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**THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA**



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February 7, 2024

Marcee D. Sloan, Prothonotary
The Disciplinary Board of the
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 5600
P.O. Box 62625
Harrisburg, PA 17106-2625

RE: Office of Disciplinary Counsel
v. ROBERT SCOTT CLEWELL
No. 17 DB 2023
Attorney Registration No. 63600
(Philadelphia)

Dear Ms. Sloan:

Office of Disciplinary Counsel ("ODC") will not submit any exceptions to the report of the Hearing Committee ("Committee") filed with the Board in the above matter pursuant to §89.201(c) of the Disciplinary Board Rules. However, we reserve the right to file a brief in opposition to any exceptions which may be filed by Petitioner.

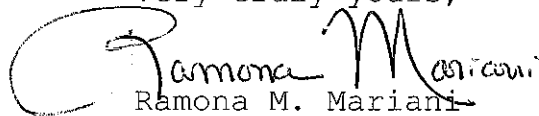
ODC does not take exceptions to the Committee's findings of fact or its recommendation for a two-year suspension. We note, however, that the Committee made a ruling on an issue of law that is inconsistent with a prior Opinion of the Board. Specifically, the Committee found that a violation of RPC 3.3(a)(1) could not be based upon an attorney's false statements to a court, under oath, where he is a party to a lawsuit and the representation was in a document filed on his behalf by his attorney. (Report, p. 48 n.6)

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In an Opinion addressing RPC 3.3, the Board found that a respondent had violated RPC 3.3(d) where she omitted material facts in an affidavit submitted to a Court in her capacity as a police officer. Opinion, Office of Disciplinary Counsel v. Anonymous, No. 94 DB 2008 (11/30/10). In rejecting the respondent's argument that the ethical rules did not apply because she was not acting as an attorney, the Board held that her "status as a lawyer [was] not held in abeyance while she [was] acting as a police officer" and that her duty of candor to the court "remain[ed] with her." Id. Similarly, here, Respondent's status as an attorney was not held in abeyance merely because he was acting as a party, rather than an attorney, and his duty of candor similarly applied.¹

The Committee found that its ruling regarding RPC 3.3(a)(1) had "no impact" on its recommended disposition of this matter. (Report, p. 48 n.6) As such, ODC does not present its discussion regarding RPC 3.3 as a basis for challenging the Committee's recommendation but only to apprise the Board of inconsistent precedent.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ramona M. Mariani". The signature is stylized with a large, looping initial "R" and a distinct "M".

Ramona M. Mariani
Disciplinary Counsel-In-Charge

JMK/jw

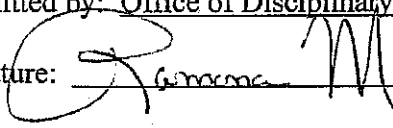
cc: Brian Zeiger, Esquire, Chairperson, Hearing Committee
Anthony Gallia, Esquire, Member, Hearing Committee
Brent Landau, Esquire, Member, Hearing Committee
Thomas J. Farrell, Chief Disciplinary Counsel
Jeffrey M. Krulik, Disciplinary Counsel, District I
Robert Scott Clewell, Respondent

¹ The Committee noted that the comments to RPC 3.3 state that "[t]his Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal." RPC 3.3, Comment 1. But the comment does not state that this is the only context in which Rule 3.3 applies. Indeed, as discussed, supra, the Board has rejected that exact position.

CERTIFICATE OF COMPLIANCE

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

Submitted by: Office of Disciplinary Counsel

Signature:  Ramona Mariani

Name: Ramona Mariani, Disciplinary Counsel-in-Charge

Attorney No. (if applicable): 78466