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IN THE SUPREME COURT OF THE STATE OF DELAWARE

Thomas L. Hunt, Esquire, Appellant, v. Court of Chancery of the State of Delaware, Appellee.	)	C.A. No. 233, 2020

ANSWERING BRIEF
OF COURT OF CHANCERY OF THE STATE OF DELAWARE

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
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DATED: October 5, 2020

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NATURE OF PROCEEDINGS

This appeal concerns a sanction levied against the Appellant, Thomas L. Hunt, Esq. ("Hunt"), by the Appellee, the Court of Chancery of the State of Delaware ("Court of Chancery"), in *Quantlab Group, LLC, et al v. Eames, et al*, C.A. No. 2018-0553 JRS.

On July 27, 2018, Plaintiffs Quantlab Group GP, LLC, Veloce LP, and Marco, LP (collectively, the "Quantlab Group"), represented by John L. Reed, Esq. ("Reed"), filed a complaint seeking a declaratory judgment against Defendants Bruce P. Eames, Andrey Omeltchenko, AVG Holdings, LP, and Aster Securities (US) LP (collectively, the "Eames Group") regarding the interpretation and validity of certain amendments to a Delaware limited partnership agreement.[1] Hunt, a Texas attorney admitted *pro hac vice*, represented the Eames Group.

On April 21, 2020, the Court of Chancery heard oral argument on the Quantlab Group's Motion to Enforce Final Order and Judgment (the "Motion to Enforce").[2] On May 8, 2020, the Quantlab Group submitted a letter to the Court of Chancery detailing multiple misrepresentations made by Hunt during the oral

[1] A-77-78, Appellant's Opening Brief (hereinafter "Op. Br.") Exhibit A at 6.
[2] A-8.

argument.[3] In response, Hunt, also on May 8, 2020, sent an e-mail containing a personal threat to counsel for Quantlab Group (Reed).[4]

On May 12, 2020, the Quantlab Group submitted another letter to the Court of Chancery (the "Sanctions Motion"), notifying the Court about Hunt's e-mail and unequivocally indicating that the Quantlab Group believed Hunt's e-mail warranted revocation of his *pro hac vice* admission and possibly other sanctions.[5] In presenting the issue for the Court of Chancery's consideration, the Sanctions Motion summarized the law on *pro hac vice* revocations as well as other available sanctions.[6] On May 13, 2020, Hunt's Delaware co-counsel, Scott B. Czerwonka, Esq., responded to the Sanctions Motion and, on behalf of both himself and Hunt, "apologize[d] for [Hunt's] e-mail," conceded the e-mail "was regrettable," that "it never should have been sent" and that Hunt failed to "maintain" the required degree of "professionalism," but nevertheless argued that no sanctions were warranted.[7]

After considering the papers submitted on behalf of the Quantlab Group and Hunt, the Court of Chancery, on June 11, 2020, sanctioned Hunt and ruled that he

[3] A-80-86.
[4] A-94.
[5] A-87-92.
[6] A-88-92.
[7] A-100-104.

was to pay the attorneys' fees incurred by the Quantlab Group in preparing the Sanctions Motion.[8]

On July 20, 2020, Hunt filed this appeal challenging the sanction. Hunt's Notice of Appeal names only the Court of Chancery as "[t]he party against whom the appeal is taken" and the Court of Chancery is the only party listed as an appellee in the caption. On September 4, 2020, Hunt submitted his Opening Brief. This is the Court of Chancery's Answering Brief.

[8] Op. Br. Ex. A at 30-31.

SUMMARY OF THE ARGUMENT

1. Hunt's appeal should be dismissed because he failed to join an indispensable party (i.e., the Quantlab Group) and because the only party against whom Hunt did take this appeal (i.e., the Court of Chancery) is not a proper party.

2. Denied.[9] The Court of Chancery properly ordered sanctions against Hunt after considering the Quantlab Group's Sanctions Motion and the response thereto. The Court of Chancery did not act *sua sponte* and Hunt, who had an opportunity to respond to, and did in fact respond to, the Quantlab Group's Sanctions Motion, was not deprived of any due process.

3. Denied.[10] Hunt's e-mail was prejudicial to the administration of justice because it not only wasted judicial resources, it concerned and was sent in direct response to a meritorious filing, alluded to a future intimidation or physical threat, and created a chilling effect in deterring meritorious arguments by opposing counsel. Further, Hunt's communication is not protected by the First Amendment because attorneys practicing law are held to a higher professional standard than non-attorneys and because threats are not protected by the First Amendment.

[9] Responding to paragraph 1 of Appellant's Summary of the Argument.
[10] Responding to paragraph 2 of Appellant's Summary of the Argument.

STATEMENT OF FACTS

On April 21, 2020, the Court of Chancery heard oral argument on the Quantlab Group's Motion to Enforce.[11] On April 27, 2020, the Eames Group submitted a letter to the Court of Chancery to, among other things, keep the Court "appraised of the proceedings in the Texas Fraud case."[12] On May 8, 2020, the Quantlab Group responded with a letter highlighting multiple misrepresentations made by Hunt during the April 21, 2020 oral argument.[13] Hunt, upon reading the May 8, 2020 letter, sent an e-mail to Reed that same day, stating:

> John- just got your last letter. Like most pusillanimous slanderers, you apparently feel cloaked in the safety of distance to launch a prevaricator's baseless ad hominem attack on me. As with most of the fabrications you foist on the court, your spew is at best specious if not just plain bogus. I look forward to meeting you face to face if your bladder can handle it.[14]

On May 12, 2020, the Quantlab Group submitted another letter to the Court of Chancery (i.e., the Sanctions Motion), notifying the Court of Chancery about Hunt's threatening e-mail and stating that "Hunt's behavior is concerning and merits the attention of [the Court of Chancery]."[15] The Sanctions Motion argued that the threatening e-mail warranted revocation of Hunt's *pro hac vice* admission and

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[11] A-8.
[12] A-80.
[13] A-80-86.
[14] A-94.
[15] A-87-88.

provided an approximately four-page analysis of how Hunt's conduct justified revocation.[16] The Sanctions Motion further asserted that "Hunt's conduct may also warrant other sanctions and certainly implicates" the Delaware Lawyers' Rules of Professional Conduct ("DLRPC"); in particular, Rules 1.1, 3.1, 3.3(a) and 8.4.[17]

On May 13, 2020, Hunt's co-counsel responded to the Quantlab Group's Sanctions Motion on behalf of himself, Hunt, and the Eames Group.[18] The response contained an apology from both himself and Hunt for Hunt's e-mail to Reed, conceded the e-mail "was regrettable," that "it never should have been sent" and that Hunt failed to "maintain" the required degree of "professionalism," but argued that, nevertheless, it did not rise to the level of "sanctionable conduct."[19] The response then made a limited request:

> To the extent that the Court [of Chancery] gives any credence whatsoever to [Quantlab group's] accusations, harbors any doubts with respect to the veracity of [] Hunt's representations at the April 21, 2020 hearing or has any questions regarding the Texas case or Texas procedure, [] Hunt respectfully requests the ability to appear before the Court [of Chancery] and respond.[20]

Notably, Hunt did not request the opportunity to be heard further regarding the threatening e-mail he sent to Reed.

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[16] A-88-92.
[17] A-91.
[18] A-100-104.
[19] A-100, 103.
[20] A-103.

On June 11, 2020, the Court of Chancery denied, without prejudice, the Quantlab Group's Motion to Enforce.[21] The Court of Chancery then found that "the Eames Group appear to misstate the nature of the parties' legal proceedings here in Delaware" and verified the misrepresentations highlighted in Quantlab Group's May 8, 2020 letter.[22] Indeed, the Court of Chancery found that Hunt's characterization of Eames Group's claims in Delaware and Texas during the April 21, 2020 were not in accord with Eames Group's actual pleadings.[23]

The Court of Chancery then addressed the Sanctions Motion, finding that Hunt's e-mail was prejudicial to the administration of justice in violation of DLRPC 8.4(d).[24] The Court of Chancery stated:

> With those clarifications in hand, and before we part ways today, I do think I need to address some of the emails that I have seen that were exchanged between the parties in connection with this latest round of motion practice. Delaware's Rules of Professional Conduct, Rule 8.4(d), requires all lawyers practicing in the state to refrain from conduct that is prejudicial to the administration of justice. When opposing counsel argues that your arguments before two separate courts are internally and knowingly inconsistent, I think it's clearly prejudicial to the administration of justice to respond, not with a counter-explanation of the alleged inconsistencies, but with a personal threat to counsel. That threat from Mr. Hunt directed to Mr. Reed is attached to Mr. Reed's letter of May 12 at DI 174, and I incorporate its contents here

[21] Op. Br. Ex. A at 19.
[22] Op. Br. Ex. A at 20-25.
[23] Op. Br. Ex. A at 22-25.
[24] Op. Br. Ex. A at 28-31.

without repeating them. I'd say that the behavior exhibited by Mr. Hunt is not how we do things in Delaware, but that would suggest that it is how things might be done elsewhere. I suspect my colleagues in Texas would have no more tolerance for this behavior than we have here in Delaware.

In any event, the question is, what is to be done about it. Vice Chancellor Glasscock wrestled with what should be done when an attorney's unprofessional behavior is brought to the attention of the Court in *Lendus LLC v. Goede*, decided in 2018. There, the Court was presented with repeated instances of very bad behavior by pro hac counsel during a deposition. The pattern of misbehavior caused the Court to conclude that it was not a one-off instance of an attorney losing his cool, but, rather, a strategic attempt to intimidate for litigation advantage. Ultimately, the Court declined to disqualify the offending counsel or to revoke his pro hac admission privileges. It did, however, impose monetary sanctions and report counsel to disciplinary counsel.

Here, while troubling, I don't see the behavior rising to the level of unprofessionalism that confronted the Court in *Lendus*. Mr. Hunt has apologized, and his outburst appears to be an isolated incident. With that said, it is a severe instance of misconduct, and it is worthy of a sanction. Mr. Hunt, not his clients, will pay the counsel fees incurred by the [Quantlab] Group in preparing Mr. Reed's May 12 letter at DI 174. I'll also note that this is strike one against Mr. Hunt's pro hac vice admission. If there is another instance of unprofessional behavior here, I will certainly be receptive to a motion to revoke Mr. Hunt's privilege to practice before this Court in this case. And I hope that's clear. But having reviewed the matter carefully, I am satisfied it is a severe but isolated instance of unprofessional conduct and, therefore, disqualification, revocation, and, for that matter, a report to disciplinary counsel are not, in my view, justified.

> That concludes my ruling. I'm going to ask that Mr. Reed submit his certification of counsel fees to me within five days. Once I receive that, I will enter an order awarding those fees. And I'll enter a summary order denying the motion to enforce without prejudice for the reasons stated on the record today.
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> Again, I appreciate very much counsel's patience as I've read this lengthy ruling. I apologize that I have to jump off. I have actually gone long, so I don't have time to entertain questions. But as I have said, you can direct those questions to me in writing to the extent you have them. Otherwise, I will await receipt of Mr. Reed's submission, and we will get the order entered promptly.
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> With that, we are adjourned. And, again, many thanks for your patience as I have read the ruling. Have a good day.[25]

Although the Court of Chancery invited "questions" "in writing," no party below, nor Hunt, submitted any questions. Likewise, no party below, nor Hunt, moved for clarification, reargument, or otherwise sought to be heard further.

The Court of Chancery ultimately ordered Hunt to pay $14,989.00, representing the amount of attorneys' fees the Quantlab Group incurred in connection with the Sanctions Motion.[26] While the Court of Chancery did mention Court of Chancery Rule 11(b), the Court of Chancery did not levy a fine or sanction upon Hunt under that rule.[27]

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[25] Op. Br. Ex. A. at 28-31.
[26] Op. Br. Ex. B.
[27] Op. Br. Ex. A at 21.

ARGUMENT

I. HUNT'S APPEAL SHOULD BE DISMISSED BECAUSE HE FAILED TO JOIN AN INDISPENSABLE PARTY AND HE NAMED AN IMPROPER PARTY

A. Question Presented

Whether this appeal should be dismissed because Hunt failed to join an indispensable party and/or because he instead named an improper party.

B. Scope of Review

To determine whether an appeal should be dismissed for failing to join or name an indispensable party, the Court must determine if such omission in the notice of appeal "is substantially prejudicial to a party in interest."[28] "The burden rests upon the appellant to establish the absence of such substantial prejudice."[29]

C. Merits of Argument

Hunt's appeal should be dismissed for two independent and compelling reasons. First, Hunt failed to join an indispensable party (i.e., the Quantlab Group) in his appeal. And second, Hunt named only the Court of Chancery, an improper party to his appeal.

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[28] *State Personnel Commission v. Howard*, 420 A.2d 135, 137 (Del. 1980).
[29] *Id.*

1. Hunt Failed To Join An Indispensable Party

[A]ll parties to [a] litigation who would be directly affected by a ruling on the merits of an appeal, should be made party to the appellate proceedings."[30] A party that has "a substantial vested interest in the outcome of the litigation [] must be joined as a party to provide for complete and proper adjudication of an appeal."[31] Further, a "notice of appeal cannot be amended or modified after the expiration of the time for perfecting the appeal" when such amendment or modification would alter "the ground or scope of the appeal after the statutory period for filing the appeal had run."[32] If an amendment would not alter the ground or scope of the appeal, and an appeal fails to name a party with a substantial interest, the Court applies the test promulgated in *Howard* to determine whether the appeal should be dismissed.[33] *Howard* provides that if an appeal omits a party with a substantial vested interest, the appeal shall be dismissed if the omission "is substantially prejudicial to a party in interest."[34] "The burden rests upon the appellant to establish the absence of such substantial prejudice."[35]

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[30] *Genesis Healthcare v. Delaware Health Res. Bd.*, 130 A.3d 931 (Table), 2015 WL 8486195, at *2 (Del. 2015), *citing Howard*, 420 A.2d at 137 (internal quotations omitted).
[31] *Genesis Healthcare*, 2015 WL 8486195, at *3 (citation omitted).
[32] *Howard*, 420 A.2d at 138, fn 4.
[33] *Howard*, 420 A.2d at 137; *Genesis Healthcare*, 2015 WL 8486195, at *2.
[34] *Howard*, 420 A.2d at 137.
[35] *Id.*

In *Genesis Healthcare*, the appellant, which operated nursing facilities, appealed a final judgment of the Superior Court affirming a decision of the Delaware Health Resources Board ("DHRB") granting a Certificate of Public Review to the Center at Eden Hill ("Eden Hill"), a facility that would compete with those of the appellant.[36] Appellant only named the DHRB as an appellee, but did not name Eden Hill in its appeal to the Superior Court or in its appeal to this Court.[37] DHRB argued that the appeal should be dismissed because the appellant failed to name Eden Hill, an indispensable party, and therefore the Court lacked jurisdiction.[38]

This Court agreed, finding that the failure to join Eden Hill required dismissal of the appeal.[39] The Court reasoned that the DHRB had no interest in the appeal as it was simply, like a court, an adjudicatory body.[40] Conversely, Eden Hill had a substantial interest in the appeal as it affected their receipt of a Certificate of Public Review, and the appellant's failure to name them in the appeal resulted in substantial prejudice.[41]

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[36] *Genesis Healthcare*, 2015 WL 8486195, at *1.
[37] *Id.*
[38] *Id.*
[39] *Id.* at *3.
[40] *Id.*
[41] *Id.*

In the present case, Hunt's appeal must be dismissed for failure to name the Quantlab Group. Like Eden Hill in *Genesis Healthcare,* the Quantlab Group (and not the Court of Chancery) has a substantial interest (and the only pecuniary interest) in this appeal. They were the successful party and were awarded their attorneys' fees in preparing their Sanctions Motion addressing Hunt's e-mail. The Quantlab Group is substantially prejudiced by not being named as a party to this appeal because, among other things, its outcome will determine whether they must bear the costs of the Sanctions Motion. Further, the Quantlab Group's interests cannot be represented by or "protected" by the Court of Chancery on appeal.[42] The Court of Chancery is, and must at all times remain, an independent and impartial adjudicatory body. Like the DHRB in *Genesis Healthcare*, the Court of Chancery has no interest in this appeal because it only issued a decision based upon the Sanction's Motion and Hunt's response. Consequently, Hunt's appeal should be dismissed.[43]

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[42] *Id.*

[43] The Quantlab Group's filing of a Disclosure of Corporate Affiliations and Financial Interest pursuant to Supreme Court Rule 7(g) does not change the analysis or outcome because the Quantlab Group expressly did so as "non-parties" consistent with them not being named in the caption or as a party against whom this appeal is taken. Such disclosure was necessitated by the purpose of Rule 7(g) because the Justices needed to be aware of the financial interests impacted by this appeal for purposes of their own internal conflict of interest checks. Likewise, the fact that the Quantlab Group had notice of this appeal does not change the analysis or outcome either. The jurisdictional defect (i.e., the expiration of the 30-day period to appeal under Supreme Court Rule 6(a)(1)) created by Hunt's failure to join the indispensable Quantlab Group is not now curable because the jurisdictional 30-day period has expired. *See Hackett v. Bd. of Adjustment of City of Rehoboth*, 794 A.2d

2. The Court Of Chancery Is Not A Proper Party

"A judge has no cognizable personal interest before a higher tribunal in seeking to have his rulings sustained."[44] Indeed, it is incorrect to join a judge as "a party to an appeal from a judgment he rendered."[45] Hunt's appeal should be dismissed because, independent of and in addition to his failure to join an indispensable party, the Court of Chancery is not the proper party to be named in this appeal.

In the instant case, the Quantlab Group notified the Court of Chancery about Hunt's e-mail, requested some form of sanction, and summarized the law on revocation of *pro hac vice* admissions and other available sanctions. Hunt's co-counsel then responded on Hunt's behalf. Because the Court of Chancery only ruled

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596, 598 (Del. 2002) (relied upon with approval in *Genesis Healthcare*). Moreover, the Quantlab Group had no obligation to intervene and correct Hunt's jurisdictional defect. In *Sussex Medical Investors, L.P. v. Delaware Health Resources Board*, the Superior Court dismissed an appeal from the Health Resources Board for failure to join an indispensable party. 1997 WL 524065, at *11 (Del. Super. Apr. 8, 1997). The board had rejected the appellant's application for nursing home beds when determining how to allocate a limited number of beds, and the Superior Court found that the interests of the successful applicants were implicated. *Id*. at *8. The Superior Court explained that "[t]he right to intervene is not tantamount to an obligation to do so" and "[t]o hold that the successful applicants have had a duty to intervene, or to otherwise risk a potentially adverse judgment in their absence, would impair or impede the successful applicants' ability to protect their interests and would effectively nullify the 30 day appeal provisions of 16 *Del. C*. § 9305(8)." *Id*. at *8, *11.

[44] *Wilmington Tr. Co. v. Barron*, 470 A.2d 257, 261–62 (Del. 1983).

[45] *Id.*

on a motion, it is not a proper party to be named in Hunt's appeal, and because the Court of Chancery was the only appellee named by Hunt, no opposing parties remain, and the appeal should be dismissed.

II. THE COURT OF CHANCERY'S SANCTION SHOULD BE AFFIRMED BECAUSE THE COURT PROPERLY FOUND HUNT'S CONDUCT TO BE PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE

A. Question Presented

Whether the Court of Chancery properly found Hunt's threatening e-mail to be prejudicial to the administration of justice, in violation of DLRPC 8.4(d), when the e-mail was sent in direct response to a meritorious filing, alluded to a future intimidation or physical threat (e.g., "you apparently feel cloaked in the safety of distance" and "I look forward to meeting you face to face if your bladder can handle it"), and caused a waste of judicial resources and a potential chilling effect on legitimate arguments.

B. Scope of Review

"[M]atters affecting governance of the Bar" are subject to *de novo* review.[46]

C. Merits of Argument

Hunt's due process argument fails because the Court of Chancery did not *sua sponte* sanction Hunt under Delaware Court of Chancery Rule 11. Rather, the Court of Chancery properly found, upon application by the Quantlab Group, that Hunt's conduct prejudiced the administration of justice in violation of DLRPC 8.4(d).

[46] *Appeal of Infotechnology, Inc.*, 582 A.2d 215, 218 (Del. 1990).

Therefore, to the extent it has jurisdiction to hear this appeal, the Court should affirm the Court of Chancery's sanction levied upon Hunt for his e-mail.

1. The Court Of Chancery Did Not Act *Sua Sponte*, Did Not Sanction Hunt Under Court Of Chancery Rule 11, Did Not Deprive Hunt Of Due Process, And In Fact Heard From Hunt

Hunt attempts to argue that the Court of Chancery failed to grant him proper notice and an opportunity to respond, citing *Crumplar v. Superior Court ex rel. New Castle County*,[47] when the Court of Chancery allegedly sanctioned Hunt "*sua sponte* with no advance notice."[48] Hunt's argument fails on multiple fronts.

As a preliminary matter, the Court of Chancery did not act *sua sponte*, but ruled on an application by the Quantlab Group to revoke Hunt's *pro hac vice* admission or to impose other sanctions. The analysis also does not turn on the fact that the Sanctions Motion was presented in the form of a letter rather than a formal motion because a letter may serve as a motion to the Court of Chancery.[49] Moreover, the Quantlab Group's Sanctions Motion provided the Court of Chancery with a comprehensive analysis of how, based on Delaware precedent, Hunt's conduct warranted the revocation of his *pro hac vice* admission and other applicable sanctions. Recognizing it as such, Hunt's co-counsel promptly responded to the

[47] 56 A.3d 1000 (Del. 2012).
[48] Op. Br. at 8-9.
[49] *See generally, eBay Domestic Holdings, Inc. v. Newmark*, 2009 WL 3494348, at *1 (Del. Ch. Oct. 29, 2009).

Sanctions Motion on Hunt's behalf. Accordingly, the Court of Chancery did not act *sua sponte*. The Court of Chancery ruled on a party's motion and, consequently, Hunt's arguments must fail.[50]

Further, Hunt was given a proper opportunity to respond and, in fact, did respond. On May 13, 2020, Hunt's co-counsel submitted a response to the Court of Chancery that contained an apology on behalf of himself and Hunt for Hunt's e-mail. He argued, however, that the e-mail did not rise to the level of "sanctionable conduct." In addition, the May 13, 2020 response submitted by Hunt's co-counsel did not request to be heard further regarding the e-mail. Hunt's response specifically requested a further opportunity to be heard on the Motion to Enforce, to the extent the Sanctions Motion impacted it, but he did not request a further opportunity to be heard on the matter of sanctions for the e-mail for which counsel acknowledged was unprofessional, "regrettable," and "never should have been sent." Hunt was thus aware that he had the ability to request an additional hearing, but forewent the request to be heard further regarding his e-mail. Finally, despite all of this, after issuing its ruling, but before filing its order, the Court of Chancery advised the parties that if they had any "questions" regarding the sanctions, they were invited to

[50] Even if the Court found that Court of Chancery acted *sua sponte*, the Court of Chancery had the authority to do so when attorney conduct prejudices the administration of justice (discussed later herein). *LendUS, LLC v. Goede*, 2018 WL 6498674, at *8 (Del. Ch. Dec. 10, 2018).

submit additional correspondence. No party below, nor Hunt, did so. And no party below, nor Hunt, requested clarification, reargument, or a further opportunity to be heard. Accordingly, Hunt was not deprived of any due process, and the Court of Chancery's sanction should be affirmed.

Hunt's reliance on *Crumplar* is also misplaced as he attempts to impermissibly expand the scope of *Crumplar*. Hunt appears to argue that any time a court imposes sanctions upon an attorney, the court must provide notice and an opportunity to heard.[51] In *Crumplar*, the Court held, *inter alia*, that the lower court must provide notice and an opportunity to respond before *sua sponte* imposing sanctions under Rule 11.[52] However, the *Crumplar* ruling was limited to sanctions under Rule 11.[53] The Court declined to rule on plaintiff's constitutional due process arguments because of its substantive ruling on the Rule 11 issue.[54] Nothing in

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[51] Op. Br. at 8-9.
[52] 56 A.3d at 1009-1010.
[53] *Id.* at 1010-1011.
[54] *Id.* In *Crumplar*, the Superior Court took issue with an attorney's failure to distinguish two cases from the facts at hand. 56 A.2d at 1004. This Court clarified that "Judges in all Delaware trial courts should determine whether an attorney should be sanctioned under Rule 11 under an objective standard." *Id.* at 1008. This Court then concluded that "[b]ecause Crumplar's behavior satisfied the objective standard, we hold that the Superior Court judge abused her discretion by imposing sanctions." *Id*. The Court also noted that Crumplar's mere "incorrect case citation for an otherwise accurate statement, in a single paragraph of a response to a motion he nevertheless lost, did not adversely affect the integrity of the proceeding." *Id*. at 1010. By any interpretation, Crumplar's conduct is highly distinguishable from Hunt's conduct.

Crumplar prohibits a court, in appropriate circumstances, from imposing monetary sanctions without application of Rule 11 or the procedures contained therein.[55] Because the Court of Chancery did not *sua sponte* sanction Hunt under Court of Chancery Rule 11, but rather found that Hunt's e-mail was prejudicial to the administration of justice in response to the Sanctions Motion, and after considering a response thereto and inviting questions, *Crumplar* is inapplicable and Hunt's reliance on *Crumplar* is misplaced.

The remaining case law cited by Hunt likewise fails to support his cause. *Roadway Express, Inc. v Piper* is distinguishable because it did not concern due process issues when a court levies a sanction against an attorney, but concerned whether attorneys' fees were recoverable as "costs" under 28 U.S.C. § 1927 when a case was dismissed for discovery violations under Federal Rule of Civil Procedure 37.[56] *Piper* did not resolve any due process issues, much less due process for conduct prejudicial to the administration of justice. Likewise, *Shelly v. Kramer* did not concern due process for attorney sanctions, but dealt with judicial enforcement of a racially-biased property restriction.[57] *Gottlieb v. Ford* is also unavailing because that case concerned notice and an opportunity to be heard before a court *sua sponte*

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[55] *Matter of Ramunno*, 625 A.2d 248, 249 (Del. 1993); *Simmons v. Bayhealth Med. Ctr., Inc*., 2009 WL 74005, at *1 (Del. Super. Ct. Jan. 7, 2009).
[56] 447 U.S. 752, 767-768 (1980).
[57] 334 U.S.1, 4-8 (1948).

issued a filing injunction, restricting a party from submitting anything further to the court, and had nothing to do with attorney sanctions.[58] Finally, *Johnson v. Cherry* is distinguishable because it dealt with sanctions under Federal Rule of Civil Procedure 11, not sanctions due to conduct found to be, after consideration of a response, prejudicial to the administration of justice.[59]

Hunt further argues that the Quantlab Group did not request monetary sanctions.[60] This argument, however, overlooks that the Quantlab Group outlined more severe penalties, from revocation of Hunt's *pro hac vice* admission to an array of other potential sanctions for violations of the DLRPC. The Court of Chancery, in its discretion, found that revocation of Hunt's *pro hac vice* admission was unwarranted at that time, but imposed a lesser penalty of a monetary sanction.[61]

2. The Court Of Chancery Properly Sanctioned Hunt Because Hunt's Threatening E-Mail Prejudiced The Administration Of Justice

Under DLRPC 8.4(d), attorneys are prohibited from engaging "in conduct that is prejudicial to the administration of justice." DLRPC 8.4(d) "focuses purely on

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[58] 633 Fed. Appx. 38, 39-40 (2d Cir. 2016).
[59] 422 F.3d 540, 549 (7th Cir. 2005).
[60] Op. Br. at 9.
[61] Notably, fee shifting is not uncommon or unforeseen in litigation and an award of attorney's fees is not the equivalent of a fine. *See Lewis v. Gulf Health, Inc.*, 540 So. 2d 159, 160 (Fla. Dist. Ct. App. 1989) (holding that "awarding attorney's fees and costs should not be construed as a…fine.").

the conduct, and not any specific underlying deceptive activity."[62] It is an objective standard and state of mind is irrelevant.[63] Conduct that results in the waste of judicial resources is prejudicial to the administration of justice.[64] Further, conduct that is "undignified, discourteous, rude, and abusive" is "prejudicial to the administration of justice."[65]

In *Abbott*, an attorney made inflammatory remarks in a brief, including personal attacks against opposing counsel and offensive and sarcastic language.[66] As a result, the trial court "was required to strike *sua sponte* portions of the Respondent's written arguments and to write an opinion explaining its actions."[67] The Court found that the offending attorney's conduct was prejudicial to the administration of justice, in violation of DLRPC 8.4(d), because it "caused a waste of judicial resources that otherwise would be devoted to the merits of other cases before the" trial court.[68] The Court acknowledged "that disruptive conduct was prejudicial to the administration of justice."[69]

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[62] *Matter of Beauregard*, 189 A.3d 1236, 1248 (Del. 2018).
[63] *Id.*
[64] *In re Abbott*, 925 A.2d 482, 486–87 (Del. 2007), *In re Murray*, 47 A.3d 972 (Del. 2012).
[65] *In re Kennedy*, 472 A.2d 1317, 1324 (Del. 1984).
[66] 925 A.2d at 484-486.
[67] *Id.* at 486 (citation omitted).
[68] *Id.* at 486-487(citation omitted).
[69] *Id.* at 487 (citation omitted).

To start, Hunt's e-mail prejudiced the administration of justice because it caused a waste of judicial resources. Hunt's e-mail reasonably prompted the Sanctions Motion, which caused the Court of Chancery to consider both the Sanctions Motion and the response from Hunt's co-counsel (also on Hunt's behalf) regarding the threatening and offensive e-mail. This diverted judicial resources from the Court of Chancery, hindering its ability to decide meritorious issues before it. Like the trial court in *Abbott*, the Court of Chancery was forced to consider Hunt's threatening e-mail, whether it warranted revocation of his *pro hac vice* admission, and whether other sanctions were appropriate. As a result, Hunt's e-mail caused a waste of judicial resources resulting in prejudice to the administration of justice. Therefore, the Court of Chancery's sanction levied upon Hunt should be affirmed.

This is not to suggest that anytime counsel brings inappropriate behavior by opposing counsel to a court's attention that it automatically falls within the "administration of justice" simply because a court must deal with it. Context is, of course, important; and Hunt is mistaken when he suggests that the fact that his e-mail was sent "outside" of a formal court proceeding is dispositive. It is not. While it is true that Hunt and Reed were not in court or before the Court of Chancery at the moment, what Hunt overlooks is that his e-mail concerned a meritorious filing, was sent in direct response to the filing, discussed the contents of the filing, and was designed to impact any further proceedings in connection with the filing. Indeed,

the multiple misrepresentations detailed in the Quantlab Group's May 8, 2020 letter could have led to further proceedings and Hunt's e-mail appears to have anticipated the reasonable probability of further proceedings. In that regard, Hunt's e-mail was intended to discourage any further zealous and meritorious advocacy by the Quantlab Group and to impugn or disrupt any future proceeding by alluding to future intimidation or physical threats (e.g., "you apparently feel cloaked in the safety of distance" and "I look forward to meeting you face to face if your bladder can handle it").

Indeed, Hunt's e-mail is of the type that, if left unchecked, creates the danger of a chilling effect upon opposing counsel to make legitimate arguments and engage in the kind of vigorous and meritorious advocacy demanded by our judicial system. Rather than make meritorious arguments in response to the Quantlab Group's May 8, 2020 submission, Hunt responded with a physical threat. Such conduct prejudices the administration of justice because it is exactly the type of conduct that prevents opposing counsel from making legitimate legal arguments due to fear of violence or harassment. The chilling effect is even more apparent because the Court of Chancery confirmed the findings in Quantlab Group's May 8, 2020 letter. Therefore, Hunt's threatening e-mail sought to discourage any further meritorious arguments.

Putting aside the threat of future intimidation, disruption, or physical harm in connection with a proceeding, Hunt's e-mail also prejudiced the administration of

justice for another simple reason. Hunt's email contained disparaging and unprofessional remarks about Reed. Correspondence containing threats and disparaging remarks made by counsel to an opposing party or counsel have been found to be prejudicial to the administration of justice.[70] In *Norkin*, the state bar suspended an attorney from the practice of law.[71] Following his suspension, the attorney sent e-mails to counsel for the state bar, calling counsel "evil" and "despicable" and threatening legal action.[72] The court found that the e-mails were prejudicial to the administration of justice, rejecting the offending attorney's argument that he had a "right to speak freely and express" his opinions.[73]

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[70] *The Florida Bar v Norkin*, 183 So.3d 1018, 1022 (Fla. 2015), *The Florida Bar v. Uhrig*, 666 So.2d 887, 888 (Fla. 1996); *see also The Florida Bar v. Martocci*, 791 So.2d 1074, 1076-1077 (Fla. 2001) (finding that counsel's conduct, including calling opposing counsel a "bush leaguer," prejudiced the administration of justice).

[71] 183 So.3d 1019.

[72] *Id.* at 1022.

[73] *Id.* The court, in finding that the e-mails prejudiced the administration of justice, relied on Rule Regulating the Florida Bar 4.8.4(d), which states:

> A lawyer shall note engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.

Likewise, Hunt's e-mail also prejudiced the administration of justice because it contained disparaging remarks and a physical threat. Similar to the e-mails in *Norkin*, Hunt's e-mail resorted to name calling and a physical threat towards Reed. Therefore, the Court of Chancery properly found Hunt's conduct prejudicial to the administration of justice, and the sanction should be affirmed.

Hunt's reliance on *Matter of Member of Bar Hurley*[74] is misplaced. In *Matter of Member of Bar Hurley*, the Court found that the disparaging e-mails Mr. Hurley sent to opposing counsel did not prejudice the administration of justice because they did not directly burden the trial court.[75] In this case, Hunt's e-mail did burden the Court of Chancery. As discussed, *supra*, Hunt's e-mail resulted in a waste of judicial resources. Therefore, *Matter of Member of Bar Hurley* does not apply here.

Finally, Hunt appears to argue that his e-mail, which contained a physical threat, is protected speech under the First Amendment.[76] "The [United States] Supreme Court has held that speech otherwise entitled to full constitutional protection may nonetheless be sanctioned if it obstructs or prejudices the administration of justice."[77] "It is well established that attorneys acting as advocates in a judicial proceeding do not enjoy the same First Amendment protections as the

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[74] 2018 WL 13219010 disposition reported at 183 A.3d 703 (Del. 2018).
[75] at WL op. at *3.
[76] Op. Br. at 12.
[77] *Lafferty v. Jones*, 2020 WL 4248476, at *11 (Conn. July 23, 2020) (citation omitted) (alteration in original).

general public, both due to their membership in a specialized profession and their status as officers of the court."[78] In the present case, Hunt's e-mail is not afforded any protection under the First Amendment because it prejudiced the administration of justice. Further, as an attorney, Hunt is subject to higher standards, such as the rules of professional conduct prohibiting disparaging remarks. Therefore, Hunt's conduct is not protected under the First Amendment.

Similarly, the "First Amendment does not protect threats of violence."[79] As Hunt, in his e-mail, made a physical threat to Reed, he is afforded no protection under the First Amendment. Consequently, the Court of Chancery's sanction should be affirmed.

The other cases cited by Hunt are distinguishable. Hunt's reliance is *Gentile v. State Bar of Nevada* is unavailing because that matter was "limited to Nevada's interpretation" of a rule regarding trial publicity and is not binding here.[80] Moreover, *Gentile* had nothing to do with direct communications by counsel containing disparaging remarks and threats. Likewise, *Schoeller v. Bd. of Registration of Funeral Directors & Embalmers*, is factually distinguishable because it involved

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[78] *Hall v. State*, 253 P.3d 716, 721 (2011) (citation omitted).
[79] *Carson v. Springfield Coll.*, 2006 WL 2242732, at *3 (Del. Super. Ct. Aug. 4, 2006); *see also*, *State v. Dumas*, 2016 WL 702003, at *2 (Del. Com. Pl. Feb. 22, 2016) (holding that defendant's statement threating to "depregnate[]" a social worker was not protected by the First Amendment.).
[80] 501 U.S. 1030, 1034 (1991).

statements made by an embalmer in an interview.[81] In fact, *Schoeller* recognized that "attorneys may be subject to restrictions on rights to which an ordinary citizen would not be…and some of those restrictions may relate to speech."[82]

Finally, the Court of Chancery's sanction was reasonable under the circumstances. Rather than refer Hunt to the Office of Disciplinary Counsel ("ODC") or revoke his *pro hac vice* admission, the Court of Chancery's sanction only required Hunt to pay the attorneys' fees Quantlab Group incurred for the Sanctions Motion. If the Court of Chancery referred Hunt to the ODC, Hunt's ability to practice law in both Delaware and Texas (and possibly other states) may be inhibited because he would be required to report the incident to the Texas State Bar as well as in subsequent motions to be admitted *pro hac vice* in Delaware.[83] Likewise, Hunt may also be required to report the revocation of his *pro hac vice* admission when seeking such admission in other jurisdictions.[84]

The Court of Chancery, however, decided that Hunt's conduct did not warrant such a penalty that could potentially hinder his ability to practice law. Rather, the Court of Chancery levied a measured sanction that would deter any further

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[81] 977 N.E.2d 524, 530 (Mass. 2012).
[82] *Id.* at 533 (citation and internal quotations omitted).
[83] Texas Disciplinary Rules of Professional Conduct 8.03(f), Del. R. Civ. P. Super. Ct. 90.1, Del. R. Ch. Ct. 170. Other jurisdictions may also require such reporting when seeking *pro hac vice* admission.
[84] *Haywood v. Univ. of Pittsburgh*, 2012 WL 6604646, at *1 (W.D. Pa. Dec. 18, 2012).

unprofessional conduct that would prejudice the administration of justice, but would not affect Hunt's ability to practice law in the future. As a result, the Court of Chancery levied a reasonable, measured sanction upon Hunt which should be affirmed.

CONCLUSION

For the reasons provided above, the Court of Chancery for the State of Delaware respectfully requests this honorable Court affirm its sanction levied upon Thomas L. Hunt, Esq., on June 11, 2020.

Respectfully submitted,

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