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IN THE SUPREME COURT OF IOWA

Supreme Court Case No. 24-0548

THE LAW OFFICE OF SHAWN SHEARER, P.C., SHAWN SHEARER & THEODORE F. SPORER

Plaintiffs,

vs.

IOWA DISTRICT COURT FOR FREMONT COUNTY

Defendant.

CERTIORARI
THE IOWA DISTRICT COURT FOR FREMONT COUNTY
HONORABLE ERIC NELSON – JUDGE
FOURTH JUDICIAL DISTRICT
CASE NO. EQCV025651

RELATED TO:
IOWA SUPREME COURT CASE NO. 23-1101

REPLY BRIEF

Shawn Shearer, AT014824
The Shearer Law Office, P.C.
1004 Melrose Avenue
University Heights, Iowa 52246
(214) 717-1828
shawn@shearerlaw.pro
Pro se and as Counsel for
The Shearer Law Office, P.C.

Theodore Sporer
1475 N.W. 92nd St.
Clive, Iowa 50325-6277
(515) 989-6080
tfs71559@yahoo.com
Pro se

PLAINTIFFS

TABLE OF CONTENTS

TABLE OF CONTENTS....................2
STATEMENT OF ISSUES PRESENTED FOR REVIEW....................5
DEVELOPMENTS IN *JENNINGS*....................6
INCORRECT DESCRIPTION OF CONSTITUTIONAL CLAIMS – RISK OF CHILLING FUNDAMENTAL RIGHTS CLAIMS....................8
I. Reversal of Dismissal of *Jennings* IOMA Claims Demonstrates the *Jennings* Petition was not Frivolous 10
II. District Court's Sanction Decision was Premature & Failed to Allocate Among Claims.................... 14
III. Voluntary Dismissal of *Jennings* would have been Negligent and a Breach of Duties to the *Jennings* Petitioners – Counsel Acted with "Reasonableness under the Circumstances 15
IV. Burden of Proof Unsatisfied by SHW.................... 17
V. The Sanction is Excessive, Punitive, in Excess of that need to Deter ... 18
CONCLUSIONS 22
RELIEF REQUESTED.................... 23
CERTIFICATE OF COMPLIANCE WITH 25
TYPE VOLUME LIMITATION, TYPEFACE and TYPE-STYLE REQUIREMENTS 25
ATTORNEY'S COST CERTIFICATE 26
CERTIFICATE OF FILING and SERVICE.................... 26

TABLE OF AUTHORITIES

Cases

Barnhill v. Iowa Dist. Ct.
765 N.W.2d 267 (Iowa 2009).. 16, 20

Brackett v. City of Des Moines
67 N.W.2d 542 (Iowa 1954)... 8

Committee on Professional Ethics v. Jackson
391 N.W.2d 699 (Iowa 1986)... 17

Committee on Professional Ethics v. Stienstra
395 N.W.2d 638 (Iowa 1986)... 16

First Am. Bank v. Fobian Farms, Inc.
906 N.W.2d 736 (Iowa 2018).. 14, 19, 20

Fox v. Vice
563 U.S. 826 (2011) 14

Harrison v. Springdale Water Sewer Com'sn
780 F.2d 1422 (8th Cir. 1986)... 20

Hawkins v. Citicorp Credit Services, Inc.
665 F.Supp. 2d 518 (D. Md. 2009) 11

Hunter et al. v. Page County et al.
653 F.Supp.3d 600 (S.D. Iowa 2023)... 10

Hunter v. Page Cnty.
102 F.4th 853 (8th Cir. 2024).. 10

In re Keegan Mgmt. Co., Secs. Litig.
78 F.3d 431 (9th Cir. 1996)... 12

Iowa Supreme Court Attorney Disciplinary Bd. v. Rhinehart
953 N.W.2d 156 (Iowa 2021)... 17

Landgraf v. USI Film Prods.
511 U.S. 244 (1994) 9

Lockhart v. Fretwell
506 U.S. 364, 376 (1993) 12

Mine Workers v. Illinois Bar Assn.
389 U.S. 217 (1967) 9

Morris v. Wachovia Securities, Inc.
448 F.3d 268 (4th Cir. 2006) 11

Nahas v. Polk Cnty.
991 N.W.2d 770 (Iowa 2023) 11

Pippen v. State
854 N.W.2d 1, 10 (Iowa 2014) 12

Ridley v. McCall
496 F.2d 213 (5th Cir. 1974) 16

Rowedder v. Anderson
814 N.W.2d 585 (Iowa 2012) 19, 21, 22

Schettler v. Iowa Dist. Ct.
509 N.W.2d 459 (Iowa 1993) 14

Teamsters Local Union No. 430 v. Cement Express, Inc.
841 F.2d 66 (3d Cir. 1988) 13

United Nat'l Ins. Co. v. R&D Latex Corp.
242 F.3d 1102 (9th Cir. 2001) 13

Statutes

Iowa Code ch. 21 7

Rules

Fed. R. Civ. P. 12(b)(6) 11
Iowa R. App. P. 6.901 5
Iowa R. Civ. P. 1.413(1) 5, 6, 16

Pursuant to Iowa R. App. P. 6.901, Plaintiffs submit this Reply in response to Appellee Brief ("*Appellee's Brief*") of Intervenor Shenandoah Hills Wind Project, LLC ("*SHW*") (filed 01/07/25) and the Waiver of Brief and Joinder ("*Brief Waiver*") in Intervenor's Brief (filed 01/08/25) of Fremont County, Iowa ("*Fremont*"), the Fremont Board of Supervisors ("*BOS*") and the named individuals (current and former members of the BOS). Appellee's Brief concedes error was preserved properly. All capitalized terms not otherwise defined herein have the meaning assigned to the term in Plaintiffs' Brief (filed 12/05/24). Plaintiffs seek to avoid repetition and therefore incorporate Plaintiffs' Brief herein.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Unlawful Imposition of Sanctions under Iowa R. Civ. P. 1.413(1)

Did the district court act unlawfully and/or abuse its discretion by imposing a Rule 1.413(1) sanction against the Plaintiffs in this certiorari action (counsel for the petitioners in *Jennings et al. v. Fremont County, Iowa et al.* (Fremont County Case No. EQCV025651) ("*Jennings*")?

2. Unreasonableness of Sanction

If a Rule 1.413(1) sanction is justified, is the district court's imposition of a $30,000 sanction unreasonable and in excess of that needed to deter for losing a motion to dismiss when the dismissal order was (i) based upon a legal

decision from a federal district court entered (a) after the *Jennings* petition was filed and (b) only four months before the dismissal order; and (ii) the federal district court decision was on appeal to the Eighth Circuit; and (iii) the *Jennings* dismissal order is, and remains, on appeal with the Iowa Court of Appeal?

DEVELOPMENTS IN *JENNINGS*

This Writ of Certiorari action involves a sanction imposed by the district court under Rule 1.413(1) on Plaintiffs, counsel for the petitioners in *Jennings et al. v. Fremont County, Iowa et al.* (Fremont County Case No. EQCV025651) ("*Jennings*" or the "*Underlying Case*").

On June 13, 2023, the district court (Judge Steensland, now retired) dismissed the *Jennings* petitioners' claims in the Underlying Case. (D0070 Ruling (06/13/23)).[1] A Notice of Appeal (D0073 Notice (07/07/23)) was timely filed and the parties briefed the arguments. (Sup. Ct. No. 23-1101) Oral arguments in *Jennings* were held November 7, 2024 before the Iowa Court of Appeals.

On December 18, 2024, the Court of Appeals decision in *Jennings* was issued, affirming in part, reversing in part, and remanding the *Jennings* to the

[1] Unless otherwise indicated, all docket references are to *Jennings* (Fremont Cnty. No. EQCV025651)

district court. The Court of Appeals reversed dismissal of the *Jennings* petitioners' claims under the Iowa Open Meetings Act ("*IOMA*"), Iowa Code ch. 21, and affirmed dismissal of the remaining claims by applying the 30-day writ of certiorari limitations period to those claims.

On December 26, 2024, a Petition for Rehearing was filed as to claims 3, 4, 7, 8 and 13 (road use and decommissioning agreement claims) asking for clarification as to why those claims were dismissed when the *Jennings* petition was filed less than 30-days after the BOS approved and entered those agreements. On January 6, 2024, a Petition for Further Review was filed requesting the Supreme Court's review of the court of appeals affirmation of all claims dismissed.

Plaintiffs' Brief in this case was filed on December 5, 2024, approximately two-weeks before the court of appeals decision in *Jennings* on December 18, 2024. Therefore, Plaintiffs' Brief could not address the implications of (i) the court of appeals reversal of the dismissal of the *Jennings* IOMA claims or (ii) the pending petitions for rehearing and further review.[2] These developments are addressed herein.

[2] Neither the intervenor (SHW) nor the named county defendants in *Jennings* filed a timely petition for rehearing or petition for further review with respect to the court of appeals reversal of the dismissal of the *Jennings* IOMA claims. Those IOMA claims will be remanded for further proceedings at the district court.

INCORRECT DESCRIPTION OF CONSTITUTIONAL CLAIMS – RISK OF CHILLING FUNDAMENTAL RIGHTS CLAIMS

Throughout the course of the *Jennings* related litigation, SHW's counsel has repeatedly misstated the constitutional claims made in *Jennings*.[3] That error is repeated again in the Appellee's Brief (pg. 36). The *Jennings* petition did not allege "the wind ordinance and the zoning ordinance were unconstitutionally vague" as asserted.

Claim 19 in the *Jennings* petition alleged that because the wind ordinance contained a "general repealer" provision – i.e. a provision that stated "All ordinances or parts of ordinances in conflict herewith are hereby ***repealed***" – all *other* ordinances were unconstitutionally vague as it is impossible for the public to know what *other* ordinances were repealed.

Court of Appeals Judge Langholz wrote a special concurrence to the *Jennings* court of appeals decision citing *Brackett v. City of Des Moines*, 67 N.W.2d 542, 545 (Iowa 1954)(explaining the new ordinance must sufficiently identify "an ordinance to be repealed … such that the lawmakers and the people be not left in doubt as to what ordinance is repealed.") and stating that "enforcing a law only after fair notice is a foundational pillar of the rule of

[3] The constitutional claims in *Jennings* are substantially different than those pled in *Hunter*. In *Hunter* the challenge was to the vagueness of the wind ordinance. In *Jennings*, the challenge is to the vagueness created in all non-wind ordinances if a "general repealer" is given legal effect.

law. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 265-66 (1994)(explaining that "[e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly" and that " a rule of law that gives people confidence about the legal consequences of their actions" fosters "creativity in both commercial and artistic endeavors" in "a free, dynamic society." *Jennings et al v. Fremont County et al.* (No. 23-1101 12/18/24 concur pgs. 16-17). This concurrence concluded that "because the general repealer clause leaves much doubt … that clause violates section 331.302(4). It is void.… in a proper case, I would hold the general repealer clause of the wind ordinance violated section 331.302(4)." *Id.* at pgs. 17-18.

The *Jennings* petition raises issues addressing a "foundational pillar of the rule of law" and, as discussed in Plaintiffs' Brief, the right to petition that "is among the most precious of liberties guaranteed by the Bill of Rights." *Mine Workers v. Illinois Bar Assn.,* 389 U.S. 217, 222 (1967).

The $30,000 sanction in this case raises the serious, and concerning, specter of chilling counsel from brining claims challenging government actors' failure to comply with foundational and sanctified rights. Even a risk of such a chilling effect is to be avoided. *McDonald v. Smith*, 472 U.S. 479, 486 (1985).

ARGUMENT

I. Reversal of Dismissal of *Jennings* IOMA Claims Demonstrates the *Jennings* Petition was not Frivolous

The court of appeals decision in *Jennings* assures that the *Jennings* petitioner's IOMA claims will be returned to the district court for SHW and the County defendants to answer and for discovery to be conducted.

The district court's sanction was based upon the federal district court's decision in *Hunter et al. v. Page County et al.* 653 F.Supp.3d 600 (S.D. Iowa 2023) ("*Hunter*") entered January 31, 2023. The *Jennings* petition was amended to remove claims in response to the *Hunter* decision. (compare D0001 Pet. (01/25/23) to D0008 Am.Pet. (02/08/23)).

On May 17, 2024, the Eighth Circuit vacated all of the *Hunter* district court decision, with one exception, and remanded the case with instructions to "dismiss without prejudice plaintiffs' all non-Open Meetings claims as moot" *Hunter v. Page Cnty.*, 102 F.4th 853, 875 (8th Cir. 2024).

With respect to the *Hunter* Open Meetings Act claim, the Eighth Circuit acknowledged the difference between the Iowa pleading standards and the federal pleading standards and acknowledged the *Hunter* Open Meetings Act claim may have survived the state pleading standard before removal. *Hunter* 102 F.4th at 874-875:

> ***Plaintiffs' complaint might have survived Iowa's more permissive pleading standard when plaintiffs brought this case in Iowa court.*** Iowa R. Civ. P. 1.421(1)(f); *see Nahas v. Polk Cnty.*, 991 N.W.2d 770, 776-77 (Iowa 2023) ("[W]e have explicitly declined to replace our notice pleading system with the heightened pleading standards that federal courts use.") However, we agree with the district court that, *once this case was removed, the complaint was insufficient to satisfy the more demanding standards of Rule 12(b)(6).*

The recent *Jennings* court of appeals decision confirmed this distinction is legally significant when it reversed dismissal of the *Jennings* petitioners' Open Meetings Act claims and remanded those claims for further proceedings.

For legal arguments to be sanctionable, "[t]he legal argument must have *absolutely no chance of success* under existing precedent. *Morris v. Wachovia Securities, Inc.*, 448 F.3d 268, 277 (4th Cir. 2006)." *Hawkins v. Citicorp Credit Services, Inc.*, 665 F.Supp. 2d 518, 527 (D. Md. 2009).

"[Fed. R. Civ. P. 11] is not breached if after reasonable legal research and adequate factual investigation, a party and counsel in good faith decide to challenge existing law. Responsible, albeit adventuresome, lawyers must not be sanctioned in those circumstances." *Gaiardo v. Ethyl Corp.*, 835 F.2d 479, 483 (3d Cir. 1987).

Plaintiffs' conduct in pursuing and advocating the *Jennings* petitioners' claims and arguing the distinctions between *Hunter* and *Jennings* is not

sanctionable behavior, especially when, ultimately, the Iowa court of appeals in *Jennings* confirmed the Eighth Circuit's analysis of the difference between federal and state pleading standards. *Hunter* provided no guidance on these questions.

If counsel for the *Jennings* petitioners had abandoned the case on the basis of the *Hunter* federal district court decision, counsel would have malpracticed. The Eighth Circuit made clear that the distinction between pleading standards was important. *Hunter* was not controlling in *Jennings* on these issues and the Iowa court of appeals confirmed such in its remand of the IOMA claims for discovery and trial.[4]

"The imposition of sanctions is an extraordinary remedy to be exercised with caution and restraint." *In re Keegan Mgmt. Co., Secs. Litig.*, 78 F.3d 431, 436–37 (9th Cir. 1996). "Judges … should impose sanctions on lawyers for their mode of advocacy *only in the most egregious situations*, lest lawyers be deterred from vigorous representation of their clients." *United Nat'l Ins. Co.*

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[4] *Hunter* was not controlling because: (i) *Hunter* was on appeal and subsequently vacated (other than the Open Meetings Act claims) by the Eighth Circuit; (ii) the claims in *Hunter* and in *Jennings* were different (e.g. the constitutional claims discussed above); (iii) the facts were different (e.g. no road use or decommissioning agreements in *Hunter*) and (iv) federal district court decisions as to Iowa law are not binding, *Lockhart v. Fretwell*, 506 U.S. 364, 376 (1993)(Thomas concurring); *Pippen v. State*, 854 N.W.2d 1, 10 (Iowa 2014). (*See also* D0078 Resistance (07/24/23) & D0093 Brief (12/19/23)).

v. R&D Latex Corp., 242 F.3d 1102, 1115 (9th Cir. 2001)(emphasis added).

The standard advocated by SHW for sanctionable conduct is inconsistent with the law and inconsistent with precedent. The loss of a pre-answer motion to dismiss is alone is insufficient for the imposition of sanctions.

> "[L]itigants misuse the Rule when sanctions are sought against a party or counsel whose only sin was being on the unsuccessful side of a ruling or judgment. . . ***Substantially more is required***." 835 F.2d at 483. Rule 11 is intended only for exceptional circumstances. . .

Teamsters Local Union No. 430 v. Cement Express, Inc., 841 F.2d 66, 68 (3d Cir. 1988).

The events in this case are not "exceptional circumstances." The timeline was compressed – the *Hunter* federal district court decision was on January 31, 2023, the *Jennings* amended petition was filed February 8, 2023 (D0008 Am.Pet.), oral arguments on the *Jennings* motion to dismiss were on May 15, 2023, and the *Jennings* dismissal was on June 13, 2023 (D0070 Ruling) – a period of 133 days. Subsequently, *Hunter* was vacated and *Jennings* reversed in part. Reasonableness of counsels actions must be viewed in the context at the time counsel made their decisions. No sanction is justified and counsel acted reasonably and responsibly to their obligations to their clients and the court.

II. District Court's Sanction Decision was Premature & Failed to Allocate Among Claims

The Court is "mindful that our civil procedure system does not expect parties to have their entire case established at the time the petition is filed." *Schettler v. Iowa Dist. Ct.*, 509 N.W.2d 459, 466 (Iowa 1993).

Jennings counsel argued to the district court that a determination of sanctions while both the *Hunter* and *Jennings* appeals were pending was premature. (D0078 Resistance (07/24/23); D0093 Brief (12/19/23).

The district court failed to determine which fees were "caused by the sanctioned filing." *First Am. Bank v. Fobian Farms, Inc.*, 906 N.W.2d 736, 744 (Iowa 2018). The district court failed to allocate the sanction to specific documents or claims.[5]

"Only attorney time which is in response to that which has been sanctioned should be evaluated. *Fobian Farms*, 906 N.W.2d at 752. "If a defendant would have incurred those fees anyway, to defend against non-frivolous claims, then the court has no basis for transferring the expense to the plaintiff." *Fox v. Vice*, 563 U.S. 826, 836 (2011).[6]

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[5] Plaintiffs advised the district court of the need to allocate any sanction amount to specific conduct. (D0108 Jan.16.24.Trans. 100:19 – 101:03 (07/18/24).

[6] SHW's counsel admits that its briefing on the *Jennings* issues was completed in *Hunter*, not in *Jennings*, (D0088 Sept.14.23.Trans. 22:25-23:3 (10/20/23).

The court of appeals reversing dismissal of the *Jennings* IOMA claims and remanding back for discovery and trial vindicates the entire Amended Petition and no sanction can be justified.[7] The fees would have been incurred anyway.

This case is far from the "egregious" behavior for which sanctions are reserved. Upholding the largest sanction in state history that was imposed early in a case (following a grant of a pre-answer motion to dismiss only 133 days into the proceedings) will chill vigorous representation and will chill legitimate claims for which judicial determination is a right protected by the Iowa and United States constitutions.

III. Voluntary Dismissal of *Jennings* would have been Negligent and a Breach of Duties to the *Jennings* Petitioners – Counsel Acted with "Reasonableness under the Circumstances

Hunter was on appeal and undecided the entire period the *Jennings* substance and sanctions were being briefed and argued. The district court relied exclusively on the *Hunter* federal *district court* decision as the basis for imposing the sanction in this case. However, the *Hunter* case, in the end, after the Eighth Circuit decision, provided no guidance and cannot be the basis for sanctions in *Jennings*.

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[7] Any sanction is premature given the pending *Jennings* Petition for Rehearing and Petition for Further Review.

- The federal district court's decision in *Hunter* on the non-Open Meetings Act claims was vacated and this vacatur destroys the precedential value of the federal district court's *Hunter* opinion as to those claims. *Ridley v. McCall*, 496 F.2d 213, 214 (5th Cir. 1974);
- The dismissal of the *Hunter* Open Meetings Act claim was affirmed, but the Eighth Circuit acknowledged that the *Hunter* petition may have survived Iowa's notice pleading standards. The court of appeals in *Jennings* reversed dismissal of the Open Meetings Act claim based on Iowa's notice pleading standard affirming this difference in pleading standards required different analysis by counsel.

These decisions vindicate *Jennings* Counsels' decision to amend the Petition and pursue their client's claims in *Jennings*. Voluntary dismissal of *Jennings* before the *Hunter* appeal was completed would have been negligent and would have waived the *Jennings* petitioners' rights.

Counsel acted with "reasonableness under the circumstances." *Barnhill v. Iowa Dist. Ct.*, 765 N.W.2d 267, 272 (Iowa 2009). Rule 1.413(1) does not require *Jennings* Counsel to malpractice or violate ethical obligations to the client by taking action that would allow a statute of limitations period to expire. See *Committee on Professional Ethics v. Stienstra*, 395 N.W.2d 638, 640 (Iowa 1986); *Committee on Professional Ethics v. Jackson*, 391 N.W.2d

699, 701 (Iowa 1986).

Sanctions should not be imposed for counsel fulfilling their legal and ethical obligations to clients. The district court abused its discretion and lacked substantial evidence in imposing a sanction on *Jennings C*ounsel.

IV. Burden of Proof Unsatisfied by SHW

Sanctions under Rule 1.413 may only be awarded when the violation is established "by a preponderance of the evidence." *Iowa Supreme Court Attorney Disciplinary Bd. v. Rhinehart*, 953 N.W.2d 156 (Iowa 2021).

SHW admits the only issue on the sanction liability question is whether *Jennings* Counsel conducted reasonable inquiry *after* the *Hunter* district court decision was entered. What evidence is there of record as to what inquiry, or alleged lack thereof, was or was not conducted by *Jennings* Counsel? -- None.

To the contrary, the record shows specific diligence as to changes in the law – the prompt filing the Amended Petition (removing two claims in reaction to *Hunter*). The records shows continuing diligence as to factual developments – the *Jennings* TRO briefing in which counsel provided the court affidavits of clients as to real-time factual events – i.e. advising the court of changes made to board agenda items within hours of them occurring (see D0047-48 Mot.&Aff. (03/27/23)). The record contains *Jennings* Counsel's personal statements as to the diligence conducted throughout the case. See

D0088 Sept.14.23.Trans. 34:22-38:8 (10/20/23).

Jennings Counsel asserted consistent legal positions in both cases in both federal and state district courts and appeals courts and argued in good faith that *Hunter* was decided improperly and distinguished the material factual differences between the two cases.[8] This is not a lack of diligence as to the law or facts.

There is no evidence of record presented by SHW to demonstrate a lack of diligence by *Jennings* Counsel after the *Hunter* district court decision. The burden of proof is unsatisfied and the sanction unsupported by substantial evidence.

V. The Sanction is Excessive, Punitive, in Excess of that need to Deter

The district court's $30,000 sanction is excessive, inconsistent with precedent, beyond that needed to deter, and was an abuse of discretion

[8] This is in contrast to SHW's Counsel, Fredrickson, taking simultaneous contrary positions on behalf of Invenergy subsidiaries before the state courts of Iowa. Compare D0063 Resist. Pgs. 6-7 in which Invenergy asserts non-zoning ordinances may limit zoning ordinances unless contrary to state law Invenergy's post-trial briefing in *Worthwhile Wind LLC v. Worth County* (CVCV012819) in which Fredrickson argues the complete opposite asserting a stand-alone home rule ordinance under Iowa Code ch. 331 cannot restrict rights under a zoning ordinance and fails to provide the court the contrary authority cited in this case. Fredrickson's briefing in *Worthwhile* overlapped with its briefing in *Jennings*. The omission was knowing and intentional and a violation of IRPC 32:3.3 (a)(2)(candor to the court, disclosure of contrary authority). The law of "vested rights" in Iowa is now muddled and contradictory due to this failure.

This Court has acknowledged that "the stigma attached to the mere imposition of sanctions" is a significant deterrent to a lawyer and that deterrence – not compensation – the primary goal of sanctions. *Rowedder v. Anderson,* 814 N.W.2d 585, 591 (Iowa 2012). "*Rowedder* is instructive making clear the *minimum* amount to deter is more significant in determining the proper sanction than the victims' attorney fees." *Fobian Farms*, 906 N.W.2d at 747.

A sanction of $30,000 in a case lasting a mere 135 days is unprecedented in this state and in any other jurisdiction (with the exception of cases in which dozens to hundreds of cases filed by the same counsel are repeatedly dismissed for the same reason). See D0093 Brf.Ex.K (12/19/23). See also, discussion of *Keister v. PPL Corp.* (M.D.Pa. 2016) at D093 Ex. K pg. 5-6 & D093 Ex. M in which multiple non-monetary sanctions (public reprimands) were issued to counsel across several different cases over three-years of litigation *before* monetary sanctions were imposed.

No sanction is justified. The risk of chilling is high.

The mere risk of chilling must be heavily weighed when, as here, the petitioners allege unlawful conduct by elected officials. Suits checking proper and legal governance implicate the fundamental rights of the citizens to be governed in accordance with the rule of law and to have access to the court to

petition for grievances. The right to petition has "a sanctity and a sanction not permitting dubious intrusion." *Harrison v. Springdale Water Sewer Com'sn*, 780 F.2d 1422, 1427 (8th Cir. 1986)(quoting *Thomas v. Collins*, 323 U.S. 516 (1945)). The Supreme Court has directed extreme caution in face of chilling the exercise of the right to petition. *McDonald*, 472 U.S. at 487 ("we extend substantial breathing space to such expression" because imposing liability "would intolerably chill 'would be critics of official conduct … from voicing their criticism.")

Plaintiffs' Brief analyzed the disproportionate nature of a $30,000 sanction in this case (pre-answer motion to dismiss) compared this sanction in *Jennings* to:

(i) *Barnhill* - a $25,000 sanction in private-party litigation over 11-years involving five petitions, eight motions for summary judgment, a class certification appeal, a summary judgment appeal, a trial with counsel's lack of candor at trial, etc. cases and numerous appeals);

(ii) *Fobian Farms* – a $30,000 sanction involving a three day trial and counsel's participation in fraud, counsel's unbelievable testimony, and counsel's acts to "bully" surveyors over what was known to be a scrivener's error. Counsel's conduct was possibly criminal in nature and egregious.

(iii) *Rowedder* – a $1,000 sanction in a case involving real estate fraud, discovery disputes, improper parties joined as defendants, motions for summary judgment and litigation lasting more than two years.

(iv) *Rhinehart* – a $5,000 sanction involving multiple cases, a trial, multiple appeals, motions on appeal, interlocutory appeals and "continuously relitigating an unfavorable ruling in every available vehicle."

This case, *Jennings*, has none of the factors present in any of these cases upon which sanctions were justified. Yet, the sanction in this case treats *Jennings* Counsel (i) the same as counsel sanctioned for submitting false testimony, bullying to obtain false statements and engaging in real estate fraud in *Fobian Farms*, (ii) worse than sanction than imposed on *Barnhill* for egregious conduct over 11-years, (iii) 30-times worse than counsel in *Rowedder*, and (iv) 6-times worse than counsel in *Rhinehart.*

Even in these cases, the sanction did not constitute the entirety of legal fees the violating counsel received from their clients. This *Jennings* sanction is so excessive as to completely deprive counsel any compensation for work performed on behalf of the *Jennings* petitioners.

If any sanction is imposed, it must be less than the $1,000 sanction in *Rowedder* and sanctions need not be monetary. "The stigma attached to the

mere imposition of sanctions" is a significant deterrent to a lawyer. *Rowedder v. Anderson,* 814 N.W.2d 585, 591 (Iowa 2012). A public reprimand is a sufficient deterrent. A $30,000 sanction is punitive and will forever chill citizen contests to government action – a process that is a foundation of American governance.

The record is devoid of evidence to support such a sanction. No fee statements were submitted as evidence. SHW counsel's affidavit describes some estimation method with no specificity of fees incurred for specific tasks in *Jennings* and *Jennings* Counsel was not provide the opportunity to cross-examine the affiant.

The $30,000 sanction amount was an abuse of discretion, excessive, more than that needed to deter and unsupported by any evidence, let alone substantial evidence.

CONCLUSIONS

A $30,000 sanction is excessive, beyond that needed to deter, and inconsistent with sanctions imposed for significantly more egregious conduct in the cases discussed above. The amount was not allocated among claims and was not based upon fee statements or evidence of fees incurred. The district court abused its discretion in setting the $30,000 amount. If any sanction is imposed, it must be nothing more than a public reprimand.

That said, no Rule 1.413(1) sanction is justified. *Jennings* Counsel acted with reasonableness under the circumstances. The rulings on appeal of *Hunter* and *Jennings* vindicate counsel's acts of amending the Petition in reaction to *Hunter* and proceeding forward with *Jennings*, which itself is now being remanded for discovery and trial, at least in part, if not more depending on the resolution of pending Petitions for Rehearing and for Further Review. *Jennings* Counsel completed more than reasonable investigations of the facts and law and made good faith arguments to distinguish the factual and legal matters between the two cases as is permitted by Rule 1.413(1). *Jennings* Counsel fulfilled thier legal and ethical duties to their clients by continuing to pursue *Jennings* while appealing *Hunter*. The district court abused its discretion in imposing a sanction.

RELIEF REQUESTED

For the reasons set forth in Plaintiffs' Brief, those set forth herein, and those contained in the record of this case (particularly *Jennings* Counsels' briefing on the sanctions issues at the district court (See D0078 Brf. (07//24/23) & D0093 Brf. (12/19/23)) there is no basis for sanctions under Rule 1.413(1). The district court erred as a matter of law and abused its discretion and the sanction order should be vacated entirely.

Alternatively, if a sanction must be imposed, Rule 1.413 does not require monetary sanctions. This Court may develop its own non-monetary sanctions, but should be mindful of the stigma and burden already imposed. Any sanction must be extremely mindful of the fundamental rights of our citizen's to speak and petition their government without punishment.

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Respectfully submitted,

/s/ Shawn Shearer
Shawn Shearer, AT014824
The Shearer Law Office, P.C.
1004 Melrose Avenue
University Heights, Iowa 52246
(214) 717-1828
shawn@shearerlaw.pro
Pro Se individually and
Attorney for The Shearer Law
Office, P.C

/s/ Theodore Sporer
Theodore Sporer
1475 N.W. 92nd St.
Clive, Iowa 50325
(515) 989-6080
tfs71559@yahoo.com
Pro Se

PLAINTIFFS

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/s/ Shawn Shearer
Shawn Shearer, AT014824
The Shearer Law Office, P.C.
1004 Melrose Avenue
University Heights, Iowa 52246
(214) 717-1828
shawn@shearerlaw.pro

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/s/ Shawn Shearer
Shawn Shearer, AT014824
The Shearer Law Office, P.C.
1004 Melrose Avenue
University Heights, Iowa 52246
(214) 717-1828
shawn@shearerlaw.pro

CERTIFICATE OF FILING and SERVICE

I, the undersigned, hereby certify that I filed and served the foregoing Plaintiffs' Brief and Request for Oral Argument through the Iowa Judicial Branch Appellate EDMS on January 27, 2025.

/s/ Shawn Shearer
Shawn Shearer, AT014824
The Shearer Law Office, P.C.
1004 Melrose Avenue
University Heights, Iowa 52246
(214) 717-1828
shawn@shearerlaw.pro