or having the right associational connection, so that the practice of the ODC to discriminate based on a lawyer's associational status was established. The ODC presented zero (0) contradictory evidence and fought Abbott mightily to prevent Abbott from obtaining further documentation that would establish the ODC's discriminatory practices and policies. The ODC thereby defaulted after Abbott presented a prima facie case of his affirmative defense of Selective Prosecution. Accordingly, the record supports a finding of Acquittal for Abbott based upon his proven defense of Selection Prosecution.

Superior Court Judge Norman Barron, a highly experienced Judicial Officer and former Criminal Prosecutor, well explained the need for a check on prosecutorial action:

> To permit criminal prosecutions to be initiated on the basis of arbitrary or irrational factors would be to transform the prosecutorial function from one protecting the public interest through impartial enforcement of the rule of law to one permitting the exercise of prosecutorial power based on personal or political bias. 'Nothing can corrode respect for a rule of law more than the knowledge that the government looks beyond the law itself to arbitrary considerations, such as race, religion, or control over the defendant's exercise of constitutional rights, as the basis for

> determining its applicability.'…It is the wisdom of our Constitution that such personal abuses of governmental power are proscribed.

Judge Barron went on to note that both the Federal and State Constitutions proscribe "selective prosecution which is a denial of equal protection, or vindictive prosecution, which is a violation of due process." Id. at *4, 5-6. The Court went on to explain that discovery is available based upon a preliminary showing of proof of the elements of selective or vindictive prosecution, but since Abbott was denied all available discovery that he was entitled to by the biased Herndon the threshold for Abbott to establish the defense must be lowered due to the artificial handcuffing imposed by Herndon (pursuant to his "hatchet man" role in this matter). Judge Barron also noted that even where discovery is allowed (which Abbott was denied), a selective or vindictive prosecution claimant need only make out a prima facie case, thereby causing "a shift in the burden of proof to the government – i.e., the burden of proving that the decision to prosecute was free of discriminatory taint." Id. at *7.

Abbott easily sets forth sufficient evidence to establish a Selective Prosecution defense. Abbott was selected for prosecution based on his associational status in violation of the 1st and 14th Amendments – he is a solo lawyer and the Vice Chancellor dislikes him. This prosecution's violations of Abbott's right to be free from such inviduous discriminatory policies and practices disables the ODC from proceeding based on the defense of Selective Prosecution. Abbott should be acquitted on all Counts.

B. Abbott Also Proved A Vindictive Prosecution Defense

A defense of Vindictive Prosecution is established based upon proof that pursuit of charges arises from a specific animus or ill-will or constitutes a prosecution of multiple stages of charges that increase the severity or numerosity of allegations ("upping the ante") in retaliation for the exercise of a legal or constitutional right in connection with the original charge. Id. at *10. In the case sub judice, Abbott presented evidence that Aaronson first pursued 3 Charges (which were abandoned in their entirety). That was followed by Mette's 4 Charges (all brand new). Then Mette swiftly shifted gears a month later to add a 5th Charge (with no factual merit due to lack of investigation or any evidence to support the charge). The ODC clearly "upped the ante," and it did so because Abbott vigorously defended himself and launched numerous offensive actions in order to attempt to obtain a fair proceeding and an appropriate end to ODC harassment.

Aaronson also "upped the ante" pursuant to the frivolous, ill-fated Petition for Interim Suspension pursued against Abbott in April of 2018, which the Supreme Court effectively yawned at and even Mette saw the handwriting on the wall about so as to dismiss it (based on its utter frivolity). Mette's bad faith addition of the meritless 5th Charge as a punitive measure for Abbott's mere request for the professional courtesy of a 2 week extension to make a written submission to the PRC smacks of the utmost ill-motivation and ill-intent.

There is simply no question that Aaronson and Mette, as well as Vavala, personally hate Abbott and have

proceeded out of a vindictive and retributive intent to try to nail Abbott. Indeed, the 5 Charges, which fail to state a claim as a matter of law on their face, speak volumes about how the ODC Disciplinary Counsel have abused their powers even so far as to commit criminal violations under Title 11 of the Delaware Code in the process. This situation constitutes the epitome of a Vindictive Prosecution, and therefore the charges should be dismissed as being improperly motivated based upon Prosecutorial Misconduct.

C. Demagogic Prosecution, Another Defense, Was Established Via Ample Proof

Next, Abbott also proved Demagogic Prosecution, which applies where a prosecution is instituted in bad faith and epitomizes a prosecutor's abuse of power since it reflects illegitimate personal considerations as opposed to valid law enforcement objectives. The 4 categories of Demagogic Prosecution are: 1) a prosecution undertaken with no reasonable belief that a conviction will follow; 2) a prosecution designed to retaliate against or deter a person from exercising a protected Constitutional right; 3) a prosecution for minor or seldom-enforced offenses coupled with overtones of political or racial animosity; and 4) a prosecution motivated by a desire for personal or political gain.

In the case sub judice, Abbott established the first, second, and fourth types of Demagogic Prosecution. The 5 Charges fail to state a claim on their face and no evidence exists to support a reasonable belief that a conviction by the high Clear and Convincing Evidence standard could be obtained. The "upping the ante" practices endemic in this 7-year matter evidence

a retaliatory intent, to-wit: they impinge on Abbott's exercise of his Due Process and 1st Amendment Constitutional rights. And the prosecution of Abbott has been based upon personal retribution with the hope of Aaronson, Mette, and Vavala being that they could harm Abbott and obtain personal aggrandizement and ingratiation to their powerful bosses (i.e. they could "show off" in order to enhance their personal reputation).

The actions of ODC Disciplinary Counsel in pursuing and then dropping the 3 Charges, pursuing and then dropping the bogus Petition for Interim Suspension, and "piling on" the 5th Charge are evidence of a vindictive personal spite campaign that is driven by improper, illegal, and Unconstitutional motives. Abbott's evidence supporting this defense was not rebutted by any countervailing evidence presented at trial, whether in the form of documents or testimony. Blanket, general denials of a plethora of evidence regarding the improper bases for prosecution of Abbott is insufficient to rebut Abbott's prima facie case of Demagogic Prosecution; Abbott's defense evidence is effectively uncontested. As a result, the charges against Abbott should be dismissed on the grounds that he has established the defense of a Demagogic Prosecution based upon the ODC's Prosecutorial Misconduct.

E. Abbott Was Improperly Targeted, Discriminated Against & Abused By This Ill-Motivated Prosecution

Abbott also presented evidence of situations in which other lawyers lied to the Court but were given a pass, which can only possibly be explained based upon their

associational status vis-à-vis government or big law firm employment and a judge's favorable personal opinion of the subject lawyer. The same holds true for offenses which are clear-cut violations of the DLRPC Rule against having Ex Parte communications with a judicial officer in pending litigation, filing frivolous and false pleadings with the Court, and only bailing out literally minutes before an unnecessary Court hearing was about to commence. These are the types of lawyer misconduct which the ODC should be all over, prosecuting them and shouting from the rooftops to the Delaware Bar that lawyers cannot engage in that type of improper conduct or else they will be prosecuted and punished. Instead, the ODC looked a blind eye to slam-dunk ethical violations, which can only be explained based upon the associational status of the lawyers involved.

When contrasted with this prosecution against Abbott, involving charges that cannot be proven under the fact pattern, it is crystal clear that the ODC has proceeded based upon personal animus, personal interests, and policies and practice of discriminatory treatment of sole practitioner lawyers and lawyers who are not personally favored by the judiciary. Such disparate treatment is violative of Abbott's 1st Amendment right to Freedom of Association, his 5th and 14th Amendment rights to Due Process, and his 14th Amendment right to Equal Protection. Weidman knowingly and intentionally procured 2 Court Orders based upon outright falsities and fraud, but the ODC refused to pursue charges against him for his clear violations of multiple DLRPC Rules because the Judicial Officer involved liked him and had no problems with his misconduct and his relatively big law firm membership. Letting Judicial Officers decide

that innocent lawyers should be prosecuted for lawful conduct and guilty lawyers should be let off scot-free is the epitome of a broken System.

The United States of America is a Country of laws, and not of men. The Rule of Law is paramount, not "who you know" or clubby-chummy relationships. And the ODC's high-jacking of a System that is legitimate on paper for their own personal purposes and in contravention of multiple Constitutional and legal rights possessed by Abbott's strikes at the very foundation of a free society and civilization upon which all of our Constitutional provisions and law are based. The Board Panel must put a stop to the ODC's misconduct, firmly rebuking it for its monumental waste of time and resources which have forced the 3 Board Panel members to suffer (as well as Abbott) for many years now. Acquittal is in order.

III. Undisputed Trial Evidence Established That Even If Abbott's Privileged & Confidential Statements Alleged To Constitute A DLRPC Violation Could Be Considered, They Constitute Truthful Free Speech That Is Protected By The 1st Amendment

At trial, Abbott presented substantial evidence tending to establish that all statements that the ODC is attempting to use against him in spite of Rules rendering them Confidential, Absolutely Privileged, and non actionable in nature were regardless cloaked with full 1st Amendment Freedom of Speech protections in order to preclude prosecution of Abbott as a matter of law. Freedom of Speech rights possessed by Abbott via Article I, § 5 of the Delaware Constitution also bar his prosecution for statements alleged. Abbott's fact and expert witness testimony

and documents (including his expert reports) were not rebutted by the ODC and therefore the statements cannot give rise to a violation of the DLRPC. See Ex. 163 and Ex. 164.

Abbott's trial testimony and documentary evidence established: 1) the Vice Chancellor acted in a discriminatory, inflammatory, and personally motivated fashion toward Abbott; 2) the ODC has pursued this matter against Abbott for 7 years now based on their fully evident personal animus and desire for personal retribution against Abbott; and 3) Weidman committed Lawyer Misconduct by falsely procuring 2 Court Orders and causing needless waste of considerable party and judicial resources. Again, Abbott extensively explained in his fact testimony and based on hearing transcripts and documentary evidence how he was the victim of rife abuse and misbehavior by the Vice Chancellor, unethical misconduct by Weidman, and long-term unfounded attacks by the ODC. In contrast, Abbott also established through testimony and documentation that there was no basis for the initiation of an investigation of this matter in the first place; it should have ended at the initial screening and evaluation stage or, at the latest, at the conclusion of the investigation stage. There was no valid factual support for the Vice Chancellor's Complaint against Abbott and the most that Aaronson could muster after spending a year of time on the matter were the 3 Charges, which she subsequently abandoned due to lack of foundational supported (and Abbott's PRC submission which established that the 3 Charges had no valid basis in law or fact).

But Mette soldiered on in an obvious vindictive and vengeful fashion to concoct more bogus charges – first

the 4 Charges and then the unfounded 5th Charge. So the uncontraverted record evidence establishes bad faith and unethical misconduct was committed by the Vice Chancellor, Weidman, and the ODC, but Abbott did nothing wrong at any time.

Regardless, Abbott testified at trial as a fact witness that every single statement alleged against him was in a private and personal capacity and he testified and presented an expert report which established that all statements were protected Free Speech which Constitutionally cannot be prosecuted. No evidence was presented by the ODC that any of Abbott's statements ever left the Private, Confidential, Privileged, Absolutely Privileged, or unpublished realms. That is fatal to the ODC's cause since one cannot be disrupted, degraded or treated discourteously if one is unaware of the conduct in question.

The only statements that the ODC could argue became known to the Tribunal referred to in statements made by Abbott would be a few excerpts contained in a Motion to Dismiss, which Abbott allegedly sent to the Supreme Court. But the ODC failed to present any evidence at trial that the Supreme Court: 1) received anything; 2) opened an envelope upon receiving anything; 3) read anything. And the Motion was filed with the Board, not the Court, so it was imbued with the Confidential and Absolutely Privileged protections afforded Abbott by DLRDP Rules (which Herndon and the ODC have used as a shield against Abbott). In addition, the ODC is estopped from asserting the claim based upon the fact that no Motion to Dismiss was ever addressed by the Supreme Court, presumably because the ODC asserted that the Motion could not be considered. Ex.

131. In sum, all of the statements may be characterized under the category of "A Message in a Bottle That Can Never Be Found" – i.e. no person that was the subject of the statements could have personally perceived any disruption, degradation, or discourtesy.

Abbott's expert evidence on the 1st Amendment established his entitlement to an Acquittal on all charges related to the supposed statements. See Ex. 163 and 164, the contents of which are hereby incorporated by reference. The 1st Amendment to the United States Constitution bars Abbott's prosecution for those statements. And no harm befalls anyone regarding those statements since they were not publicly disseminated or known to the Vice Chancellor or the Supreme Court. The ODC just brought those charges via Mette as part of the vindictive, retributive pursuit of some form of punishment against Abbott for Abbott's exercise of Constitutional rights to attack the corrupt System and the unethical and criminal conduct of Mette and Vavala.

IV. Abbott's Acquittal Is Supported By Violation Of His Constitutional Petition And Confrontation Rights

This action constitutes an Unconstitutional attempt to punish Abbott for exercising his rights to Petition the Government for Redress of Grievances via litigation aimed at bringing to light the corrupt practices and policies of the ODC generally and in its pursuit of Abbott specifically (i.e. facial and as applied arguments). In addition, Abbott has a right to confront his accuser, the Vice Chancellor, which was denied on multiple occasions in the pretrial discovery process and again at trial. Thus, this action is

Constitutionally infirm and dismissal of all charges should follow.

Pursuant to the 1st Amendment to the United States Constitution and Art. I, § 16 of the Delaware Constitution, Abbott is entitled to Petition Government for Redress of Grievances based upon his mistreatment at the hands of the marauders at the ODC lo' these last 7 years. In addition, Abbott has a right under the 6th Amendment to the U.S. Constitution and Art. I, § 7 of the Delaware Constitution to confront witnesses against him in person, including his accuser the Vice Chancellor. The Selective, Vindictive, and Demagogic Prosecution of Abbott based upon his exercise of the Right to Petition the Government for Redress of Grievances pursuant to both Court and administrative litigation was established on a prima facie basis at trial; there was no other merit-based reason presented by the ODC in opposition to Abbott's voluminous evidence of such intent being a motivating factor for his prosecution and persecution. And Abbott was roundly denied his right to confront the Vice Chancellor, whether in a deposition, pursuant to written questions, or through examination of him at trial.

At trial, the ODC effectively admitted that it was angry at Abbott for bringing cases against the ODC and Disciplinary Counsel for their corrupt conduct pursuant to their submission of documents and posing of questions to Abbott regarding those litigations. Abbott is imbued with the absolute Constitutional right and privilege to pursue such Redress of Grievances via government channels like the Courts, thereby establishing that the ODC's effort to punish Abbott constitutes the essence of a Selective, Vindictive, and Demagogic Prosecution.

Finally, the 1st Amendment-based Noerr-Pennington Doctrine provides Abbott with the veil of immunity under the Petition Clause. Immunity applies to administrative and judicial actions. Id. The doctrine cinches the fact that Abbott's proof of retributive intent behind this prosecution due to his exercise of 1st Amendment petitioning rights vests him with absolute immunity from prosecution.

The more Abbott fought the ODC's unsupported campaign of harassment, the more the ODC went after Abbott with unfounded allegations. The record reflects a series of retaliatory acts taken in the form of the bogus Petition for Interim Suspension, the pursuit of the frivolous 4 Charges, and the tacking on of the personally retributive 5th Charge (as a punitive measure for Abbott merely requesting a 2 week extension). The ODC did not present Aaronson, Mette, Vavala, or any other witness or documentary evidence at trial that might bring into question the undisputed evidence of the ODC's history of attempts to punish Abbott for his exercise of the right to Petition for Redress of Grievances via litigation aimed solely at attempting to obtain a fair and merit-based process. The proper means of redress for the ODC's Constitutionally violative acts is dismissal with prejudice.

Additionally, the outright denial of Abbott's right to confront the Vice Chancellor contravenes Abbott's Confrontation Clause rights under the Federal and State Constitutions. The Vice Chancellor is the one who started this whole mess in the first place by filing a bogus Complaint for the ODC to engage in a "fishing expedition" against Abbott despite the lack of any basis in fact or law. Indeed, the Vice Chancellor acted out of personal spite and dislike of Abbott since there

was no meritorious basis for his complaint against Abbott. Rather than rejecting the unfounded complaint of the Vice Chancellor as it should have done pursuant to the facts and the DLRDP, however, the ODC forged ahead to blindly attack Abbott despite the lack of any factual or legal foundation.

When it became obvious that the ODC had come up dry in its attempt to prosecute Abbott (in order to please the Vice Chancellor), the ODC shifted gears pursuant to the bogus Petition for Interim Suspension (later dismissed) and then to Mette's concoction of charges without factual foundation and based on his manufacturing of "process crimes" from the multi-year ODC pursuit of Abbott (which never should have been initiated in the first place). Abbott was Constitutionally entitled to call the Vice Chancellor and the members of the Supreme Court to testify in some form or fashion, to establish: 1) they were totally unaware of any of the statements that were alleged to have disrupted, degraded, or been discourteous toward them; 2) the Vice Chancellor had no factual foundation for his complaint to the ODC against Abbott; 3) the Vice Chancellor overlooked the unethical misconduct of Weidman due to his personal favor toward him; 4) the Vice Chancellor could not cite to any prohibition against Abbott advising his client on how to potentially avoid a settlement agreement and judgment; and 5) his issue with Abbott is based upon personal, subjective, stylistic differences. Since the foundational basis for virtually every component of every charge alleged against Abbott emanates from the Vice Chancellor, the denial of Abbott's right to confront him, in order to be able to fully and fairly present his defenses in this action renders it

Constitutionally infirm. Therefore, charges should be dismissed in their entirety.

It is well-settled that the 6th Amendment right to confront one's accuser requires that an adverse witness against the accused be subject to cross-examination on the content of his statement and whether it was truthful. In the instant action, the ODC relied upon statements about Abbott by the Vice Chancellor that were derogatory and defamatory. Abbott had the absolute Constitutional right under the 6th Amendment to confront the Vice Chancellor regarding those conclusory, unfounded allegations, as well as the insinuation that Abbott did something wrong by filing the baseless Complaint against Abbott with the ODC.

Again, we would not be involved in this process were it not for the Vice Chancellor's inappropriate conduct (i.e. Judicial Misconduct). He is the central figure and star witness in this case, but Abbott was denied his Constitutional right to examine the Vice Chancellor under oath in order for a fair and Constitutional trial, to which Abbott is guaranteed, to have occurred. The denial of Abbott's Constitutional rights constitutes grounds for dismissal of all charges.

V. The Charges Against Abbott Should Be Dismissed On The Grounds That The Entire System Is Unconstitutionally Discriminatory

The System itself violates the 1st and 14th Amendments of the United States Constitution due to its Inviduous Discrimination pursuant to the policies and practices applied by the ODC in favoring certain classes of like-situated individuals – lawyers associated with big law firms and government – and

the polar opposite targeting of classes of sole practice lawyers and lawyers disfavored by a judge. Such policies and practices violate the 1st Amendment of right to Freedom of Association and correspondingly breach the Equal Protection Clause of the 14th Amendment.

The right to the Freedom of Association includes the right to not associate, which would include the right to practice law by one's self as a solo practitioner. The fact that other lawyers choose to associate in bigger law firms does not entitle them to the type of immunity that they have been granted as a matter of practice by the ODC. And the ODC's multiple admissions that lawyers that violate the DLRPC will be given immunity based on the sole say-so of a judge directly conflicts with the ODC's similar practice (established indisputably at trial) of going after lawyers that a judge dislikes despite the lack of any valid basis to pursue charges. In point of fact, Abbott's case, juxtaposed with Weidman's conduct, exemplifies the Disparate Treatment that is meted out on a regular basis by the ODC against sole practitioners and lawyers that draw a judge's ire versus law firm attorneys favored by a Court.

At no time in the past 7 years has anyone presented a single ounce of evidence or legal authority to support the proposition that Abbott's act of advising Jenney on transfer of title to the 2 properties as a possible means of mooting the in personam settlement agreement and judgment was anything other than valid, legal, and permissible (if not required of Abbott based upon his ethical duties to his client). Therefore, it is evident that the Vice Chancellor's Complaint against Abbott to the ODC and the ODC's pursuit of the matter past

the initial review stage were not based on the merits; they were based on other class-based motives.

Abbott incorporates by reference the legal points contained in his 2 Complaints regarding Constitutional provisions and arguments. App. Exs. A and B. They establish the parameters of class-based discrimination in violation of the U.S. Constitution.

Six (6) unrefuted examples the ODC Unconstitutionally disparate treatment based upon associational status were admitted into evidence at trial: the 5 examples at Exs. 172 through 182 (further buttressed by Abbott's testimony cementing the discriminatory practices presented thereby) and Exhibit 198A. And Abbott testified based thereon about the ODC's failure to pursue slam-dunk charges against Aaronson due to her favored associational class and status.

The ODC failed to present any evidence at trial to counter Abbott's prima facie case of the discriminatory policies and practices of the System. Abbott was effectively hogtied by the biased Herndon's denial of discovery that would have further buttressed Abbott's case of the Unconstitutionality of the System, but despite that fact Abbott presented sufficient evidence to shift the burden to the ODC. The ODC, however, completely failed to provide any contrary evidence of a class-less administration of the System in response to Abbott's evidence of rash discriminatory actions in the past. Accordingly, the Board Panel should recommend that the entire System and Abbott's prosecution are Unconstitutionally invalid and that therefore the charges against Abbott should be dismissed in toto.

VI. Denial Of Discovery, The Right To Call Witnesses In Defense, And The Right To A Fair And Impartial Proceeding Violated Abbott's Constitutional Rights To Due Process

It is beyond question that Abbott is guaranteed the right to Due Process of Law under the 5th and 14th Amendments to the United States Constitution and Art. I, §§ 7 and 9 of the Delaware Constitution. Procedural Due Process requires, among other things, conformance with applicable Rules and legal provisions. Abbott's rights under applicable law were woefully denied in multiple respects, thereby invalidating this proceeding and requiring a recommendation of dismissal due to such Constitutional frailties.

First, Abbott was denied all discovery in direct contravention of his right to receive discovery pursuant to DLRDP Rule 15, which incorporates by reference, inter alia, the Rules allowing Abbott to take written and deposition discovery: Superior Court Civil Rules 26-36. Abbott restates and hereby incorporates by reference all prior filings establishing his entitlement to numerous forms of discovery, pursuant to depositions by written questions and Depositions Ad Testificandum and Duces Tecum.

Abbott was also denied his Constitutional Due Process right to present a full and fair defense at trial pursuant to the improper quashing of every single subpoena (17 total) regarding relevant witnesses Abbott sought to present at trial. Included in the list of witnesses were the Administrative Assistant, who could have discussed the collusion that she engaged in with the Board Chair, the ODC, and Herndon throughout the course of these proceedings or, in the

alternative, the co-colluders Mette, Vavala, Michael Barlow, etc. Abbott was also denied the right to call the Vice Chancellor and other witnesses that possessed relevant knowledge (some of whom would have taken only a mere few minutes to testify as to their limited, on-point information). Abbott was also denied the fundamental right to production of the documents, which was improperly denied to him pursuant to Herndon's biased denial of each and every trial subpoena issued (in contravention of Abbott's Due Process rights).

The denial of every witness that Abbott subpoenaed to testify in support of his defenses handcuffed Abbott in a fashion that prevented him from receiving a fair trial in violation of Constitutional Due Process principles. As a result, the dismissal of this action is warranted since Due Process concepts of fundamental fairness require it under the circumstances.

Abbott was also denied the right to a fair trial based upon the involvement of Herndon in the trial, in spite of the need for him to have previously recused himself and walked away from this matter. The contents of Argument II herein are hereby incorporated by reference. They establish that Herndon was specifically recruited and installed in this action as a plant and shill with the express aim by Mette that he assist the ODC in railroading Abbott due to their personal dislike of Abbott and a desire to appear that they were the saviors of the Delaware Bar (in spite of them being the very antithesis of what the Delaware Bar has historically stood for). Throughout the trial, Herndon posed questions and made rulings that were slavishly favorable to the ODC and harmful to Abbott (without justification). See e.g. App. Ex. N. Herndon and Vavala were even seen giving one another head

nodding signals during the course of trial in a fashion that evidenced the outright collusion between Herndon and the ODC to rig this case against Abbott. Herndon's obvious prejudice denied Abbott a fair trial and therefore requires dismissal of this improvidently brought action.

While Herndon did "throw a bone" to Abbott on a few occasions by ruling documents subject to Lawyer-Client Privilege were inadmissible, the inconsistency in his rulings, which admitted similarly privileged evidence, shows that the few Abbott-favorable rulings were merely intended as a subterfuge to try to convince the other 2 Board Panel members that he was being fair. That was not the case, however, as Herndon admitted the fundamental, material evidence that the ODC wanted admitted over the well-founded objections of Abbott. The scales of justice were tilted heavily in favor of the ODC and against Abbott to the point where Abbott was denied his fundamental Constitutional right to a fair trial under the Due Process Clause.

As noted at trial, it is literally impossible for Abbott, a 33-year experienced lawyer and member of the Delaware Bar who has had a successful career, to be wrong 100% of the time. Yet that is precisely what Herndon would have the other 2 members of the Board Panel believe pursuant to his dozens and dozens of rulings which denied discovery and resulted in an ODC-favorable trial evidence record. In sum, the numerosity of violations of Abbott's rights to a fair trial add up to a mountain of support for concluding that: 1) this proceeding is Constitutionally infirm; and 2) there is a resultant need for the other 2 members of the Board Panel to reject Herndon's biased positions and vote for the outright Acquittal of Abbott.

/s/ Richard L. Abbott
Richard L. Abbott
724 Yorklyn Road, Suite 240
Hockessin, DE 19707
(302) 489-2529
rich@richabbottlawfirm.com

Pro Se Respondent

Dated: April 18, 2022