IN THE IOWA SUPREME COURT

Supreme Court No. 24–0548
District Court No. EQCV025651
Related Supreme Court No. 23–1101

THE LAW OFFICE OF SHAWN SHEARER,
SHAWN SHEARER, AND THEODORE SPORER,
Plaintiffs,

vs.

IOWA DISTRICT COURT FOR FREMONT COUNTY,
Defendant.

Certiorari
Iowa District Court in and for Fremont County
The Honorable Eric Nelson

BRIEF FOR APPELLEE SHENANDOAH HILLS WIND PROJECT, LLC

Kristy Dahl Rogers, AT0012773
Bret A. Dublinske, AT0002232
Brant M. Leonard, AT0010157
FREDRIKSON & BYRON, P.A.
111 East Grand Avenue, Suite 301
Des Moines, Iowa 50309
Tel: (515) 242-8900
Fax: (515) 242-8950
Email: krogers@fredlaw.com
bdublinske@fredlaw.com
bleonard@fredlaw.com

Attorneys for Shenandoah Hills Wind Project, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Pages**

Statutes **Pages**

Rules **Pages**

Other **Pages**

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The District Court Did Not Abuse Its Discretion in Concluding Counsel Violated Rule 1.413.

II. The District Court Did Not Abuse Its Discretion in Imposing a $30,000 Sanction to Deter Further Violations of Rule 1.413.

ROUTING STATEMENT

This case is appropriate for determination by application of existing legal principles by the Court of Appeals, but Appellee does not object to retention by the Supreme Court. *See* Iowa R. App. P. 6.1101.

NATURE OF THE CASE

Pursuant to Iowa Rule of Civil Procedure 1.413(1), with each filing they sign, Iowa attorneys certify they have determined after reasonable inquiry that the filing is well grounded in fact and warranted by existing law or good faith argument for extension of the law and is not filed for any improper purpose.

Attorneys Shawn Shearer and Theodore Sporer ("Counsel") litigated the underlying case. Following its dismissal, the district court granted a motion for sanctions and imposed monetary sanctions in the minimum amount it found necessary to deter Counsel from future violations of rule 1.413. Counsel now seeks certiorari review.

STATEMENT OF THE FACTS

Shenandoah Hills Wind Project, LLC ("SHW") is an affiliate of Invenergy LLC, a leading developer of renewable energy projects throughout the U.S. and globally, with over 30,000 megawatts ("MW") of operational generating capacity including projects in at least twenty Iowa counties. SHW's team is experienced at working with counties, landowners, and other stakeholders and has complied with scores of ordinances.

SHW invested several years and millions of dollars carefully developing a state-of-the-art wind energy conversion system ("WECS") in Page and Fremont Counties ("the Project"), consistent with bipartisan state and federal policies. *See, e.g.*, Iowa Code § 476.41 ("It is the policy of this state to encourage the development of alternate energy production facilities…."); *id.* § 18B.1(3) (encouraging local governments to implement this policy); 26 U.S.C. § 45 (creating a tax incentive for renewable energy production).

While the Project was being developed, wind ordinances comprehensively regulating the siting, construction, and operation of WECS were enacted by the counties' respective boards of supervisors on October 29, 2019 (Page) and June 24, 2020 (Fremont).[1, 2] The ordinances were "almost identical."[3] Before their enactment, building WECS was effectively foreclosed by the counties' respective zoning ordinances, which did not contemplate WECS.[4] For the next two years, SHW

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[1] All record citations are to the district court record in this case (EQCV025651) unless otherwise indicated.

[2] *See* D0008, Am. Pet. ¶ 35 (02/08/2023); D0001 (EQCV105928), Pet. ¶ 51 (09/19/2022).

[3] D0070, Ruling at 2 (06/13/2023). *Compare* Attach. C to D0008, Fremont County Ordinance #2020-1 (02/08/2023), *with* Page County Ordinance #2019-2 (Oct. 29, 2019), https://cap.gmdsolutions.com/lib/pdf.js/web/viewer.html?file=/api/files/add44c82-2fa5-4b28-92af-da9dd30b5052/64836517400A47439B0405484E09CCA4. *See also* Attach. to D0001 (EQCV105928), Page County Ordinance #2019-2 (09/19/2022).

[4] *See* D0008 ¶¶ 21–29; Attach. A to D0008, Fremont County Zoning Ordinance (02/08/2023); Attach. to D0001 (EQCV105928), Page County Zoning Ordinance at 42–103.

developed the Project to the standards in the wind ordinances before submitting nearly identical permit applications to the counties in March 2022.[5] The applications included a dozen detailed appendices addressing the wind ordinances' requirements.[6]

Months later, both applications were unanimously approved by the counties' boards of supervisors on July 13, 2022 (Fremont) and August 2, 2022 (Page).[7] The wind ordinances also required SHW to enter road use and decommissioning agreements with the counties, and Fremont County executed them on December 28, 2022.[8]

Counsel began representing opponents of the Project in July 2022 and would soon file consecutive lawsuits seeking to halt it.[9]

Page County Suit

Counsel filed a 116-page petition challenging the Page County wind ordinance and permit on September 19, 2022—years after the October 2019 ordinance enactment and 41 days after meeting minutes reflecting the permit

[5] *See* D0008 ¶ 51; D0001 (EQCV105928) ¶ 98.
[6] *Compare* Attach. to D0001 (EQCV105928), Page Cnty. Appl. at 27–40, *with* Attach. D to D0008, Fremont Cnty. Appl. (02/08/2023).
[7] *See* D0008 ¶ 62; D0001 (EQCV105928) ¶ 184(t).
[8] *See* D0008 ¶ 66; Attach. C to D0008 §§ 7–8.
[9] Pls.' Br. at 15.

approval were published.[10] Upon discovering that suit, SHW's attorneys sent Counsel a letter explaining the petition was not well grounded in fact, law, or good faith argument for extension of the law as required by rule 1.413, pointing out that certiorari review was time-barred by Iowa Rule of Civil Procedure 1.1402(3) because over thirty days had passed since the challenged acts and identifying other legal and factual defects in the petition.[11] The letter further noted this Court's recent rejection of similar wind ordinance challenges in *Mathis v. Palo Alto County Board of Supervisors*, 929 N.W.2d 191 (Iowa 2019).

SHW moved to intervene, noting its interest in the permit satisfied both the requirements for intervention of right and the more stringent test for indispensable parties.[12] Counsel then moved for an ex parte temporary restraining order ("TRO") and resisted intervention, asserting SHW had no interest in the action.[13] Before any motions were decided,[14] however, Page County removed the case, which included a federal constitutional claim, to federal court.[15]

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[10] *Hunter v. Page County*, 653 F. Supp. 3d 600, 608 (S.D. Iowa 2023), *aff'd in part, vacated in part*, 102 F.4th 853 (8th Cir. 2024).
[11] *See generally* Attach. A to D0075, Letter (07/13/2023).
[12] *See Hunter*, 653 F. Supp. 3d at 612, 620–21.
[13] *See id.*; *see also* D0005 (EQCV105928), M. Ex Parte TRO (09/26/2022); D0011 (EQCV105928), Resist. M. Intervene (09/29/2022).
[14] Counsel had also moved to strike an appearance by SHW's counsel and SHW's resistance to the TRO motion. *See* D0010 (EQCV105928), M. Strike Resist. (09/28/2022); D0019 (EQCV105928), M. Strike App. (10/04/2022).
[15] *See Hunter*, 653 F. Supp. 3d at 610, 612–15.

Counsel resumed their serial motion practice in federal court, vehemently resisting intervention and asserting SHW lacked standing and had no permit,[16] then moving for remand on the untenable theory that serving the county auditor had constituted service on a supervisor in his *personal* capacity such that his consent was required to properly remove the case.[17]

The federal court heard argument on the many motions by then pending before it on January 6, 2023. Weeks later, on January 31, it issued an order denying six pending motions filed by Counsel and granting SHW's and Page County's motions to dismiss.[18] The court declined to remand the case after deciding the sole federal claim, instead exercising supplemental jurisdiction to decide the state-law claims, citing the "unusual docket" Counsel's serial motion practice had created and the "significant investment of time and energy by the parties and the Court."[19]

Citing *Mathis*, the federal court dismissed the state-law claims as untimely, barred by the exclusive-remedy doctrine, and too speculative to state a claim, noting the challenged policy decisions were "entrusted to the elected representatives on the

[16] *See id.* at 612, 620–21.
[17] *See Hunter*, 102 F.4th at 867–68 (citing Iowa R. Civ. P. 1.305(9), (13)).
[18] *See Hunter*, 653 F. Supp. 3d at 621.
[19] *See id.* at 615.

board of supervisors."[20] Rejecting Counsel's argument that the petition raised novel state law questions necessitating remand, the court observed,

> *Mathis* demonstrates—contrary to Plaintiffs' assertion—that the problems raised here are not issues of first impression in the State such that remand is appropriate.

Hunter v. Page County, 653 F. Supp. 3d 600, 615 (S.D. Iowa 2023) *aff'd in part, vacated in part*, 102 F.4th 853 (8th Cir. 2023). SHW elected not to seek sanctions upon *Hunter*'s conclusion as a professional courtesy.

Fremont County Suit

Anticipating the *Hunter* order, Counsel initiated this action challenging the Fremont County ordinance and permit on January 25, 2023.[21] The two cases presented nearly the same facts. The challenged ordinances were "almost identical,"[22] as were the applications approved under them.[23] The cases were filed long after both ordinances were passed and both permits were approved.[24] The new petition was filed 946 days after the Fremont County wind ordinance was enacted and 196 days after the Fremont County permit was granted.[25]

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[20] *See id.* at 618–20 (citing *Mathis v. Palo Alto Cnty. Bd. of Sup'rs*, 927 N.W.2d 191, 200 (Iowa 2019)) (other citations omitted).
[21] D0001, Pet. (01/25/2023).
[22] D0070 at 2.
[23] *Compare* Attach. to D0001 (EQCV105928) at 27–40, *with* Attach. D to D0008.
[24] *See* D0008 ¶¶ 35, 62; *Hunter*, 653 F. Supp. 3d at 608–09.
[25] *See* D0008 ¶¶ 35, 62.

Because of these similarities, many claims asserted in *Hunter* were "the same or substantially similar to the claims" asserted in the new suit, and the new suit presented issues "nearly identical to the issues presented in *Hunter*."[26] Both petitions challenged a wind ordinance and a permit, seeking relief by certiorari, declaratory judgment, injunction, mandamus, or statute.[27] Relief was sought in both suits on many identical legal theories, as Counsel asserted the challenged actions had violated Iowa Code sections 331.301(1)–(2), 331.302(1), 331.302(4), 331.302(6), 331.302(14), 335.24, 351.1, 352.5, and 414.3, as well as the open meetings act in chapter 21.[28]

In contrast, the differences between the suits were limited. Only the latter suit included new claims purportedly challenging the agreements or seeking to "enforce" the ordinance by making SHW apply for a new permit, but these claims, too, functionally attacked either the wind ordinance or the permit.[29] Perhaps the most striking difference concerned how the requested relief was pled. Notwithstanding *Hunter*'s thorough discussion of the exclusive-remedy doctrine,[30] the new petition evinced an effort to circumvent the 30-day limitations period applicable to certiorari

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[26] D0089, Ruling at 3, 6 (11/07/2023).
[27] *Compare* D0008 at 2–3, *with* D0001 (EQCV105928) at 2–3.
[28] *Compare* D0008 ¶¶ 125, 127, 142, 149, 158–160, 168–171, 194, 226, 244, 250, *and* D0017, M. TRO (03/21/2023), *with* D0001 (EQCV105928) ¶¶ 42, 211–212, 241–253, 313, 557, 559–569, *and* D0005 (EQCV105928).
[29] *See* D0008 at 2–3 (claims 3–4, 7–8, 13, 15); *id.* ¶¶ 64–86, 133–140, 196–204.
[30] *Hunter*, 653 F. Supp. 3d at 619–20.

through a pleading scheme whereby the petition requested only declaratory and injunctive relief.[31] Yet for every claim seeking declaratory relief, the same or another claim sought an injunction "by mandamus, ***certiorari***, general equitable authority, common law, or as authorized by statute" on the same legal theory.[32] As a result, Counsel requested certiorari relief in connection with the legal theories advanced in 19 of 23 claims.

The federal court issued its sharply worded decision dismissing *Hunter* just six days after Counsel filed the new petition. SHW's attorneys then sent Counsel a second rule 1.413 letter, observing the petition was untimely and its claims precluded by the existing law the federal court had just applied in dismissing *Hunter*.[33]

In direct reaction to *Hunter*, Counsel amended the Fremont County petition two days later.[34] But the amended petition retained all but two claims challenging the permit approval *and* the same unusual pleading scheme, with injunctive relief "by…certiorari" sought based on the legal theories advanced in 17 of the 21

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[31] *See* D0001 at 2–3 (showing paired claims 1–2, 3–4, 5–6, 7–8, 9–10, 11–12, and 13–14 sought relief on the same legal theories and claims 15, 16, 17, 21, 22, and 23 sought both declaratory and injunctive relief).
[32] *See* D0001 ¶¶ 128, 136, 143, 150, 157, 165, 176, 188, 198, 244, 249, 265 (emphasis added) (seeking injunctive relief "by…certiorari" in claims 2, 4, 6, 8, 10, 12, 14, 15, 16, 21, 22, and 23). Only claim 17 sought injunctive relief *without* invoking certiorari. *See* D0001 ¶ 207.
[33] *See generally* Attach. B to D0075, Letter (07/13/2023).
[34] *See generally* D0008; Pls.' Br. at 22 n.8.

remaining claims.[35] Moreover, relief was still sought on the grounds just rejected in *Hunter*.[36]

On March 21, 2023, Counsel moved for an "emergency" TRO to keep Fremont County from issuing ministerial permits authorizing SHW to perform preliminary work in county road rights-of-way near participating parcels.[37] The next day they moved for a hearing.[38] The district court set a telephonic hearing on March 27,[39] then Counsel filed a third motion demanding an "immediate" hearing that same day.[40] The court responded with a ***one-line order*** instructing Fremont County to "take no permanent action" until after the April 5, 2023 hearing.[41]

Days later, the district court set hearing on SHW's motion to dismiss for May 15, 2023 and continued the TRO hearing until then.[42] Because that order also

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[35] *See* D0008 ¶¶ 132, 140, 147, 154, 162, 173, 185, 195, 241, 247, 263 (seeking injunctive relief "by…certiorari" in claims 2, 4, 6, 8, 10, 12, 13, 14, 19, 20, and 21); D0008 at 2–3 (showing paired claims 1–2, 3–4, 5–6, 7–8, 9–10, 11–12, and 13–14 sought relief on the same legal theories and claims 15, 16, 17, 19, 20, and 21 sought both declaratory and injunctive relief).
[36] *See* D0008 at 2–3 (claims 3–4 and 15); *see also Hunter*, 653 F. Supp. 3d at 619 (dismissing claims seeking declaratory, injunctive, and mandamus relief because the "gist" of the petition concerned the permit approval for which certiorari was the exclusive remedy).
[37] *See generally* D0017; *see also* D0028, Right-of-Way Permit Appl. at 1–5 (03/22/2023).
[38] *See generally* D0031, M. Emergency Hrg. (03/22/2023).
[39] D0046, Order Setting Hrg. (03/27/2023).
[40] D0047, M. Immediate Hrg. at 1–2 (03/27/2023).
[41] D0051, Order (03/28/2023).
[42] D0053, Order (04/03/2023).

advised the district court judge, the Honorable Gregory Steensland, would be subject to mandatory retirement in early July and had "a packed calendar" of matters requiring his attention,[43] SHW elected not to contest the extension of, essentially, a de facto TRO. Due to the "contentious posture" of the case, the court found the hearing should be in person.[44]

On June 13, 2023, approximately one month after the consolidated hearing on the motion to dismiss, the TRO motion, and motions for judgment on the pleadings filed by Counsel and the County,[45] the district court dismissed the amended petition on purely legal grounds.[46]

Page County Appeal

The outcome of the *Hunter* appeal ultimately turned not on merits but on events that occurred around the time *Hunter* was decided. While the case was pending before the district court, the composition of the board had changed, and supervisors who opposed the Project then comprised a majority.[47] As a result, days after *Hunter* was decided, SHW received a letter purportedly rescinding the very permit the County had just successfully defended.[48] Although SHW had appealed

[43] D0053 at 1.
[44] D0053 at 1.
[45] *See* D0088, Tr. Mot. Hrg. (05/15/2023).
[46] D0070 at 2–7.
[47] *Hunter*, 102 F.4th at 862.
[48] *Id.*

and a suit challenging the revocation was pending, the Eighth Circuit determined the revocation had mooted all claims challenging the validity of the ordinance and permit and vacated the portion of *Hunter* addressing those claims.[49]

But the Eighth Circuit concluded the change in the status of the permit had ***not*** mooted the open meetings act claims seeking certain statutory remedies.[50] It therefore fully evaluated substantial portions of the *Hunter* order addressing those claims and several arguments the court had rejected in reaching them.[51] In a lengthy opinion, the Eighth Circuit rejected Counsel's arguments regarding removal jurisdiction, subject-matter jurisdiction, supplemental jurisdiction, and abstention and affirmed the district court's dismissal of the open meetings act claims, concluding the petition did not support a reasonable inference that open meetings violations occurred.[52] As to every issue the opinion addressed on the merits, it affirmed the district court's rejection of Counsel's claims and arguments.

Fremont County Appeal

Counsel's arguments fared similarly in the appeal from the dismissal of this action. The Court of Appeals affirmed the dismissal of nearly every claim Counsel alleged in the amended petition, concluding 18 of 21 were untimely because

[49] *Id.* at 863–65.
[50] *See* Iowa Code § 21.6(3) (authorizing fines, costs, and attorney fees).
[51] *Hunter*, 102 F.4th at 866–76.
[52] *See id.* (affirming rulings on removal jurisdiction, subject-matter jurisdiction, supplemental jurisdiction, abstention, and open meetings).

certiorari was the exclusive means by which they could be brought.[53] Because the term "meeting" is statutorily defined, however, the Court of Appeals reluctantly concluded bare allegations that "meetings" occurred were sufficient to satisfy Iowa's minimal notice-pleading standards, reversing the dismissal order and remanding those claims for further proceedings.[54]

Notwithstanding the partial remand, the decision on appeal established the validity of the Fremont County ordinance and permit, as the related board votes had been taken more than six months before Counsel initiated this case.[55]

Sanctions Proceedings

Even after *Hunter*, Counsel pursued the same untimely claims based on the same rejected legal theories with the same intensity. Just as in federal court, Counsel's conduct created substantial work for the parties and the court. Between the January 25 filing of the petition and the May 15 hearing, SHW briefed motions to intervene and dismiss the petition and resisted Counsel's motions seeking an ex parte TRO and judgment on the pleadings.[56]

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[53] *Jennings v. Fremont County*, No. 23-1101, 2024 WL 5152369, at *5 (Iowa Ct. App. Dec. 18, 2024).
[54] *Id.* at *1, *4–6 (citing Iowa Code § 21.2(2)).
[55] *See* Iowa Code § 21.6(3)(c).
[56] D0007, Pet. Intervene (02/08/2023); D0034, Resist. M. Ex Parte TRO (03/23/2023); D0052, M. Dismiss (03/30/2023); D0063, Resist. M. Partial J. Pleadings (05/05/2023); D0067, Reply M. Dismiss (05/14/2023).

Judge Steensland dismissed the Fremont County petition on June 16, 2023,[57] after which SHW filed its brief in the *Hunter* appeal and prepared the motion for sanctions.[58] The Honorable Eric Nelson was assigned to the case July 10, 2023.[59] SHW timely moved for sanctions July 13, 2023,[60] Counsel resisted the motion July 24, 2023,[61] and SHW replied August 3, 2023.[62]

Within hours of SHW filing the reply supporting its sanctions motion, Counsel moved to strike it as untimely, citing Iowa Rule of Civil Procedure 1.431(5), which states a reply may be filed within 7 days after a resistance is served.[63] Upon receiving the email notification indicating the motion to strike had been filed,[64] SHW immediately resisted, explaining the reply was timely because that deadline is modified by other rules extending deadlines triggered by EDMS service of filings.[65]

Rather than concede the mistake or withdraw the motion, Counsel filed a reply asserting the rules extending deadlines did not apply because "service of a document

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[57] D0070.
[58] *See* Pls.' Br. at 31 n.16.
[59] D0074, Order at 1 (07/10/2023).
[60] D0075, M. Sanctions (07/13/2023); Pls.' Br. at 27 (admitting SHW filed its motion July 13, 2023). *But see* Pls.' Br. at 13 (incorrectly stating the motion was filed July 17, 2023).
[61] D0078, Resist. M. Sanctions (07/24/2023).
[62] D0079, Reply M. Sanctions (08/03/2023).
[63] D0080, M. Strike (08/03/2023).
[64] D0108, Tr. Hrg. Sanctions at 89:6–90:25 (01/16/2024).
[65] D0081, Resist. M. Strike ¶¶ 9–10 (08/03/2023) (citing Iowa R. Civ. P. 1.443(2); Iowa R. Elec. P. 16.317).

through EDMS" was not "service of a document made electronically."[66] Alarmingly, Counsel also accused SHW's counsel of committing misconduct and demanded "**an evidentiary hearing on the facts as to how SHW's counsel…received a copy of the content of the Motion to Strike *before* it was accepted by the clerk**."[67]

On September 14, 2023, the parties presented argument on both motions during a reported telephonic hearing attended by both Mr. Shearer and Mr. Sporer.[68] The court first heard argument on and overruled the motion to strike before hearing argument on the appropriateness of sanctions.[69] Following argument, the County, who had not yet taken a position, joined SHW's sanctions motion.[70]

Nearly two months later, on November 7, 2023, the district court issued an order finding sanctions were appropriate.[71] Concluding additional briefing concerning the appropriate sanction would be helpful, the order set a briefing schedule.[72]

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[66] D0083, Reply M. Strike at 4–9 (08/08/2023).
[67] D0083 at 1 n.1.
[68] *See generally* D0107, Tr. Hrg. M. Sanctions (09/17/2023).
[69] D0107 at 5:8–11:3.
[70] D0107 at 11:1–50:11; *id.* at 49:24 (stating "this sanction motion should probably be granted").
[71] *See generally* D0089.
[72] D0089 at 10.

On November 28, 2023, SHW filed its brief addressing the appropriate sanction, requesting that the district court impose only $75,000 in sanctions, an amount equal to a mere fraction of the attorney fees SHW had incurred due to Counsel's rule 1.413 violations in this action.[73] The County joined SHW's brief, supporting the imposition of $75,000 in sanctions payable to SHW and asking the court to order an *additional* $14,625 in sanctions payable to the County.[74] On December 19, 2023, Counsel filed a lengthy brief rehashing arguments the court had just rejected in ruling sanctions were appropriate and arguing no sanction should be imposed.[75]

The district court held a reported hybrid hearing concerning its determination of appropriate sanction on January 16, 2024, with Mr. Shearer appearing in person and Mr. Sporer by videoconference.[76]

SHW thereafter filed a sworn affidavit attesting to the estimated attorney fees SHW incurred due to Counsel's rule 1.413 violations in this action.[77] Counsel objected, asserting a due process right to examine extensive billing records far exceeding the scope of those upon which the estimate was based.[78] SHW replied,

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[73] D0090, Br. Monetary Sanctions at 3, 21 (11/28/2023).
[74] D0091, Joinder at 1–2 (11/30/2023).
[75] D0093, Br. Resist. Monetary Sanctions (12/19/2023).
[76] D0108 at 29:12–64:7 (Shearer), 64:8–70:1 (Sporer), 94:20–99:13 (Shearer).
[77] D0097, Suppl. M. Sanctions (01/29/2024); Attach. to D0097, Dublinske Affidavit (01/29/2024).
[78] D0098, Objections (02/05/2024).

addressing the objections and emphasizing the court's task was to determine the minimum sanction needed to deter Counsel from further violating rule 1.413, not to award attorney fees.[79]

On March 7, 2024, the district court entered an order imposing a $30,000 monetary sanction on Counsel, including $20,000 designated for SHW and $10,000 for the County.[80] Thereafter, this Court granted Counsel's timely petition for writ of certiorari.

For the following reasons, SHW asks this Court to affirm the district court rulings concluding Counsel violated rule 1.413 and imposing monetary sanctions and annul the writ.

ARGUMENT

Rule 1.413(1) deems that every signed filing submitted to Iowa courts signifies the submission is warranted by existing law or good faith argument:

> Counsel's signature to every motion, pleading or other paper shall be deemed a certificate that…to the best of counsel's knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation….

[79] D0099, Reply Affidavit (02/15/2024).
[80] D0100, Order at 12 (03/07/2024).

Rule 1.413 thus imposes a duty to reasonably inquire into the facts and the law, the breach of which violates the rule. *See, e.g.*, *Barnhill v. Iowa Dist. Ct. for Polk Cnty.*, 765 N.W.2d 267, 272 (Iowa 2009) (citation omitted). "If a document is signed in violation of rule 1.413, the court is required to impose an appropriate sanction." *Id.*

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN CONCLUDING COUNSEL VIOLATED RULE 1.413.

Error Preservation. Error was preserved. Iowa R. App. P. 6.903(3).

Standard of Review. District court orders imposing sanctions are reviewable for abuse of discretion. *Rowedder v. Anderson*, 814 N.W.2d 585, 589 (Iowa 2012). "An abuse of discretion occurs 'when the district court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *Id.* (quoting *Schettler v. Iowa Dist. Ct. for Carroll Cnty.*, 509 N.W.2d 459, 464 (Iowa 1993)). "'Unreasonable' in this context means not based on substantial evidence." *Schettler*, 509 N.W.2d at 464–65 (citation omitted). An erroneous application of the law is clearly untenable. *Rowedder*, 814 N.W.2d at 589. "The findings of fact by the district court are binding if they are supported by substantial evidence." *Dupaco Cmty. Credit Union v. Iowa Dist. Ct. for Linn Cnty.*, 13 N.W.3d 580, 589 (Iowa 2024).

Merits. A primary goal of rule 1.413 is maintaining "a high degree of professionalism in the practice of law." *Barnhill*, 765 N.W.2d at 273 (citation omitted). The rule is meant to "discourage…counsel from filing frivolous suits and

otherwise deter misuse of pleadings motions, or other papers" and "was designed to prevent abuse caused not only by bad faith but by negligence and, to some extent, professional incompetence." *Id.* (citations omitted). Consequently, an attorney "need not act in subjective bad faith or with malice" to violate the rule and "cannot use ignorance of the law or legal procedure as an excuse" to avoid sanctions. *Id.* (citation omitted).

Compliance with the rule is determined "based on an objective, not subjective, standard of reasonableness under the circumstances…as of the time the paper is filed." *Dupaco*, 13 N.W.3d at 590 (Iowa 2024) (citations omitted). "[T]he standard to be used is that of a reasonably competent attorney admitted to practice before the district court." *Barnhill*, 765 N.W.2d at 272 (citation omitted).

As demonstrated below, the district court did not abuse its discretion in applying this standard to conclude that Counsel violated rule 1.413.

A. The District Court Committed No Abuse of Discretion in Concluding the Underlying Merits Supported Imposing Sanctions.

Naturally, whether an attorney has violated rule 1.413 "is inextricably entwined with the determination of issues in the underlying action." *Franzen v. Deere & Co.*, 409 N.W.2d 672, 675 (Iowa 1987). Of course, only prior decisions addressing the merits are relevant in determining whether Counsel made the required reasonable inquiry into the law. *See Barnhill*, 765 N.W.2d at 272; *Mathias v.*

Glandon, 448 N.W.2d 443, 446–47 (Iowa 1989). Even so, subsequent decisions can inform whether claims and arguments raised had any merit under the existing law when Counsel proffered them.

The district court dismissed the claims alleged in the amended petition as stating no claim upon which relief could be granted as a matter of law.[81] The Court of Appeals affirmed the dismissal of claims 1–15 and 19–21 on different grounds, concluding they were untimely because certiorari was the exclusive remedy.[82] The determinations that those claims were destined to fail validate that the court committed no abuse of discretion in concluding sanctions were appropriate.

Determination on the Merits

The district court concluded that claims 1–15 and 19–21 failed as a matter of law.[83] While the Court of Appeals affirmed the dismissal of these claims on other grounds, as demonstrated below, they also failed to state claims for relief based on viable legal theories on their face.

Claims 1 and 2 sought to establish that restrictions in the zoning ordinance still apply to WECS. But enacting the wind ordinance was well within the broad scope of Fremont County's home-rule authority, and Iowa law instructs that the

[81] *See* D0070 at 2–7.
[82] *Jennings*, 2024 WL 5152369, at *4.
[83] *See* D0077 at 2–8.

later-enacted, more-specific controls.[84] Incidentally, the wind ordinance did not amend the zoning ordinance, so Iowa Code section 331.302(4) did not apply.[85] Even assuming section 331.302(4) could apply, the wind ordinance's repealer clearly conveys that it was intended to supersede preexisting regulations; thus, it was valid and substantially complied.[86] Iowa Code section 335.24 does not impact the wind ordinance because turbines are structures, not buildings.[87]

Claims 3 and 4 sought to establish the invalidity of the agreements. But the agreements satisfied the wind ordinance's requirements on their face because only the second sentence of section 7 specified required contents for the road use agreement and Counsel's contorted interpretations of section 8 and the decommissioning agreement's terms ignore the plain meaning of words.[88] Moreover, because these claims essentially demanded that the court change rather than enforce the ordinance's requirements, they functioned primarily to collaterally

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[84] *See Hunter*, 653 F. Supp. 3d at 617–18 (citations omitted); *Kelly v. State*, 525 N.W.2d 409, 411–12 (Iowa 1994) (citation omitted).

[85] *See* Attach. C to D0008 § 13; *Hunter*, 653 F. Supp. 3d at 617–18 (citations omitted); *see also* Iowa Code § 331.302(1).

[86] *See Brackett v. City of Des Moines*, 67 N.W.2d 542, 545 (Iowa 1954); Iowa Code § 331.301(5); *see also Taylor v. Dep't of Transp.*, 260 N.W.2d 521, 523 (Iowa 1977); *Residential & Agric. Advisory Comm., LLC v. Dyersville City Council*, 888 N.W.2d 24, 48–49 (Iowa 2016).

[87] *See* Attach. A to D0008 at 11, 20.

[88] *Compare* Attach. B to D0008 §§ 7–8, *with* Attach. E to D0008, Road Use Agreement (02/08/2023), *and* Attach. F to D0008, Decommissioning Agreement (02/08/2023). *See also Mathis*, 927 N.W.2d at 198 (citations omitted) (addressing substantial compliance).

attack the wind ordinance and thus necessarily failed for the same reasons as claim 13.[89]

Claims 5 through 8 sought to invalidate the wind ordinance and agreements based on their alleged inconsistency with the county comprehensive plan, citing irrelevant statutes that imposed no relevant duties.[90] Moreover, such plans are intended to harmonize competing land uses and must be considered only when enacting zoning regulations, not in enacting a home-rule ordinance or entering an agreement to protect county infrastructure.[91]

Claims 9 through 12 sought to invalidate the wind ordinance based on alleged imperfect compliance with Iowa Code section 331.302(6)(a), but because the utilized enactment procedures substantially complied with this statute by accomplishing its underlying purpose, those statutory requirements were satisfied.[92]

Claim 13 merely alleged general dissatisfaction with actions of the elected supervisors, which is insufficient to rebut the presumption of validity to which they

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[89] *See* D0008 ¶¶ 64–86, 133–140.
[90] *See* D0008 ¶¶ 138, 145 (citing Iowa Code §§ 351.1, 352.5, 414.3).
[91] *See* Iowa Code § 335.5; *Goodell v. Humboldt County*, 575 N.W.2d 486, 496–97 (Iowa 1998); *Ackman v. Bd. of Adjustment for Black Hawk Cnty.*, 596 N.W.2d 96, 103 (Iowa 1999); *see also Iowa Coal Mining Co. v. Monroe County*, 494 N.W.2d 664, 669 (Iowa 1993) (addressing substantial compliance); Iowa Code § 331.301(5).
[92] D0008 ¶¶ 35(a)–46, 157, 164–68; Iowa Code §§ 331.301(5), 331.302(6)(a); *KCOB/KLVN, Inc. v. Jasper Cnty. Bd. of Sup'rs*, 473 N.W.2d 171, 176 (Iowa 1991) (citing § 331.301(5)); 1992 Iowa Op. Att'y Gen. 130 (citations omitted); *Dyersville*, 888 N.W.2d at 48–49 (citation omitted); *Taylor*, 260 N.W.2d at 523.

are entitled under Iowa law.[93] Also fatal to this claim was the fact that nothing—no statute, regulation, controlling case, or legal obligation—required the wind ordinance to regulate WECS in any particular way. Counties do not have to enact wind ordinances or any land use regulations—they simply have the power to regulate land use by ordinance but no duty to do so.[94]

Claim 14 sought to invalidate the wind ordinance, permit, and agreements based on alleged conflicts of interests. But under Iowa law, a disqualifying conflict of interest "must be 'direct, definite, capable of demonstration, not remote, uncertain, contingent, unsubstantial, or merely speculative or theoretical,'"[95] so the conflicts alleged were insufficient to be disqualifying as a matter of law because they hinged entirely on speculative, contingent future events.[96]

Claim 15 sought an order obligating Fremont County to "enforce" a provision in the wind ordinance requiring a developer with a WECS permit to submit a new permit application if "materials changes to the information provided" in the

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[93] *Mathis*, 927 N.W.2d at 193; *Shriver v. City of Okoboji*, 567 N.W.2d 397, 401 (Iowa 1997); *Neuzil v. City of Iowa City*, 451 N.W.2d 159, 163 (Iowa 1990); *see also Worth Cnty. Friends of Agric. v. Worth County*, 688 N.W.2d 257, 261–62 (Iowa 2004); Attach. C to D0008 § 1.
[94] *See* Iowa Code § 335.3(1).
[95] *Bluffs Dev. Co. v. Bd. of Adjustment of Pottawattamie Cnty.*, 499 N.W.2d 12, 15 (Iowa 1993) (citation omitted); *Miller v. Grundy Cnty. Bd. of Sup'rs*, No. 14-0765, 2015 WL 1817096, at *3–4 (Iowa Ct. App. Apr. 22, 2015) (evaluating more direct interests); *see also Helmke v. Bd. of Adjustment of Ruthven*, 418 N.W.2d 346, 349 (Iowa 1988); *Sutton v. Dubuque City Council*, 729 N.W.2d 796, 800 (Iowa 2006).
[96] D0008 ¶¶ 191–193.

approved permit application occur.[97] This reapplication requirement is not triggered by immaterial errors within the approved permit application or changes to aspects of the development for which flexibility was expressly reserved in the approved permit application.[98]

Conditional claim 19 alleged that the wind ordinance and the zoning ordinance were unconstitutionally vague. But the ordinances each provide "fair notice" as to prohibited conduct, provide enforcement officials "sufficient guidance to prevent the exercise of power in an arbitrary or discriminatory fashion," and do not prohibit "constitutionally-protected activities."[99] Counsel's clients also lacked standing to challenge the wind ordinance on vagueness grounds because it does not regulate *their* conduct.[100] Moreover, even if legislative discretion was somehow delegated to permit applicants, they are not government actors capable of unconstitutionally discriminatory enforcement.[101]

Conditional claim 20 sought to invalidate the wind ordinance on the theory that its repealer amended other ordinances that were not republished, thereby

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[97] Attach. C to D0008 § 4(B).
[98] *See* D0008 ¶¶ 62, 198–201.
[99] *State v. Nail*, 743 N.W.2d 535, 539 (Iowa 2007).
[100] *See, e.g.*, *City of Panora v. Simmons*, 445 N.W.2d 363, 366 (Iowa 1989); *State v. Ortiz*, 905 N.W.2d 174, 184–85 (Iowa 2017).
[101] *See, e.g.*, *Garner v. White*, 726 F.2d 1274, 1277 (8th Cir. 1984) (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972)); *see also Behm v. City of Cedar Rapids*, 922 N.W.2d 524, 577 (Iowa 2019).

violating Iowa Code 331.302(4). But this statute requires that amendments to ordinances set forth the amended text. Here, neither the statute is implicated by the enactment of a new, standalone ordinance, nor does the wind ordinance amend the zoning ordinance.[102]

Conditional claim 21 sought to invalidate the wind ordinance on the theory that it impermissibly delegates legislative authority to those regulated by it because the repealer provision allows them to decide which regulations it repeals. But of course, only the supervisors can amend the zoning ordinance or any other county ordinance.[103] Even assuming the repealer *had* changed the content within another ordinance, that change was complete upon the wind ordinance's passage—no subsequent act by a regulated party made it effective.[104]

Determination on Appeal

The Court of Appeals concluded that claims 1–15 and 19–21 were properly dismissed without ever passing on their merits, concluding instead that they were

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[102] *Compare* Iowa Code § 331.302(4) (2022), *with id.* § 331.302(4) (1989); *see Brackett*, 67 N.W.2d at 545; D0008 ¶¶ 35(r), 50(n); *see also Willett v. Cerro Gordo Cnty. Zoning Bd. of Adj.*, 490 N.W.2d 556, 560 (Iowa 1992) (addressing substantial compliance); Iowa Code § 331.301(5).

[103] *See* Iowa Code §§ 331.301(2), 331.302(1); *see also Cedar Rapids Hum. Rts. Comm'n v. Cedar Rapids Cmty. Sch. Dist.*, 222 N.W.2d 391, 399 (Iowa 1974).

[104] D0077 at 7–8.

untimely because certiorari was the exclusive remedy.[105] That determination was correct.

Under Iowa law, certiorari provides the exclusive means for decisions by county boards acting in a quasi-judicial capacity. *Sutton v. Dubuque City Council*, 729 N.W.2d 796, 800 (Iowa 2006). Certiorari lies for claims challenging the legality of such boards issuing permits under county ordinances. *Bluffs Dev. Co. v. Bd. of Adjustment of Pottawattamie Cnty.*, 499 N.W.2d 12, 14 (Iowa 1993).[106] Certiorari is also the proper means for challenging decisions to enact ordinances involving notice, hearing, and indicia of quasi-judicial process. *Residential & Agricultural Advisory Committee, LLC v. Dyersville City Council*, 888 N.W.2d 24, 40–43 (Iowa 2016) (citations omitted) (concluding certiorari was available to challenge an ordinance when no adjudicative factfinding was required and it addressed the best interests of the community). In such circumstances, the decision to enact an ordinance is quasi-judicial for purposes of determining whether certiorari applies even though its essential nature is legislative. *See id.* at 40, 43; *see also Montgomery v. Bremer Cnty. Bd. of Sup'rs*, 299 N.W.2d 687, 694 (Iowa 1980).

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[105] *Jennings*, 2024 WL 5152369, at *4.

[106] Certiorari also lies for claims challenging the legality of a governmental board entering into an agreement with a private party, *see Porter v. Iowa State Board of Public Instruction*, 144 N.W.2d 920, 923 (Iowa 1966), but as previously noted, the claims challenging the agreements collaterally attacked the ordinance itself.

Additionally, this Court has concluded certiorari is available for claims challenging government decisions based on certain specific alleged illegalities. Indeed, its precedents establish that certiorari is the exclusive remedy for claims alleging arbitrary or capricious decision-making;[107] conflicts of interest;[108] incompatibility with county comprehensive plans;[109] illegal subdelegation;[110] failure to comply with statutory requirements;[111] and constitutional violations.[112] Precedent also holds that certiorari is appropriate for claims challenging the legality of board actions based on alleged "fraud, corruption, and conspiracy"[113] or noncompliance with a county zoning ordinance[114] or seeking the enforcement of ordinances.[115]

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[107] *See, e.g.*, *Perkins v. Bd. of Sup'rs of Madison Cnty.*, 636 N.W.2d 58, 64, 71–73 (Iowa 2001) (citations omitted); *Boomhower v. Cerro Gordo Cnty. Bd. of Adjustment*, 163 N.W.2d 75, 77 (Iowa 1968).

[108] *See, e.g.*, *Sutton*, 729 N.W.2d at 800.

[109] *See, e.g.*, *Dyersville*, 888 N.W.2d at 44–45; *Ackman*, 596 N.W.2d at 104; *Montgomery*, 299 N.W.2d at 695.

[110] *See, e.g.*, *Perkins*, 636 N.W.2d at 62–63; *Ackman*, 596 N.W.2d at 104.

[111] *See, e.g.*, *Dyersville*, 888 N.W.2d at 44–45; *Perkins*, 636 N.W.2d at 64; *Ackman*, 596 N.W.2d at 104; *Smith v. City of Fort Dodge*, 160 N.W.2d 492, 495–98 (Iowa 1968).

[112] *See, e.g.*, *Dyersville*, 888 N.W.2d at 44–45; *Perkins*, 636 N.W.2d at 64.

[113] *See Hoefer v. Sioux City Cmty. Sch. Dist.*, 375 N.W.2d 222, 225 (Iowa 1985).

[114] *See, e.g.*, *Obrecht v. Cerro Gordo Cnty. Zoning Bd. of Adjustment*, 494 N.W.2d 701, 703 (Iowa 1993).

[115] *See, e.g.*, *Goodenow v. City Council of Maquoketa*, 574 N.W.2d 18, 22 (Iowa 1998).

The petition here alleged fraud and corruption as factual background[116] along with claims asserting the illegalities identified above.[117] And the wind ordinance at the heart of those claims was enacted following publicly noticed,[118] comment-argument type proceedings with public participation, with full awareness that SHW had begun acquiring land rights for the Project.[119] Because development was already underway, the rights of a particular party—SHW—were at stake, even though the wind ordinance addressed the best interests of the community.[120] Thus, the Court of Appeals correctly determined the enactment involved many hallmarks of quasi-judicial process such that certiorari was the exclusive remedy for the claims challenging the wind ordinance.[121]

Of course, it is black letter Iowa law that when certiorari is available, it is exclusive. *Sutton*, 729 N.W.2d at 800. Claims seeking other forms of relief based on the same alleged illegality are barred unless certiorari will not provide complete relief and the legislature did not intend certiorari to be the exclusive remedy. *See City of Johnston v. Christenson*, 718 N.W.2d 290, 297 (Iowa 2006) (declaratory judgment); *see also Lewis Invs., Inc. v. City of Iowa City*, 703 N.W.2d 180, 186

[116] *See* D0008 ¶¶ 13–20.
[117] *See* D0008 ¶¶ 118–204, 224–264.
[118] *See* Iowa Code §§ 21.3, 21.4, 331.302(6).
[119] *See* D0008 ¶¶ 38–41.
[120] *See* Attach. C to D0008 § 1.
[121] *Jennings*, 2024 WL 5152369, at *4.

(Iowa 2005) (injunction); *Reed v. Gaylord*, 216 N.W.2d 327, 331–32 (Iowa 1974) (mandamus).

"An untimely petition for writ of certiorari deprives the reviewing court of subject matter jurisdiction." *Hilkemann v. City of Carter Lake City Council*, No. 18-0841, 2019 WL 4297242, at *2 (Iowa Ct. App. Sept. 11, 2019) (quoting *Sergeant Bluff-Luton Sch. Dist. v. City Council of Sioux City*, 605 N.W.2d 294, 297 (Iowa 2000)). The wind ordinance was enacted more than 30 days before the petition was filed, so the amended petition was untimely as to those claims. *See* Iowa R. Civ. P. 1.1402(3). As the claims purportedly challenging the agreements functionally attacked the contents of the ordinance, they were untimely for the same reason. *See O'Malley v. Gundermann*, 618 N.W.2d 286, 291 (Iowa 2000) (citing *Sergeant Bluff-Luton*, 605 N.W.2d at 297). The claim seeking enforcement of the ordinance, on the other hand, was properly dismissed because it challenged a decision that had not yet been made and was just as lacking in jurisdiction as if it had been filed late. *See Brueggeman v. Osceola County*, No. 16-1552, 2017 WL 2464072, at *5 (Iowa Ct. App. June 7, 2017). The Court of Appeals therefore correctly concluded claims 1–15 and 19–21 were untimely and affirmed their dismissal, and its decision further supports the district court's determination that sanctions were appropriate.

That the Court of Appeals did not affirm dismissal as to every claim in no way undermines the district court's determination that Counsel's conduct was

sanctionable. Its conclusion that the "barebones" petition included enough content to satisfy Iowa's minimal notice-pleading standards as to the open meetings claims by no means establishes that they had merit or that Counsel performed an adequate inquiry into the facts or the law regarding those claims. On the contrary, Counsel failed to state a single relevant fact supporting those claims in the petition, alleging only "indicia" of ***legal*** conduct, disregarding well established law defining what constitutes a "meeting" to which the requirement of openness applies. *Compare generally* D0008 at 50–53, *with Hutchinson v. Shull*, 878 N.W.2d 221 (Iowa 2016), *and Hettinga v. Dallas Cnty. Bd. of Adjustment*, 375 N.W.2d 293 (Iowa Ct. App. 1985), *and Gavin v. City of Cascade*, 500 N.W.2d 729 (Iowa Ct. App. 1993).

Even more fundamentally, as this Court has previously determined, filings need not consist *entirely* of sanctionable content to be sanctionable. The bulk of the claims alleged and arguments Counsel advanced in this action were without merit—even assuming the petition *had* contained 3 meritorious claims, there were 18 claims capable of being dismissed twice over. That was more than sufficient to support the sanction imposed here. *See First Am. Bank v. Fobian Farms, Inc.*, 906 N.W.2d 736, 752–53 (Iowa 2018) (upholding the imposition of $30,000 in sanctions on a party who had "prevailed on same claims"). The district court did not impose sanctions merely because Counsel's filings contained "some misstatements of fact or law" or "one argument or sub-argument behind a valid pleading or motion." *See Dupaco*,

13 N.W.3d at 594 (quoting Mark S. Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach*, 36 Drake L. Rev. 483, 496 (1987)). On the contrary, the court expressly found "a quantity and quality of legal and procedural defects" sufficient to render their pursuit of their claims unreasonable, thereby triggering rule 1.413. D0089 at 9.

B. The District Court Committed No Abuse of Discretion in Determining Counsel Violated Rule 1.413.

This Court has endorsed a series of factors describing potentially relevant circumstances for consideration by district courts in evaluating the reasonableness of an attorney's inquiry into the *law*. *See Mathias*, 448 N.W.2d at 446–47 (citation omitted).[122] The district court committed no abuse of discretion in concluding Counsel's conduct was unreasonable because, as demonstrated below, it dutifully evaluated each factor in assessing whether Counsel violated rule 1.413, and its associated findings were supported by substantial evidence. *See* D0089 at 6–9.

a. The amount of time available to the signer to investigate the facts and research and analyze the relevant legal issues.[123]

The district court found Counsel had ample time to conduct the reasonable inquiry rule 1.413 requires, weighing this factor in favor of sanctions. D0089 at 6.

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[122] This Court has endorsed consideration of overlapping factors in assessing an attorney's inquiry into the *facts*. *Compare Dupaco Cmty. Credit Union v. Iowa Dist. Ct. for Linn Cnty.*, 13 N.W.3d 580, 590 (Iowa 2024) (citations omitted), *with Mathias v. Glandon*, 448 N.W.2d 443, 446 (Iowa 1989) (citation omitted).

[123] *Mathias*, 448 N.W.2d at 446.

Finding that the conduct complained of began with the first reading of the wind ordinance in the spring of 2020 and continued through the execution of the agreements in December 2022 just before the petition was filed, the court determined Counsel had "a significant amount of time in which legal research and analysis could be performed." *Id.* Substantial evidence supports its findings. D0008 ¶¶ 38–41, 51–62, 66. The court further found the similar issues presented in *Hunter* supported the conclusion that Counsel had ample time to investigate, as "research and analysis for those issues would have already been completed." D0089 at 6.

b. The complexity of the factual and legal issues in question.[124]

The district court found that the nature of the issues raised in the underlying action also weighed in favor of sanctions. D0089 at 6–7. Observing that the Project has been "ongoing for many years and involves multiple governmental jurisdictions" and the exercise of county home-rule under the Iowa Constitution, the court acknowledged that the precise interplay between county home-rule and other laws is somewhat "untested." D0089 at 7. It further found the claims in the amended petition were capable of being dismissed summarily "without rigorous analysis" because, just as in *Hunter*, the issues raised in the amended petition were "not issues of first impression." *Id.* (quoting *Hunter*, 653 F. Supp. 3d at 615). These findings are supported by facts found in the amended petition and governing Iowa law,

[124] *Id.*

including *Mathis*, in which this Court dismissed claims concerning a home-rule wind ordinance[125] and a permit brought on similar grounds and addressed the substantial compliance standard that applies in evaluating most of the claims advanced in the amended petition. *See generally* 927 N.W.2d 191; *see also* Iowa Code § 331.301(5).

c. The clarity or ambiguity of existing law.[126]

The district court found the amended petition concerned "topics in general municipal law that are settled" and that the applicable existing law had been "further clarified by the *Hunter* court." D0089 at 7. Observing that Counsel "would have been aware of" the *Hunter* decision "before filing their amended petition"—a fact Counsel freely admits[127]—the court found this factor favored sanctions.

d. The plausibility of the legal positions asserted.[128]

The district court found this factor supported the issuance of sanctions because—focusing on the legal plausibility of Counsel's asserted positions rather than their likelihood of success—most claims alleged in the amended petition were so flawed as to have "minimal plausibility." *Id.* As examples of implausible claims, the court cited claims 1 and 2, in connection with which Counsel had moved for

[125] *See* Wind Energy Conversion Systems Ordinance for Palo Alto, Iowa (Sept. 27, 2016), *available at* https://paloaltocounty.iowa.gov/wp-content/uploads/2016/08 Wind-Energy-Conversion-Systems-Ordinance-SM.pdf.
[126] *Mathias*, 448 N.W.2d at 446.
[127] *See* Pls.' Br. at 22 n.8.
[128] *Mathias*, 448 N.W.2d at 446.

judgment on the pleadings, arguing that WECS permitted under the wind ordinance cannot exceed the thirty-five-foot height limitations in the zoning ordinance. *Id.*; *see generally* D0056. The court also pointed to claims 5 and 7, in which Counsel cited statutes that did not impose any duty on the board of supervisors such as Iowa Code section 351.1, which was repealed in 1994 and concerned license tags for dogs. D0089 at 7. Substantial evidence supports the finding that Counsel asserted implausible legal claims in their filings, as both district court judges who assessed them so found, and the dismissal of the bulk of claims asserted by Counsel has been affirmed.

e. Whether the signer is an attorney or *pro se* litigant.[129]

It is undisputed that Counsel are attorneys. This district court therefore found this factor favored imposing sanctions. *Id.*

f. The knowledge of the signer.[130]

It is likewise undisputed that Counsel are licensed attorneys who have practiced law for many years in Iowa and other jurisdictions. The district court found that these facts indicate Counsel is experienced and therefore have "a higher degree of knowledge" than many attorneys, weighing this factor in favor of sanctions. D0089 at 8.

[129] *Id.*
[130] *Id.*

g. Whether the case was accepted from another attorney, and, if so, at what stage in the proceedings.[131]

It is undisputed that Counsel prepared and filed the petition initiating the underlying case. *See* Pls.' Br. at 16, 19. While the court found this factor was "inapplicable" based on that fact, D0089 at 8, SHW respectfully submits that it plainly weighs in favor of sanctions. That Counsel initiated this action demonstrates they alone were responsible for the content of their filings, and any potential mitigating circumstances apropos to assuming control of a case mid-litigation are nonexistent to undercut their culpability.

h. The extent to which counsel relies upon other counsel to conduct the legal research and analysis underlying the position asserted.[132]

As the district court noted in weighing this factor in favor of sanctions, Counsel do not allege that they relied upon other counsel. *Id.* It is undisputed that Counsel are solo practitioners, therefore this finding was supported by substantial evidence.

i. The extent to which counsel had to rely upon other counsel to conduct the legal research and analysis underlying the position asserted.[133]

Counsel likewise do not allege that they had to rely upon other counsel, so the district court appropriately found this factor favored sanctions. *Id.* Counsel's

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[131] *Id.*
[132] *Id.*
[133] *Id.*

undisputed status as solo practitioners and the attorneys who initiated the case constitutes substantial evidence supporting that conclusion. Pls.' Br. at 16, 19.

j. The resources reasonably available to the signer to devote to the inquiry.[134]

The district court gave no weight to this factor in its analysis because it was "unaware of what resources" were available to Counsel. Nevertheless, significant resources were not needed to reasonably investigate the law that applies to the issues raised in this case. Given that Counsel had both ample time and each other's experience and knowledge to rely upon in preparing their filings, this factor cuts in favor of sanctions as well.

k. The extent to which the signer was on notice that further inquiry might be appropriate.[135]

The district court found Counsel had notice that further inquiry might be appropriate and weighed this factor in favor of sanctions where appropriate. D0089 at 8–9. This finding was supported by substantial evidence. As the court noted, the rule 1.413 letters Counsel received from SHW's attorneys and the federal district court's decision to exercise supplemental jurisdiction to summarily dismiss the nearly identical state-law claims in *Hunter* should have alerted Counsel that "the claims in *Hunter*, that were then again asserted here, may have legal or factual

[134] *Id.*
[135] *Id.*

defects requiring further inquiry." *Id.* SHW further notes that many arguments and misstatements of existing law asserted by Counsel in filings before the district court were plainly precluded by precedents of this Court cited by the other parties, and in some cases by Counsel themselves, in both cases. For example, this Court's decision in *Mathis*, which addressed similar allegations concerning a county's decision to enact a wind ordinance and issue a permit under that ordinance and was cited by Counsel in the amended petition,[136] applied the same substantial compliance standard that applies here to the bulk of the claims asserted in the amended petition. *See generally* 927 N.W.2d 191.

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Upon assessing the above circumstantial factors individually, the district court considered the overall circumstances and determined that Counsel was unreasonable:

> "The test of an attorney's actions in zealously pursuing his or her client's interests is one of reasonableness." *Barnhill*, 765 N.W.2d at 279. Having reviewed each of the *Mathias* factors individually, the Court concludes that counsel for Petitioners have violated the inquiry duty of Rule 1.413 by asserting unreasonable claims. The lengthy petition in this case is largely based upon untenable bases of law, on legal matters already settled by Iowa courts and the *Hunter* court, and upon speculation and conjecture. The quantity and quality of legal and procedural defects in the pleadings render Petitioners' counsel's actions unreasonable, and the Court finds they have crossed the line from

[136] D0008 at 14–15.

> zealous advocacy into frivolousness by asserting claims that could not be successful, despite the ample notice of the defects present.
>
> While it is true that federal interpretation of State law is not binding precedent upon this Court, it is persuasive authority. *Goodpaster v. Schwan's Home Service, Inc.*, 849 N.W.2d 1 (Iowa 2014). Further, the basis for the *Hunter* court's order was Iowa case law that is binding upon this Court. Rule 1.413 is not meant to punish those who argue for a modification or reversal of existing law made when made in good faith. However, counsel for Petitioners have not advocated for a modification or reversal. Rather, they have asserted the same claims with nearly identical facts and parties in apparent nonacceptance of prior case law. It appears to the Court that counsel for Petitioners, after *Hunter* was dismissed, sought a second bite at the apple and filed this action regardless of its deficiencies.

D0089 at 9. The court thus concluded that Counsel violated rule 1.413 in filing the amended petition and maintaining the case "despite it not being warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." D0089 at 10.

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN IMPOSING A $30,000 SANCTION TO DETER FURTHER VIOLATIONS OF RULE 1.413.

Error Preservation. Error was preserved. Iowa R. App. P. 6.903(3).

Standard of Review. Review is for abuse of discretion. *Fobian Farms*, 906 N.W.2d at 744. "An abuse of discretion occurs 'when the district court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *Rowedder*, 814 N.W.2d at 589 (citation omitted). "'Unreasonable' in this context means not based on substantial evidence." *Schettler*, 509 N.W.2d at

464–65 (citation omitted). An erroneous application of the law is clearly untenable. *Rowedder*, 814 N.W.2d at 589.

The district court's fact findings are binding if supported by substantial evidence. *Barnhill*, 765 N.W.2d at 272. "Evidence…is not insubstantial merely because [the Court] may draw a different conclusion from it." *Hutchison v. Shull*, 878 N.W.2d 221, 230 (Iowa 2016). "The crucial question in determining whether substantial evidence supports a district court finding is not whether the evidence would support a different finding, but whether the evidence supports the finding actually made." *Id.*

Merits. Upon finding a rule 1.413 violation, "the court…shall impose upon the person who signed it…an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing…including a reasonable attorney fee." Iowa R. Civ. P. 1.413. "The question presented to the district court…is not whether a court shall impose sanctions when it finds a violation—it *must*[.]" *Mathias*, 448 N.W.2d at 445 (emphasis added).

The appropriate sanction is informed by the purposes it is intended to serve. *See, e.g.*, *Barnhill*, 765 N.W.2d at 276. As this Court has observed, rule 1.413 sanctions serve several:

> "The primary purpose of sanctions under rule 1.413(1) is deterrence, not compensation." Compensation for the opposing party, however, is a secondary purpose of rule 1.413(1)….
>
> Awarding sanctions motivates the victims of frivolous pleadings "to invest the time and money necessary to pursue legitimate sanction claims." As we explained,
>
> > if injured parties do not expect even to recoup the cost of their additional sanction filings, some may not be willing or financially able to file motions for sanctions. This would not only compound the personal injustice that they have already suffered, but it could undermine the integrity of our judicial system by diminishing the deterrent effect of sanctions.

Fobian Farms, 906 N.W.2d at 745 (quoting *Rowedder*, 814 N.W.2d at 589, 592). Accompanying this recognition that deterrence primarily determines the appropriateness of a given sanction is an unstated acknowledgment—*not every sanction is adequate to deter*. For this reason, "*de minimis* sanctions are 'simply inadequate.'" *Barnhill*, 765 N.W.2d. at 276 (citation omitted).

Beyond considering these purposes, this Court instructs district courts to make findings regarding four factors in determining the appropriate sanction for a rule 1.413 violation: "(1) the reasonableness of the opposing party's attorney's fees; (2) the minimum to deter; (3) the sanctioned party's ability to pay; and (4) factors related to the severity of the violation." *First. Am. Bank*, 906 N.W.2d at 740 (citation omitted) (cleaned up). It also encourages district courts to consider sixteen additional factors from the ABA's Rule 11 practice guidelines. *Barnhill*, 765 N.W.2d at 276–77 (citation omitted).

The district court addressed every single factor, including the ABA factors, and ordered Counsel to pay $30,000 in monetary sanctions, including $20,000 to SHW and $10,000 to the County, finding this was the minimum sanction necessary to deter Counsel from further violating rule 1.413.[137] The court did not abuse its discretion in ordering this sanction, and its associated findings are supported by both substantial evidence and Iowa law.

A. Substantial Evidence Supports the District Court's Finding the Attorney Fees Incurred Were Reasonable.

"The district court is considered an expert in what constitutes a reasonable attorney fee, and we afford it wide discretion in making its decision." *GreatAm. Leasing Corp. v. Cool Comfort Air Conditioning & Refrigeration, Inc.*, 691 N.W.2d 730, 733 (Iowa 2005). SHW filed a sworn affidavit from the attorney responsible for this matter's billings attesting to a conservative estimate of the attorney fees SHW incurred because of Counsel's rule 1.413 violations, detailing precisely how he calculated it, and addressing how he ensured it included only those fees attributable to the district court proceedings in this case.[138] Yet, Counsel protests there exists ***no*** evidence, let alone substantial evidence, to justify the sanctions awarded to SHW.[139] Counsel is incorrect.

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[137] D0100 at 4–12.
[138] Attach. to D0097.
[139] Pls.' Br. at 65. Counsel does not contest the sufficiency of the evidence to support the sanctions awarded to the County. *See id.* at 64–65.

Affidavits constitute admissible evidence under Iowa law in the context of, among others, collateral motions seeking attorney fees. *See, e.g.*, Iowa Code § 625.24; *accord* 2A C.J.S. Affidavits § 63. Indeed, an affidavit's sufficiency is ordinarily left to courts to determine based on the affiant's competency and the degree to which they directly and unequivocally state facts within their personal knowledge. *See, e.g.*, 3 Am. Jur. 2d Affidavits § 19.

The district court order shows the court exercised expertise and judgment in determining the attorney fees disclosed were reasonable, expressly finding the above-average rates charged by SHW's attorneys were appropriate because "the legal issues present in this case are not commonly handled by local attorneys necessitating attorneys with a specialized practice." D0100 at 5–6. Exercising its expertise in evaluating the reasonableness of attorney fees, the court further observed that Counsel's numerous "unfounded and frivolous" legal arguments had necessitated SHW responding to defend its interests. D0100 at 11. In short, the court committed no abuse of discretion by recounting the factors relevant to assessing the reasonableness of attorney fees, making fact findings regarding relevant factors, and concluding the attorney fees SHW and the County incurred were reasonable. D0100 at 5–6 (citation omitted).

Yet, Counsel complain they have been denied due process merely because they did not get to examine SHW's legal invoices with a fine-toothed comb. Not so.

Procedural due process requires only that an alleged offender be afforded (1) fair notice and (2) an opportunity to be heard before sanctions are imposed. *K. Carr v. Hovick*, 451 N.W.2d 815, 817–18 (Iowa 1990). These requirements are satisfied when one is "informed somehow of the issues involved in order to prevent surprise at the hearing and allow an opportunity to prepare." *Johnson v. Iowa Dist. Ct. for Black Hawk Cnty.*, No. 07-2007, 2009 WL 142543, at *4 (Iowa Ct. App. Jan. 22, 2009). Notably, an "opportunity to be heard" regarding sanctions does not require an actual hearing; rather, that determination is discretionary. *Id.* ("[T]he rule is that the court, in its discretion may determine whether to hold a hearing on sanctions….").

Contrary to Counsel's assertions, this case's proceedings comported with due process. The district court provided Counsel ample notice each stage of the sanctions proceedings. It issued orders informing counsel a hearing was to be held on SHW's motion. Then, only after an in-person hearing that Counsel attended, it ruled that sanctions were appropriate and informed Counsel it would accept further briefing on the appropriate sanction. On December 19, 2023, the court notified Counsel a telephonic hearing on appropriate sanction would be held January 16, 2024—providing enough notice for Counsel to request and be granted a hybrid proceeding. Counsel participated in that proceeding for nearly three hours. Yet, despite receiving ample notice of the hearing, Counsel failed to notice or call a single

witness for examination, not even the County's attorney. Still, in the time between SHW moving for sanctions and the district court imposing them, Counsel submitted eight filings totaling—*excluding* the content of 21 associated attachments—over 125 pages of legal argument *and* participated in nearly four hours of oral argument.[140] Counsel fail to identify a single Iowa authority holding "fee statements" must be provided for the imposition of sanctions to satisfy the requirements due process. Counsel received the process they were due.

Counsel likewise cites no relevant authority to support their assertion that only itemized billings constitute substantial evidence of attorney fees incurred.[141] More to the point, however, SHW and the County were not awarded attorney fees, but monetary sanctions. The court expressly declined to order sanctions in amounts equal to the fees the parties incurred, concluding "these values exceed the minimum necessary for deterrence." D0100 at 11–12. The reasonable attorney fees they incurred were but one datapoint among many the district court considered in evaluating the ultimate question relevant to determining an appropriate sanction—***what sanction was sufficient to deter Counsel from engaging in similar conduct***

[140] D0078; D0080; D0083; D0084; D0093; D0094; D0095; D0098; D0107; D0108.
[141] *See, e.g.*, *In re Washington*, No. 17-1005, 2018 WL 1858297, at *7 n.7 (Iowa Ct. App. Apr. 18, 2018) (upholding a fee award as reasonable without an itemization); *Guge v. Kassel Enters.*, No. 21-1511, 2022 WL 10827240, at *8 (Iowa Ct. App. Oct. 19, 2022) (upholding a fee award though "the fee itemization lacked detail" because an order showed "this was meaningfully taken into consideration").

in the future? The record reflects the court considered evidence before it—the affidavit from SHW's attorney, the County's fee affidavit and invoices, oral argument, and written materials in the record—and gave that evidence the weight it deemed appropriate, considering the parties' reasonable attorney fees merely as one factor relevant to determining an appropriate sanction.

Finally, Counsel fails to address that neither the total sanctions imposed nor the amounts designated for the respective parties even approach the fees they reported or the sanctions they requested. SHW requested sanctions in the total amount of $75,000,[142] equal to roughly half of its conservatively estimated attorney fees attributable to Counsel's sanctionable conduct.[143] The County requested that Counsel be ordered to pay $75,000 to SHW plus an additional $14,625 to the County for its own defense costs.[144] The sanctions awarded constituted only a fraction of the reported attorney fees—with the County being awarded sanctions equal to roughly 68% of its reported fees and SHW being awarded only 14%. The granular detail Counsel demands was thus unnecessary. SHW's and the County's fee affidavits constituted substantial evidence sufficient to convince a reasonable mind that they incurred attorney fees in amounts exceeding the sanctions they were respectively awarded as a result of Counsel's sanctionable conduct.

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[142] D0090 at 3, 21.
[143] *See* Attach. to D0097 at 7–8.
[144] D0091.

B. Substantial Evidence Supports the District Court's Finding that Counsel Have Some Ability to Pay Monetary Sanctions.

The district court found Counsel "have the ability to pay some monetary sanction" but "the nature of their practices and limited income as it relates to this case supports [sic] a sanction less than…what is sought." D0100 at 7. Counsel does not affirmatively dispute this finding. *See also Rowedder*, 814 N.W.2d at 69 (citing *In re Kunstler*, 914 F.2d 505, 524 (4th Cir. 1990) ("Inability to pay what the court would otherwise regard as an appropriate sanction should be treated as reasonably akin to an affirmative defense, with the burden upon the parties being sanctioned to come forward with evidence of their financial status.")). In any event, the record contains substantial evidence to support it. Counsel self-reported that they invoiced their clients more than $36,000 in attorney fees and costs from the start of their work preparing the original petition through entry of the dismissal order.[145]

Counsel now asserts "Sporer has retired from the practice of law,"[146] but omits an important detail that reflects why this Court should disregard his alleged retirement in assessing the sanction imposed—six months ago, Sporer's license was administratively suspended because he failed to fully cooperate with an audit of his trust account. Order at 1, *In re Enforcement of Iowa Court Rule 39.10(3)*,

[145] D0093 at 67.
[146] Pls.' Br. at 69.

No. 24-0866 (Iowa May 31, 2024). That misconduct does not justify reducing the sanction for Counsel's misconduct in this case.

C. Substantial Evidence Supports the District Court's Finding that Counsel's Violations Were Severe.

Recognizing there is no "exhaustive list of factors" courts are obligated to consider in assessing the severity of the violations, the district court evaluated the ABA factors this Court has encouraged them to consider "as they relate to issues identified in the four-factor test." *Barnhill*, 765 N.W.2d at 277. Its findings regarding these factors were supported by substantial evidence, few of which Counsel substantively disputes on appeal and most of which weighed in favor of imposing a more significant sanction.

a. The good or bad faith of the offender.[147]

The district court concluded Counsel acted in bad faith in asserting claims that "were either identical to claims already decided or lacked a basis for their assertion." D0100 at 7. But what the court found especially indicative of Counsel's bad faith was their willingness to assert misconduct on the part of opposing counsel without proof:

> However, what is most concerning to the Court regarding good or bad faith of [Counsel] is the repeated allegation that [SHW] somehow had advanced knowledge of EDMS filings quite possibly with the assistance of the Court. Even after the attorneys had discussion of how EDMS notifications work prior to filings being accepted by the Clerk,

[147] *Barnhill v. Iowa Dist. Ct. for Polk Cnty.*, 765 N.W.2d 267, 276 (Iowa 2009).

> [Counsel] continued to offhandedly assert some sort of improper behavior by opposing counsel without proof….

Id. As the court found, Counsel lodging "complaints of misconduct in open court without evidence" is "unacceptable." *Id.* Yet, Counsel have asserted or implied similarly unsupported allegations of misconduct throughout this litigation and similarly persist even in these proceedings. *See, e.g.*, Attach. 2 to D0078, Shearer Letter (07/24/2023) (accusing counsel of collusion); Pls.' Br. at 46 (asserting SHW improperly delaying filing the motion for sanctions), 69 (implying a connection between the imposed sanctions and a routine trust account audit). The district court finding that Counsel committed sanctionable conduct in bad faith was supported by substantial evidence.

b. The degree of willfulness, vindictiveness, negligence, or frivolousness involved in the offense.[148]

The district court found Counsel willfully persisted in pursuing frivolous claims despite notice of defects in the pleadings and acted with intentionality in asserting the same claims. D0100 at 7–8. This finding was supported by its observations that Counsel persisted in pursuing meritless claims even after receiving the rule 1.413 letters and collaterally attacked *Hunter* throughout this action.

Furthermore, this finding is supported by the fact that Counsel was familiar with this Court's decision in *Mathis* as well as the *Hunter* Court's reliance on that

[148] *Id.*

case to dismiss their claims against Page County. Thus, Iowa law has been clear from the beginning that their arguments implicating policy decisions concerned "matters for the board of supervisors—not the courts—to resolve." *Hunter*, 653 F. Supp. 3d at 618 (quoting *Mathis*, 927 N.W.2d at 193, 200).

c. The knowledge, experience, and expertise of the offender.[149]

The district court found Counsel are highly experienced and knowledgeable, concluding their knowledge and experience made their frivolous filings "more egregious." D0100 at 8. Counsel's own statements alone provide substantial evidence to support this finding. *See, e.g.*, D0108 at 60:18–20 (Shearer), 65:4–66:2 (Sporer); *see also Iowa Sup. Ct. Att'y Disciplinary Bd. v. Sporer*, 897 N.W.2d 69, 71 (Iowa 2017) ("Sporer has been licensed as an Iowa attorney for thirty-one years.").

d. Any prior history of sanctionable conduct on the part of the offender.[150]

Mr. Sporer had prior history of sanctionable conduct resulting in a six-month suspension for violations of the rules of professional conduct and more recently was administratively suspended for failure to fully comply with a trust account audit. *See Sporer*, 897 N.W.2d at 90; Order at 1, *In re Enforcement of Iowa Court Rule 39.10(3)*, No. 24-0866. The district court inadvertently neglected to address

[149] *Id.*
[150] *Id.*

Mr. Sporer's prior sanctionable conduct, however, and therefore did not weigh this factor in favor of finding the violations were serious. *See* D0100 at 8.

e. The reasonableness and necessity of the out-of-pocket expenses incurred by the offended person as a result of the misconduct.[151]

As previously noted, the district court found the attorney fees the parties incurred were reasonable. D0100 at 6. The court also found that SHW and the County incurring attorney fees to respond appropriately to Counsel's frivolous filings was "necessary and reasonable." D0100 at 8. This finding was supported by substantial evidence because, as it observed, the claims asserted by Counsel, "if unopposed, could prevent the wind farm project from moving forward ending years of work and rendering…expenses incurred a waste." *Id.*

f. The nature and extent of prejudice, apart from out-of-pocket expenses, suffered by the offended person as a result of the misconduct.[152]

The district court found that although the Project was "stalled" while the litigation was ongoing, it was unaware of evidence suggesting "this delay…resulted in extensive prejudice." D0100 at 8–9. Nevertheless, the earlier record in this case provides substantial evidence that Counsel's sanctionable conduct caused other harms by threatening SHW's substantial investment, delaying substantial increases

[151] *Id.*
[152] *Id.*

in tax revenues for the counties, delaying anticipated job creation, and frustrating express public policies favoring wind development. *See* D0037 at 19.

g. The relative culpability of client and counsel and the impact on their privileged relationship of an inquiry into that area.[153]

The district court found that Counsel, not their clients, are culpable for the rule 1.413 violation. D0100 at 9. This finding was supported by substantial evidence as the sanctionable conduct concerned their failure to reasonably investigate the law.

h. The risk of chilling the specific type of litigation involved.[154]

Recognizing that claims brought by individual property owners against government and corporate entities may be chilled, the district court found that such concerns were not implicated in this case. D0100 at 9. The court cited substantial evidence to support this finding, noting the parties themselves were not being sanctioned and the sanctioned conduct concerned filing frivolous legal claims. *Id.*

i. The impact of the sanction on the offender, including the offender's ability to pay a monetary sanction.[155]

Noting it had previously addressed Counsel's ability to pay a sanction, the district court correctly observed that because the purpose of sanctions is deterring

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[153] *Id.*
[154] *Id.*
[155] *Id.* at 277.

future misconduct, there necessarily must "be some negative impact upon the offending party." *Id.*

j. The impact of the sanction on the offended party, including the offended person's need for compensation.[156]

The district court declined to weigh this factor in favor of imposing a greater sanction, noting the record did not reflect SHW's or the County's need for compensation. D0100 at 10.

k. The relative magnitude of sanction necessary to achieve the goal or goals of the sanction.[157]

The district court found this factor favored imposing sanctions in "a reasonable amount" because such sanctions plus the dismissal of the action would be sufficient to deter future frivolous filings. *Id.* It therefore weighed this factor in favor of imposing a reasonable sanction rather than a "high-value sanction." *Id.*

l. Burdens on the court system attributable to the misconduct, including consumption of judicial time and incurrence of juror fees and other court costs.[158]

The record contains substantial evidence to support the district court's finding that Counsel's sanctionable conduct "required multiple court hearings and considerable time expended on behalf of the Court to review…voluminous filings." *Id.*

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[156] *Id.*
[157] *Id.*
[158] *Id.*

m. The degree to which the offended person attempted to mitigate any prejudice suffered by him or her.[159]

The district court found the other parties' actions "mitigated the duration the case remained pending and expenses incurred," weighing this factor in support of concluding the violations were severe. *Id.* Substantial evidence supports this conclusion, including the rule 1.413 letter SHW sent to Counsel once *Hunter* was dismissed and the motions seeking dismissal and judgment on the pleadings.

n. The degree to which the offended person's own behavior caused the expenses for which recovery is sought.[160]

Substantial evidence supports the district court's finding that neither SHW nor the County caused the expenses they incurred, "as they acted only to protect their interests as was necessary" due to Counsel's actions. D0100 at 10–11.

o. The extent to which the offender persisted in advancing a position while on notice that the position was not well grounded in fact or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

The district court found Counsel persisted in pursuing their frivolous claims while on notice that they were not well grounded in fact or warranted by existing law, weighing this factor in favor of imposing a higher sanction. D0100 at 11. Substantial evidence supports its finding that Counsel received such notice, including the rule 1.413 letters, the *Hunter* decision, the order dismissing the case,

[159] *Id.*
[160] *Id.*

and the Court of Appeals decision finding the bulk of dismissed claims were untimely.

p. The time of, and circumstances surrounding, any voluntary withdrawal of a pleading, motion, or other paper.[161]

As Counsel never withdrew any filing, the district court reasonably found this factor inapplicable in determining an appropriate sanction. *Id.*

D. Substantial Evidence Supported the District Court's Finding that $30,000 Was the Minimum Sanction Necessary to Deter Future Sanctionable Conduct.

Acknowledging there is "no mathematical formula for calibrating sanctions to the optimal sum that will preserve a deterrent effect," the district court considered the following in evaluating the minimum sanction necessary to deter:

> Whether the improper conduct was willful, or negligent; whether it was a part of a pattern of activity, or an isolated event;…whether the person has engaged in similar conduct in other litigation; whether it was intended to injure; what effect it had on the litigation process in time or expense; whether the responsible person is trained in the law; what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; [and] what amount is needed to deter similar activity by other litigants.

D0100 at 6 (quoting *Fobian Farms*, 906 N.W.2d at 748).

The district court found that although Counsel did not intend to injure, their willful pursuit of frivolous claims still "vexed the wind farm's progress" and "caused significant expense" for the other parties. *Id.* Those findings were supported by the

[161] *Id.*

record reflecting the quantity and quality of Counsel's sanctionable filings. Notably, however, the district court considered only the following filings in determining the appropriate sanction:

(1) amended petition;[162]

(2) *ex parte* motion seeking a TRO;[163]

(3) brief supporting the TRO motion;[164]

(4) request for an emergency hearing on the TRO motion;[165]

(5) motion for immediate hearing on the TRO motion;[166]

(6) motion for partial judgment on the pleadings;[167]

(7) resistance to SHW's motion to dismiss and Fremont County's motion for judgment on the pleadings;[168]

(8) reply supporting the motion for partial judgment on the pleadings;[169]

(9) resistance to the sanctions motion;[170]

(10) reply supporting the motion to strike;[171] and

(11) supplemental resistance to the sanctions motion.[172, 173]

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[162] D0008.
[163] D0017.
[164] D0018, Br. M. Emergency TRO (03/22/2023).
[165] D0031.
[166] D0047.
[167] D0056, M. Partial J. Pleadings (04/05/2023).
[168] D0064, Resist. M. Dismiss (05/05/2023).
[169] D0066, Reply M. Partial J. Pleadings (05/12/2023).
[170] D0078.
[171] D0080.
[172] D0084, Suppl. Resist. M. Sanctions (08/24/2023).
[173] The district court appears to have considered all briefing supporting Counsel's argument for a TRO frivolous and sanctionable but appears to have inadvertently

The court expressly declined to consider other filings Counsel submitted despite finding they contained ample sanctionable content. D0100 at 5. Nevertheless, the sheer volume of sanctionable content within the filings it did consider supported imposing a hefty sanction under this Court's precedents.

In *Barnhill v. Iowa District Court for Polk County*, for example, this Court affirmed sanctions against a lawyer who had pursued "six unfounded claims along with one legitimate claim." 765 N.W.2d at 278. The district court had determined that ***not*** imposing a sanction of $25,000 would "reward, not deter, the filing of frivolous claims." *Id.* The same analysis applies equally here, where Counsel relentlessly pursued 21 meritless claims despite having received prior notice that they were flawed on multiple occasions, including 18 claims so flawed as to be capable of dismissal on multiple grounds. Not imposing a significant sanction here would not only have rewarded Counsel's conduct but encouraged other attorneys to employ such tactics to burden opposing parties and their attorneys. *See also Fahrney v. Animal Rescue League of Iowa*, No. 19-0093, 2020 WL 377883, at *4 n.2 (Iowa Ct. App. Jan. 23, 2020) (citations omitted) (emphasizing that sanctions "serve the objectives of both specific *and general* deterrence" such that the minimum sanction

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omitted Counsel's reply brief filed in support of the TRO, which it presumably would have also found sanctionable. D0037, Reply M. TRO (03/27/2023).

to deter should account for how "enforcement of the rule sets expectations for the greater legal community").

District courts are "best situated to determine when a sanction is warranted to serve the goal of specific and general deterrence," and such determinations should be accorded a degree of deference. *Dull v. Iowa Dist. Ct. for Woodbury Cnty.*, 465 N.W.2d 296, 298 (Iowa Ct. App. 1990) (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 386 (1990)). Here, the district court declined to order Counsel to pay sanctions to SHW and the County in amounts equal to their reported attorney fees or the sums they requested. This shows a distinct exercise of discretion, supported by substantial evidence in the record before it. The sanctions imposed were not designed to compensate—the amounts awarded to SHW and the County equal a fraction of the fees they incurred and will not come close to making them whole. The sanctions ordered were plainly designed to deter.

The district court did not abuse its discretion in assessing the minimum sanction necessary to deter, and the record reflects substantial supportive evidence that anything less than the monetary sanction imposed will, in essence, reward Counsel's continued improper conduct.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court orders imposing sanctions and annul the writ.

REQUEST FOR ORAL SUBMISSION

SHW respectfully requests oral argument concerning this matter.

Respectfully submitted this 7th day of January 2025.

/s/ Kristy Dahl Rogers
Kristy Dahl Rogers
Bret A. Dublinske
Brant M. Leonard
FREDRIKSON & BYRON, P.A.
111 East Grand Avenue, Suite 301
Des Moines, IA 50309
Tel: (515) 242-8900
Fax: (515) 242-8950
Email: krogers@fredlaw.com
bdublinske@fredlaw.com
bleonard@fredlaw.com

Attorneys for Shenandoah Hills Wind Project, LLC

CERTIFICATE OF COST

The undersigned certifies that the cost for printing and duplicating paper copies of this brief was $0.00.

Respectfully submitted this 7th day of January 2025.

/s/ Kristy Dahl Rogers
Kristy Dahl Rogers
Bret A. Dublinske
Brant M. Leonard
FREDRIKSON & BYRON, P.A.
111 East Grand Avenue, Suite 301
Des Moines, IA 50309
Tel: (515) 242-8900
Fax: (515) 242-8950
Email: krogers@fredlaw.com
bdublinske@fredlaw.com
bleonard@fredlaw.com

Attorneys for Shenandoah Hills Wind Project, LLC

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rules of Appellate Procedure 6.903(1)(g) and 6.903(1)(i)(1) because it has been prepared in a proportionally spaced typeface using 14-point Times New Roman font in Microsoft Word 2010 and contains 12,994 words, excluding the parts of the brief exempted from the type-volume requirements by Iowa Rule of Appellate Procedure 6.903(1)(i)(1).

Respectfully submitted this 7th day of January 2025.

/s/ Kristy Dahl Rogers

Kristy Dahl Rogers
Bret A. Dublinske
Brant M. Leonard
FREDRIKSON & BYRON, P.A.
111 East Grand Avenue, Suite 301
Des Moines, IA 50309
Tel: (515) 242-8900
Fax: (515) 242-8950
Email: krogers@fredlaw.com
bdublinske@fredlaw.com
bleonard@fredlaw.com

Attorneys for Shenandoah Hills Wind Project, LLC

CERTIFICATE OF SERVICE

The undersigned certifies the foregoing document was electronically served on the Clerk of the Supreme Court using the Electronic Document Management System on January 7, 2025, which will serve a notice of electronic filing to all registered counsel of record.

Respectfully submitted this 7th day of January 2025.

/s/ Kristy Dahl Rogers

Kristy Dahl Rogers
Bret A. Dublinske
Brant M. Leonard
FREDRIKSON & BYRON, P.A.
111 East Grand Avenue, Suite 301
Des Moines, IA 50309
Tel: (515) 242-8900
Fax: (515) 242-8950
Email: krogers@fredlaw.com
bdublinske@fredlaw.com
bleonard@fredlaw.com

Attorneys for Shenandoah Hills Wind Project, LLC