

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

C.A. Misc. Nos. 10-8013 & 10-8046

In re: Janice Shelburne Haagensen, Esq.,
an Attorney at law

REPORT AND RECOMMENDATION OF THE STANDING
COMMITTEE ON ATTORNEY DISCIPLINE

BEFORE: Fisher, Chairperson, and Ambro and Hardiman,
Members, being the Judges constituting the Standing
Committee on Attorney Discipline of the United States
Court of Appeals for the Third Circuit¹

As required under Rule 10.3 of the Rules of Attorney Discipline Enforcement (“R.A.D.E.”), the Standing Committee on Attorney Discipline (the “Standing Committee” or “Committee”) has prepared the instant Report and Recommendation setting forth its findings of fact and recommending that Janice Haagensen, Esquire (“Ms. Haagensen”) be disciplined by this Court for the reasons discussed below. In the first part of this Report and Recommendation, the Committee will outline the procedural history in the above-captioned matters. In part two, the Committee will address the reciprocal discipline proceeding docketed in C.A. Misc. No. 10-8013 and recommend that the Court impose a reciprocal suspension of one year and one day upon Ms.

¹ When these two cases were docketed initially, Judge Greenberg was the Chairperson of the Standing Committee on Attorney Discipline. Effective December 1, 2010, Judge Fisher became the Chairperson of the Standing Committee and Judge Hardiman joined the Committee. Ms. Haagensen was notified of the change in the composition of the Committee. The hearing in these matters was held before Judges Fisher, Ambro, and Hardiman.

Haagensen. In part three, the Committee will address the original discipline proceeding docketed in C.A. Misc. No. 10-8046 which arose from a referral from the merits panel in C.A. No. 09-1957. With respect to the conduct which is the subject of C.A. Misc. No. 10-8046, the Committee recommends that Ms. Haagensen be publicly reprimanded for conduct unbecoming a member of the bar of this Court. See R.A.D.E. 2.4.

Part I: Procedural History

These matters came before this Court in the following circumstances. The Supreme Court of Pennsylvania suspended Ms. Haagensen – who has been a member of the bar of this Court since 1995 and a member of the bar of the Supreme Court of Pennsylvania since November 16, 1987 – for a period of one year and one day, effective February 17, 2010. Although R.A.D.E. 6.1 required Ms. Haagensen to notify the Clerk of this Court within ten days of her suspension by the Supreme Court of Pennsylvania, she failed to do so.² Nonetheless, the Committee became aware of the suspension and opened a reciprocal discipline proceeding based on the February 17, 2010 order. See C.A. Misc. No. 10-8013 (“Haagensen I”). Under the rules effective at the time of her suspension by the Supreme Court of Pennsylvania, Ms. Haagensen’s suspension was

² Ms. Haagensen was also previously administratively suspended by the Supreme Court of Pennsylvania in an order dated November 18, 2009 and by the United States District Court for the Western District of Pennsylvania, effective March 8, 2010. As discussed further below, Ms. Haagensen’s administrative suspension by the Supreme Court of Pennsylvania was due to her failure to pay expenses taxed pursuant to Rule 208(g), Pa. R.D.E. The Western District of Pennsylvania administrative suspension order was reciprocal to that order.

automatically effective in this Court. See R.A.D.E 7.1 (March 1991). As the Court was preparing to change the Rules of Attorney Discipline Enforcement to require the issuance of an order to show cause before the imposition of reciprocal discipline, this Committee issued an order granting Ms. Haagensen temporary reinstatement to the bar of this Court, and subsequently issued an order to show cause why this Court should not impose the same discipline as that imposed by the Supreme Court of Pennsylvania.³

Ms. Haagensen filed a response to the order to show cause on July 12, 2010 and requested that she “be heard in person in any hearing convened by the Third Circuit regarding this matter.” Thereafter, Ms. Haagensen filed a motion entitled “Motion for Designation of Documents Relevant to Ms. Haagensen’s Defense” requesting that additional documents in “the *Grine* case” and the Pennsylvania disciplinary proceedings be made available to her.⁴ The Committee denied this motion on September 14, 2010 without prejudice to Ms. Haagensen offering relevant evidence at the hearing. The Committee denied Ms. Haagensen’s motion to reconsider on October 13, 2010. Ms.

³ On June 7, 2010, this Court adopted amendments to R.A.D.E. 4, 7, and 10. In relevant part, these amendments require the issuance of an order to show cause before the imposition of reciprocal discipline. In view of the issuance of an order to show cause in C.A. Misc. No. 10-8013, and Respondent’s temporary reinstatement to the bar of this Court, however, there is no material difference between the old and new rules for purposes of these proceedings. Unless specifically stated otherwise, all references to the R.A.D.E. in this Report and Recommendation are to the rules in their present form.

⁴ Ms. Haagensen’s reference to “the *Grine* case” appears to be to the district court proceedings in Grine v. Coombs, W.D. Pa. No. 95-342E and related appeals to this Court. Ms. Haagensen’s conduct in those federal proceedings formed the basis for the disciplinary action in Pennsylvania.

Haagensen then filed a document entitled “Objection on Jurisdictional Grounds to Third Circuit Suppression of Record in Federal Environmental Action at No. 95-342E and Appeal at No. 03-3028, and Jurisdictional Objection to Clerk’s Attempt to Alter Underlying Record in Federal and/or State Court Proceedings.” These objections were denied for the reasons stated in the Committee’s order of September 14, 2010.

Following the issuance of this Court’s show cause order in C.A. Misc. No. 10-8013, Ms. Haagensen continued to represent various parties in this Court, including herself as the appellant in Haagensen v. Supreme Court of Pennsylvania, et al., C.A. No. 09-1957.⁵ Of relevance to the instant attorney discipline proceedings, Ms. Haagensen filed a motion to restore her right to oral argument in C.A. No. 09-1957 on May 7, 2010. On May 12, 2010, she also filed a motion to recuse Judge Richard L. Nygaard. Both of these motions were denied by the merits panel in orders entered on May 12, 2010 and May 13, 2010, respectively. The merits panel in C.A. No. 09-1957 subsequently decided the case and issued an opinion on August 11, 2010, in which it referred Ms. Haagensen’s behavior to this Committee pursuant to R.A.D.E. 4.2 for consideration of whether the Court should impose disciplinary sanctions against her. See Haagensen v. Supreme Court of Pennsylvania, No. 09-1957, 390 Fed. Appx. 94, 99 (3d Cir. 2010). In relevant part, the merits panel stated as follows:

Haagensen’s conduct before this Court and others concerns us. In addition to her suspension from the bar of the Commonwealth

⁵ Ms. Haagensen does not currently represent any party in any case pending before this Court.

of Pennsylvania, she has received reciprocal discipline in the Western District of Pennsylvania. A separate case is pending before the Third Circuit's Standing Committee on Attorney Discipline, *In Re: Janice Haagensen*, Civ. A. No. 10-8013.

Haagensen's manner of practicing law has been described as "vexatious," *Grine*, 214 F.R.D. at 369, and her conduct in pursuing this appeal amply evidences this. Following the panel's decision not to grant oral argument in this matter, she filed an "Emergency Motion to Restore her Right to Present Oral Argument."

Haagensen contended that the Court violated Federal Rule of Appellate Procedure 34, which discusses when oral argument is proper. According to Haagensen, the Clerk of Court, in advising the parties that the case would be submitted on the briefs, "reli[ed] on hearsay and closed-door internal operating procedure to inform Appellant that her right to present oral argument has been terminated." (Appellant's Emergency Mot. ¶ 8.) Rule 34 does not state that a panel must place on record its reason for denying oral argument. Moreover, the rule specifically provides for the clerk to advise parties regarding whether oral argument will be scheduled. Haagensen provides no basis for her bold insinuation that the decision not to schedule oral argument was the product of nefarious back-room dealings, rather than the self-evident conclusion that her case did not merit argument.

We find no more persuasive Haagensen's contention, which relies on our order excusing the Appellees from filing a brief, that this "case cannot be submitted, as stated in the Clerk's letter, 'on the briefs,' because only one brief (by Appellant) is before the Court." (*Id.* ¶ 9.) This argument moves an already frivolous case into the realm of the farcical.

The Court is also troubled by the inappropriate language used by Haagensen in addressing this Court and referring to members of this panel. In a Motion for Recusal of Judge Nygaard she alleged that Judge Nygaard "grossly corrupted the record" in a related case and that his "interest in protecting from objective inspection this corruption of the federal record disqualifies him as a judge on the merits panel contemplating Appellant's claims against state court judges." (Mot. for Recusal ¶ 6.) Such baseless allegations, directed at a single member of a panel and relying on the language of an unfavorable decision, are reflective of the undisciplined and unprofessional manner in which Haagensen appears to practice law. Haagensen's Petition for Rehearing in *Grine v. Colburn's Air*

Conditioning and Refrigeration, et al., Civ. A. No. 09-3775, provides further evidence of Haagensen's inappropriate ad hominem attacks. In that Petition, Haagensen contends that Judge Nygaard, the author of our decision in that case, chose to affirm the District Court's judgment "because he believes that federal judges are above the law, and ought to be able to write orders which are not subject to review." *Id.*, Appellant's Pet. for Rehearing, at 9. Finding normal typeface insufficient, Haagensen proceeds to charge Judge Nygaard with "going outside the record, and off the reservation, WITH A VENGEANCE." (*Id.* at 12. (emphasis in original)).

For the foregoing reasons, we will affirm the District Court. We also refer Haagensen's behavior in this case to the Court's Standing Committee on Attorney Discipline, which is already considering whether to suspend her in this Court. *See* Rule 4.2, *Third Circuit Rules of Attorney Disciplinary Enforcement*.

Id. at 98-99.

Based on this referral from the merits panel in C.A. No. 09-1957, a second disciplinary case concerning Ms. Haagensen was opened: C.A. Misc. No. 10-8046 ("Haagensen II"). Pursuant to R.A.D.E. 7.3, the Committee issued an order to show cause in C.A. Misc. No. 10-8046 which quoted verbatim from the opinion issued in C.A. No. 09-1957 and ordered Ms. Haagensen to show cause why she should not be subject to disciplinary action as a result of alleged violations of R.A.D.E. 2.3 and 2.4.⁶ Ms. Haagensen filed a response to this order to show cause on September 29, 2010 and requested to be heard in person

⁶ R.A.D.E. 2.3 and 2.4 provide that, "A member of the bar of this Court may be disciplined by this Court as a result of . . . 3. conduct with respect to this Court which violates the Federal Rules of Appellate Procedure, the Rules or Internal Operating Procedures of this Court, or orders or other instructions of the Court; or 4. any other conduct unbecoming a member of the bar of this Court."

before the Committee.

On November 18, 2010, a Clerk's order was issued consolidating C.A. Misc. Nos. 10-8013 and 10-8046 for all purposes. On December 1, 2010, Ms. Haagensen filed a "Jurisdictional Objection" to this consolidation order, which was denied on December 16, 2010. A hearing was scheduled and held in C.A. Misc. Nos. 10-8013 and 10-8046 on January 10, 2011 at 3 p.m.⁷ Ms. Haagensen represented herself at the hearing, as she has throughout these disciplinary proceedings. At the hearing, the Committee entered into the record the orders to show cause, the responses thereto, and all of the documents listed in the Clerk's letter of December 17, 2010.⁸ Neither the Committee nor Ms. Haagensen called any witnesses at the hearing. Ms. Haagensen offered into evidence one exhibit, a copy of the Petition for Discipline filed by the Office of Disciplinary Counsel on November 15, 2006 before the Disciplinary Board of the Supreme Court of Pennsylvania.⁹

⁷ Ms. Haagensen filed a motion to continue this hearing which further requested that the Committee include additional documents from C.A. No. 09-1957 in the record. The motion for a continuance was denied in part and granted in part. The Committee ordered the hearing to proceed as scheduled and directed the Clerk to supplement the record with several motions filed by Respondent in C.A. No. 09-1957 and the orders denying same.

⁸ This letter advised Ms. Haagensen of the contents of the record in accordance with R.A.D.E. 10.1. These documents are attached to the Report and Recommendation and are being forwarded as an appendix with this Report and Recommendation to the active members of the Court.

⁹ This document is also now a part of the record and is attached to the Report and

Part II: Reciprocal Discipline Proceeding in C.A. Misc. No. 10-8013

The reciprocal discipline proceeding at C.A. Misc. No. 10-8013 was initiated when the Clerk of this Court obtained a copy of the Supreme Court of Pennsylvania's order suspending Ms. Haagensen. By way of background, this suspension in Pennsylvania was the culmination of disciplinary proceedings stemming from Ms. Haagensen's representation of plaintiffs in a federal civil action, Grine v. Coombs, W.D. Pa. No. 95-342 and multiple appeals to this Court from district court orders entered in that matter. In Grine v. Coombs, 112 Fed. Appx. 830 (3d Cir. 2004), this Court awarded approximately \$45,000 to appellees under Federal Rule of Appellate Procedure 38. This amount was taxed solely against Ms. Haagensen, rather than her client, because the merits panel determined that the frivolous appeals were the result of her professional errors. Id. at 834. In November 2006, a petition for discipline was filed with the Disciplinary Board of the Pennsylvania Supreme Court alleging that during the Grine case, Ms. Haagensen violated various Pennsylvania Rules of Professional Conduct.

A Hearing Committee of the Pennsylvania Disciplinary Board concluded that Ms. Haagensen had violated Rules 3.1 and 8.4 of the Pennsylvania Rules of Professional Conduct. The Disciplinary Board concurred, ordered a private reprimand, and taxed Ms. Haagensen \$1,499.00 for expenses incurred during the investigation. Ms. Haagensen appealed the Disciplinary Board's decision to the Supreme Court of Pennsylvania. On

Recommendation.

September 25, 2008, the Supreme Court of Pennsylvania affirmed the Disciplinary Board's decision and ordered a private reprimand. Ms. Haagensen failed to appear for the scheduled private reprimand and did not pay the expenses taxed against her. The Disciplinary Board subsequently recommended that the private reprimand be converted to a public reprimand. The Supreme Court of Pennsylvania rejected this recommendation and instead entered a rule on November 18, 2009 "to show cause why [Ms. Haagensen] should not be suspended from the practice of law in this Commonwealth for a period of one year and one day." Ms. Haagensen did not respond and the Supreme Court of Pennsylvania entered the February 17, 2010 order suspending her for a period of one year and one day, which is the subject of the reciprocal discipline proceeding in this Court.¹⁰

As discussed above in Part I, the Clerk of this Court transmitted the February 17, 2010 order of the Supreme Court of Pennsylvania to the Committee. On June 15, 2010, the Committee ordered Ms. Haagensen to show cause why she should not be suspended for a period of one year and one day in this Court, "effective upon the entry of the order of suspension in this Court." Upon the filing of Ms. Haagensen's response opposing the imposition of reciprocal discipline, the proceedings in C.A. Misc. No. 10-8013 continued

¹⁰ Pennsylvania attorneys who are suspended for a period exceeding one year are not automatically reinstated. See Rule 218, Pennsylvania Rules of Disciplinary Enforcement. Rather, attorneys suspended for more than a year, like Ms. Haagensen, must petition for reinstatement. Id. Ms. Haagensen represented at the hearing before the Committee that she would not be seeking reinstatement in Pennsylvania in February 2011 because she was "not guilty of obstruction of justice or frivolity."

as a contested proceeding under R.A.D.E. 10.

Admission to the bar of this Court is predicated upon an attorney's admission to the bar of the Supreme Court of the United States, any United States Court of Appeals, any United States District Court, the District Court of the Virgin Islands, or the highest appellate court of any state or territory. Attorneys who are disciplined in other courts are subject to reciprocal discipline in this Court under R.A.D.E. 7. The "identical discipline imposed by another court is presumed appropriate for discipline imposed as a result of that other court's suspension or disbarment of an attorney." R.A.D.E. 3.1. As reflected by the record in this case, Ms. Haagensen has been ordered suspended for a period of one year and one day by each of the following courts: the Supreme Court of Pennsylvania (by order dated February 17, 2010), the United States District Court for the Western District of Pennsylvania (by order dated March 31, 2010), and the United States District Court for the Eastern District of Pennsylvania (by order dated September 23, 2010).¹¹

In her response to the order to show cause issued in C.A. Misc. No. 10-8013, Ms. Haagensen contends that she should not be subject to reciprocal discipline in this Court because the Pennsylvania proceedings constituted a violation of the Supremacy Clause of the United States Constitution. According to Ms. Haagensen, this Court cannot take

¹¹ The suspensions in the district courts were reciprocal to the Supreme Court of Pennsylvania order. According to the Declaration Form submitted by Respondent in this proceeding, the only other court that Ms. Haagensen is admitted to is the bar of the United States Supreme Court.

reciprocal disciplinary action premised upon the Supreme Court of Pennsylvania order of February 17, 2010 because it is “null and void on its face because it is rendered by a tribunal unknown to the federal republic.” (Response filed in C.A. Misc. No. 10-8013 at ¶ 3, p. 1.) In essence, Ms. Haagensen contends that the order is null and void because the Supreme Court of Pennsylvania and the Pennsylvania Disciplinary Board were without jurisdiction to sanction her, even though she is a member of the Pennsylvania bar, because the sanctions were based on putative actions in federal proceedings, e.g., actions in the United States District Court for the Western District of Pennsylvania and before this Court in the Grine case. (*Id.* ¶¶ 21, 22, at p. 6.) Ms. Haagensen alleges that, “[a] state in reliance on its constitution or through its sovereignty has no power to override or make exceptions to the original or appellate jurisdiction conferred on the federal courts by the Constitution of the United States. Pennsylvania’s state courts are constitutionally precluded from interfering with discovery process in a federal forum, reviewing federal appeals on their merits, ruling on the merits of petitions for certiorari to the U.S. Supreme Court, and making findings as to the integrity of FOIA inquiries.” (*Id.* at ¶13, p. 3.) According to Ms. Haagensen, if any discipline was to be imposed as a result of her conduct in the Grine appeals, then the merits panels in those cases should have referred her behavior to the Committee. In other words, because the merits panels in the Grine cases did not “frame disciplinary charges against the Respondent,” the state authorities were without jurisdiction or authority to later do so under the Pennsylvania Rules of

Disciplinary Enforcement.

The case law does not support Ms. Haagensen's position. See, e.g., Gadda v. Ashcroft, 377 F.3d 934, 944 (9th Cir. 2004) (rejecting as without merit an attorney's arguments that "federal law preempts a state's authority to discipline or regulate the conduct of attorneys who, like him, practice exclusively in the immigration or federal courts and, accordingly, the Supreme Court of California lacked jurisdiction to disbar him"); Gillette v. Edison, 593 F. Supp. 2d 1063, 1068 (D.N.D. 2009) ("The Court expressly finds that the North Dakota Supreme Court has jurisdiction to discipline Gillette for professional misconduct regardless of where the misconduct occurred."); Woloohojian Realty Corp. v. Bogosian, No. CA 93-348 L, 2008 WL 4646109, at *1 (D.R.I. Oct. 17, 2008) (rejecting attorney's argument that Massachusetts could not discipline him for conduct occurring in a federal case heard in Rhode Island) (collecting cases); In re Dennis, 188 P.3d 1, 13-14 (Kan. 2008) (holding that Kansas Supreme Court possessed jurisdiction to discipline attorney for conduct in federal court) (per curiam); In re Scanio, 919 A.2d 1137, 1145 (D.C. 2007) ("[A]ttorneys have a duty, at all times and in all conduct, both professional and personal, to conform to the standards imposed upon members of the Bar as conditions for the privilege to practice law.") (internal quotation marks omitted); In re Soininen, 783 A.2d 619, 622 (D.C. 2001) (disciplining member of D.C. bar for acts committed in Virginia); Mississippi Bar v. Strauss, 601 So.2d 840, 845 (Miss. 1992) (imposing suspension from practice of law in Mississippi for violation of a

local rule of the federal court).

Ms. Haagensen's attempts to raise similar jurisdictional arguments before the Pennsylvania Supreme Court, the United States District Court for the Western District for Pennsylvania, and this Court have all been unsuccessful. See Haagensen, 390 Fed. Appx. at 96-97, aff'g Haagensen v. Supreme Court of Pennsylvania, 651 F. Supp. 2d 422, 429 (W.D. Pa. 2009) (collecting cases rejecting arguments similar to Ms. Haagensen's); In re: Haagensen, No. 09-mc-310, 2010 WL 887366, at *3 (W.D. Pa. March 8, 2010) ("Further, even assuming [Ms. Haagensen] properly asserted [the jurisdictional argument that she attempts to re-litigate] here, we find that this argument does not fall within any of the four exceptions to L.R. Civ. P. 83.3.D.4."). Thus, assuming *arguendo* that Ms. Haagensen has properly raised these jurisdictional arguments again before the Committee, we recommend that this Court likewise reject Ms. Haagensen's jurisdictional arguments.

Ms. Haagensen's remaining arguments regarding the putative violation of her due process rights and R.A.D.E. 10.5 are also unpersuasive. It is clear that even in a reciprocal disciplinary proceeding arising from the imposition of discipline in another court, a federal court has the power to determine who may be admitted to its bar. See In re Surrick, 338 F.3d 224, 230-31 (3d Cir. 2003). A state court disbarment proceeding will not be considered valid if it was entered without due process of law, was not predicated on sufficient evidence, or for some other reason should not be recognized. In

re Rodriguez, 304 Fed. Appx. 947, 954 (3d Cir. 2008) (citing Selling v. Radford, 243 U.S. 46, 51 (1917)). R.A.D.E. 10.5 provides that:

A certified copy of a judgment or order demonstrating that a member of the bar of this Court has been disbarred or suspended by another court is accepted as establishing that the conduct for which the discipline was imposed in fact occurred and that the discipline imposed was appropriate unless it appears:

- (a) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (b) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (c) that the imposition of the same discipline by this Court would result in grave injustice; or
- (d) that the misconduct established is deemed by this Court to warrant substantially different discipline.¹²

It is manifest that the Pennsylvania proceedings did not violate Ms. Haagensen's due process rights or any of the subsections of R.A.D.E. 10.5. Ms. Haagensen submitted to the Committee a copy of the petition for discipline filed by the Pennsylvania Office of Disciplinary Counsel on November 15, 2006 which clearly outlines the disciplinary charges against her. Ms. Haagensen provided no evidence that was there any infirmity of proof during these proceedings. The Pennsylvania Disciplinary Board held hearings on May 30, 2007 and December 18, 2007. Thereafter, the Board filed a report concluding that Ms. Haagensen had violated the Pennsylvania Rules of Professional Conduct and

¹² R.A.D.E. 10.5 was unchanged by the June 2010 amendments to the Rules of Attorney Disciplinary Enforcement.

recommending that she be subject to a private reprimand. Ms. Haagensen filed exceptions and appeared for oral argument before a three-member panel of the Board on May 19, 2008. The panel accepted the recommendations of the Hearing Committee and ordered that Ms. Haagensen be subjected to a private reprimand. The Supreme Court of Pennsylvania denied her subsequent petition for review. When Ms. Haagensen failed to appear for a scheduled private reprimand, the Board recommended that she be subject to a public censure. The Supreme Court rejected this recommendation and instead issued an order and a rule to show cause why Ms. Haagensen should not be suspended. After Ms. Haagensen failed to respond, the Pennsylvania Supreme Court entered the order. Thus, she was given notice of the charges against her and the opportunity to respond to those charges, both in writing and in person. The Pennsylvania procedures were not “so lacking in notice or opportunity to be heard as to constitute a deprivation of due process” or that “there was such an infirmity of proof establishing the misconduct.” R.A.D.E. 10.5(a)-(b).

Although Ms. Haagensen asserts that none of her clients have ever complained about her performance, and that no witnesses testified against her, neither of these assertions demonstrate that the Pennsylvania proceedings were deficient. As noted above, the Pennsylvania Office of Disciplinary Counsel filed a petition for discipline which outlined the charges against her. In addition, Ms. Haagensen testified before this Committee that she was able to present witnesses who testified on her behalf. The fact

that no witnesses appeared to testify against her goes to the weight of the evidence before the Pennsylvania Disciplinary Board, not deprivation of due process.

In addition, at the hearing before this Committee, Ms. Haagensen complained that members of the Disciplinary Board of Pennsylvania and the Supreme Court of Pennsylvania were “under oath” to the Commonwealth of Pennsylvania. This argument is frivolous and does not merit further discussion. Ms. Haagensen further complained that the record in the state proceedings was sealed.¹³ This argument does not undermine the propriety of the Pennsylvania proceedings. Rule 402 of the Pennsylvania Rules of Disciplinary Enforcement governs access to disciplinary information and confidentiality in proceedings under those rules. Ms. Haagensen does not explain how this rule and/or its application in her case ran afoul of her due process rights or R.A.D.E. 10.5.

Nor does the Committee find that the suspension imposed is a “grave injustice” or otherwise unwarranted within the meaning of R.A.D.E. 10.5(c)-(d). Initially, Ms. Haagensen was only the subject of a private reprimand, but following her failure to pay the costs of her disciplinary proceedings as ordered and her failure to appear for the scheduled private reprimand, the Supreme Court of Pennsylvania suspended her for a period of one year and one day. This was a reasonable form of discipline under the circumstances.

¹³ Ms. Haagensen also stated, but did not explain why, that the record in the state proceeding was not “complete.”

In short, it is clear that the Pennsylvania proceedings were valid, notwithstanding Ms. Haagensen's contentions to the contrary. The Pennsylvania Disciplinary Board had jurisdiction to discipline a member of its own bar for violations of the Pennsylvania Rules of Disciplinary Enforcement, regardless of whether the conduct which was the subject of the disciplinary proceedings took place in a state or federal court. There is no evidence that the Pennsylvania proceedings were lacking in due process or in any way ran afoul of R.A.D.E. 10.5. Therefore, pursuant to both the 1991 and 2010 versions of R.A.D.E. 7.1 and 10, Ms. Haagensen is subject to reciprocal discipline in this Court based on the Pennsylvania order suspending her for a period of one year and one day. Accordingly, the Committee recommends that this Court accept the order of the Supreme Court of Pennsylvania "as establishing that the conduct for which discipline was imposed in fact occurred and that the discipline imposed was appropriate." R.A.D.E. 10.5. As Ms. Haagensen has been permitted to practice law in this Court during the pendency of the instant disciplinary proceedings, it is further recommended that any disciplinary order issued by this Court be effective as of the date it is issued, as opposed to being made retroactive to the date of the suspension by the Supreme Court of Pennsylvania.

Part III: Original Discipline Proceeding in C.A. Misc. No. 10-8046

In addition to the foregoing reciprocal discipline proceedings, Ms. Haagensen's conduct in C.A. No. 09-1957 was referred to the Committee pursuant to R.A.D.E. 4.2 (providing that any matter of attorney discipline in which suspension or disbarment may

be considered as an appropriate sanction is referred to the Court's Standing Committee, or in the case of an uncontested matter, to its Chairperson). In the course of this referral, the merits panel also described Ms. Haagensen's troublesome conduct in another proceeding before this Court. After careful consideration, the Committee recommends that Ms. Haagensen be publicly reprimanded for behavior unbecoming a member of the bar of this court.

As discussed below, Ms. Haagensen's motion to recuse and motion to restore oral argument filed in C.A. No. 09-1957 contained professionally irresponsible statements constituting behavior unbecoming a member of the bar of this Court within the meaning of R.A.D.E. 2.4. These actions, especially when viewed in conjunction with the statements quoted by the merits panel in C.A. No. 09-1957 from the Grine appeal in C.A. No. 09-3775, amply justify the Committee's recommendation that Ms. Haagensen be publicly reprimanded. We do not believe, however, that Ms. Haagensen's actions warrant a suspension in addition to the reciprocal suspension already discussed above.

The order to show cause issued in C.A. Misc. No. 10-8046 quoted verbatim from the opinion issued in C.A. No. 09-1957, and ordered Ms. Haagensen to show cause why she should not be subject to disciplinary action as a result of alleged violations of R.A.D.E. 2.3 and 2.4. The rules provide that "[a] member of the bar of this Court may be disciplined by this Court as a result of . . . [] conduct with respect to this Court which violates the Federal Rules of Appellate Procedure, the Rules or Internal Operating

Procedures of this Court, or orders or other instructions of the Court; or [] any other conduct unbecoming a member of the bar of this Court.” This Court has inherent authority to suspend, disbar, or otherwise discipline a member of its bar for conduct unbecoming a member of the bar of this Court. In re: Mitchell, 901 F.2d 1179, 1183 (3d Cir. 1990) (citing In re Snyder, 472 U.S. 634, 643 (1985)). “This authority derives from the lawyer’s role as an officer of this court.” Id. Authority to discipline members of this Court’s bar “is also explicitly granted by Fed. R. App. P. 46(b) and (c).” Id. Conduct unbecoming a member of the bar of a court may include any conduct “contrary to professional standards that show[s] an unfitness to discharge continuing obligations to clients or courts, or conduct inimical to the administration of justice.” In re Snyder, 472 U.S. at 645. Under R.A.D.E. 3, discipline may “consist of disbarment, suspension from practice before the Court, monetary sanctions, removal from the roster of the attorneys eligible for appointment as Court-appointed counsel, reprimand, or any other sanction that the Court or panel thereof may deem appropriate.”

Here, Ms. Haagensen filed two motions in C.A. No. 09-1957 that led the merits panel in that case to describe her conduct as “vexatious.” We have reviewed the motions in question and agree with this characterization of Ms. Haagensen’s conduct.

First, in her “Emergency Motion to Restore her Right to Present Oral Argument on May 18, 2010, and Statement as to Need of Oral Argument” filed May 7, 2010 in C.A. No. 09-1957, Ms. Haagensen made the frivolous and unsupported statement that the

Clerk of Court, in advising the parties that the case would be submitted on the briefs, “reli[ed] on hearsay and closed-door internal operating procedure to inform Appellant that her right to present oral argument has been terminated.” (Appellant’s Emergency Mot. ¶ 8.) When asked about this issue at the hearing, Ms. Haagensen read the text of Federal Rule of Appellate Procedure 34 to the Committee and insisted, without pointing to any support for this statement in the rule, that she was entitled to be given an order from a judge or judges giving her a reason why oral argument had been denied. Rule 34, however, has no such requirement. Moreover, the rule specifically provides that the clerk will advise parties regarding whether oral argument will be scheduled. Fed. R. App. P. 34(b). In any event, Ms. Haagensen failed to provide any justification for her statement that the Clerk of Court relied on “hearsay” or “closed-door” procedures.

Second, in “Appellant’s Motion for Recusal of Judge Nygaard” filed May 12, 2010 in C.A. No. 09-1957, Ms. Haagensen stated that Judge Nygaard “grossly corrupted the record” and that his “interest in protecting from objective inspection this corruption of the federal record disqualifies him as a judge on the merits panel contemplating Appellant’s claims against state court judges.” (Appellant’s Motion at ¶ 7). When questioned about her statement that Judge Nygaard had “grossly corrupted the record” at the hearing, the only support Ms. Haagensen provided was her disagreement with Judge Nygaard’s putative statement that Appellants failed to request or provide discovery. Ms. Haagensen’s disagreement with a statement of a judge of this Court in an order or

opinion does not in any way support her assertions that Judge Nygaard “grossly corrupted the record” or otherwise has an “interest” in protecting from “objective inspection” an alleged “corruption” of the record. The making of such reckless and unsupported statements is not appropriate for a member of the bar of this Court and runs afoul of R.A.D.E. 2.4.

This conduct is particularly egregious in view of the fact that, as quoted by the merits panel in C.A. No. 09-1957, Ms. Haagensen made additional inappropriate comments during the Grine appeal in C.A. No. 09-3775 in an unsuccessful petition for rehearing. In Ms. Haagensen’s Petition for Rehearing in Grine v. Colburn’s Air Conditioning and Refrigeration, C.A. No. 09-3775, Ms. Haagensen stated that Judge Nygaard chose to affirm the District Court’s judgment “because he believes that federal judges are above the law, and ought to be able to write orders which are not subject to review.” (Appellant’s Pet. for Reh’g filed in C.A. No. 09-3775 at 9). Ms. Haagensen went on to charge Judge Nygaard with “going outside the record, and off the reservation, WITH A VENGEANCE.” (Id. at 12. (emphasis in original)).¹⁴ Although lawyers

¹⁴ The Grine petition for rehearing filed in C.A. No. 09-3775 is not part of the record before this Committee. We may consider this statement, however, as it was quoted in the opinion issued by the merits panel in C.A. No. 09-1957 and it was again quoted in the order to show cause issued in C.A. Misc. No. 10-8046. Ms. Haagensen’s contention that it was inappropriate for the merits panel in C.A. No. 09-1957 to quote the Grine petition is without merit. It is beyond dispute that this Court may take judicial notice of publicly filed documents in other cases. See McTernan v. City of York, Pa., 577 F.3d 521, 526 (3d Cir. 2009) (stating in the context of an appeal of an order deciding a motion to

certainly have a right to challenge judges' findings and conclusions, they must do so in a professional manner based on facts or the law.

Ms. Haagensen's repeated scurrilous allegations concerning a judge of this Court constitutes behavior that is contrary to this Court's professional standards. Specifically, accusing a judge of this Court of "corrupting the record" based on a disagreement with his description of discovery and the making of other inappropriate ad hominem attacks is not professionally responsible behavior. Accordingly, we recommend that Ms. Haagensen be publicly reprimanded for conduct unbecoming a member of the bar of this Court pursuant to R.A.D.E. 2.4.¹⁵

Finally, we briefly address Ms. Haagensen's remaining arguments that she should not be subject to discipline as a result of the conduct referred to the Committee in C.A. No. 09-1957. Ms. Haagensen alleges that the panel in C.A. No. 09-1957:

lacks jurisdiction to adjudicate a civil appeal on its merits, and,
while carrying out its assigned function as an appellate court,

dismiss that "[i]n addition to the complaint itself, the court can review documents attached to the complaint and matters of public record . . . and a court may take judicial notice of a prior judicial opinion." (internal citation omitted). Further, Ms. Haagensen does not dispute that she made this statement during the Grine appeal. Rather, she persists in justifying the remarks as truthful, even though she provides no support for her statements other than her disagreement Judge Nygaard's decisions.

¹⁵ After careful consideration of the record before us, however, this Committee does not find that the conduct referred by the merits panel in C.A. No. 09-1957 to this Committee violated any Federal Rules of Appellate Procedure, or the Local Rules of Appellate Procedure or Internal Operating Procedures of this Court, or any other orders or other instructions in C.A. No. 09-1957, within the meaning of R.A.D.E. 2.3.

simultaneously raise original and collateral quasi-criminal charges against counsel of record. One of the numerous reasons why this is wrong and constitutionally precluded is that the lawyer who is being attacked cannot obtain representation and defend against accusations made for the first time within the boundaries of a merits panel's disposition of an appeal . . . she cannot defend against accusations made against her in that context, because she has no immediate opportunity for hearing, **WITH REPRESENTATION**, when she is engaged in filing a petition for rehearing en banc on the merits.

(Response filed in C.A. Misc. No. 10-8046 at 1-2) (emphasis in original). This is plainly incorrect. In the first instance, the referral from the merits panel in C.A. No. 09-1957 did not involve “quasi-criminal charges.” Furthermore, R.A.D.E. 4.2 specifically provides that, “[a]ny matter of attorney discipline in which suspension or disbarment may be considered as an appropriate sanction is referred to the Court’s Standing Committee or, in the case of an uncontested matter, to its chairperson.” Thus, the Rules of Attorney Discipline Enforcement explicitly authorize the merits panel’s referral of Ms. Haagensen’s behavior in the course of an appeal to the Committee.

Ms. Haagensen further argued at the hearing that she was not given the opportunity to defend against the charges regarding her conduct that were raised by the merits panel in C.A. No. 09-1957. This argument is likewise without merit. The merits panel did not impose any discipline in that case. Rather, the panel referred Ms. Haagensen’s conduct to the Committee. We subsequently issued an order to show cause in C.A. Misc. No. 10-8046 and scheduled a hearing. As Ms. Haagensen acknowledged at

the hearing, she was entitled to representation by counsel before the Committee, but an attorney never entered an appearance on her behalf, and she did not appear with counsel present.

Ms. Haagensen further contends that the Committee's order to show cause was void for vagueness. This argument is unpersuasive. As the Committee emphasized at the hearing, the order to show cause quoted verbatim from the opinion issued in C.A. No. 09-1957, and ordered Ms. Haagensen to show cause why she should not be subject to disciplinary action as a result of alleged violations of R.A.D.E. 2.3 and 2.4.

Ms. Haagensen also alleges that the Committee does not have jurisdiction to review the merits of an opinion issued by the panel in C.A. No. 09-1957. Ms. Haagensen is correct that the Committee does not have the authority to review the merits of the opinion issued in C.A. No. 09-1957. This, however, is not what the Committee is doing. As explained to Ms. Haagensen at the hearing, the Committee may review conduct that is collateral to the merits of an appeal, such as conduct unbecoming a member of the bar of this Court. See R.A.D.E. 2.4, 4.2; see also Fed. R. App. P. 46(c) ("A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule."). The merits panel in C.A. No. 09-1957 did not decide whether Ms. Haagensen's conduct in that case, or the statements she made in C.A. No. 09-3775, violated any of the Rules of Attorney Disciplinary Enforcement. Rather, the panel in C.A. No. 09-1957 described the conduct that it found

troubling and referred it to the Committee for consideration.¹⁶ Only now do we make a recommendation regarding Ms. Haagensen's conduct and a potential sanction to the active members of this Court pursuant to R.A.D.E. 10.3. We do not evaluate the merits of the appeal in C.A. No. 09-1957.

Finally, Ms. Haagensen contends that the pendency of her petition for writ of certiorari in the Supreme Court deprives this Court of jurisdiction over the referral from the merits panel in C.A. No. 09-1957. Again, Ms. Haagensen is mistaken. The mandate has issued in C.A. No. 09-1957 and Ms. Haagensen did not file a motion to stay the mandate. In the event the Supreme Court grants certiorari to Ms. Haagensen and she is successful before that Court with respect to any issues concerning the referral of her behavior to the Committee, she may of course return to this Court to challenge any discipline imposed at that time.

IV. Conclusion

In view of the foregoing, the Committee recommends that the Court impose a reciprocal suspension of one year and one day upon Ms. Haagensen based on the February 17, 2010 order of the Supreme Court of Pennsylvania. Any such order would be effective as of the date of this Court's reciprocal suspension order. The Committee

¹⁶ Again, we disagree with Ms. Haagensen that we cannot consider statements she made in Grine, C.A. No. 09-3775. Statements that she made in that case were quoted in the C.A. No. 09-1957 opinion and reiterated in the Order to Show Cause issued by this Committee. Furthermore, these statements are a matter of public record.

further recommends that Ms. Haagensen should not be permitted to petition for reinstatement to the bar of this Court until she is reinstated to the bar of the Commonwealth of Pennsylvania. In addition, the Committee recommends that the Court find that Ms. Haagensen engaged in conduct unbecoming a member of the bar of this Court and issue an order publicly reprimanding her for her conduct.

Respectfully submitted,

/s/ D. Michael Fisher
Circuit Judge

/s/ Thomas L. Ambro
Circuit Judge

/s/ Thomas M. Hardiman
Circuit Judge

Dated: May 16, 2011



Marcia M. Waldron

Marcia M. Waldron, Clerk

APPENDIX

- (1) Order of the Supreme Court of Pennsylvania dated February 17, 2010 suspending Janice Haagensen, Esquire, for a period of one year and one day, to which is attached a Recommendation for Public Censure dated August 7, 2009, Respondent's Answer to Rule to Show Cause Issued May 4, 2009, and a Reply to Answer to Rule to Show Cause;
- (2) Order of the Supreme Court of Pennsylvania administratively suspending Janice Haagensen, Esquire, dated November 18, 2009;
- (3) Order and Rule to Show Cause of the Supreme Court of Pennsylvania dated November 18, 2009;
- (4) Order for Temporary Reinstatement of the Standing Committee on Attorney Discipline dated March 9, 2010 issued in C.A. Misc. No. 10-8013;
- (5) Order of the United States District Court for the Western District of Pennsylvania dated March 8, 2010 and attached memorandum;
- (6) Order of the United States District Court for the Western District of Pennsylvania dated March 31, 2010;
- (7) Order to Show Cause of the Standing Committee on Attorney Discipline filed June 15, 2010 in C.A. Misc. No. 10-8013;
- (8) Response filed by Respondent Janice Haagensen, Esquire to Order to Show Cause filed July 12, 2010 in C.A. Misc. No. 10-8013, attaching Affidavit of Service and Affidavit of Good Cause;
- (9) Clerk Letter dated July 19, 2010 advising Janice Haagensen, Esquire, that the Standing Committee on Attorney Discipline of the United States Court of Appeals for the Third Circuit will hold a hearing on Wednesday, August 25, 2010 in the Maris Courtroom on the 19th Floor of the Philadelphia Courthouse in C.A. Misc. No. 10-8013;

- (10) Confirmation by Janice Haagensen, Esquire, acknowledging receipt of the Clerk's Letter and confirming that she will personally appear at the hearing, received July 26, 2010;
- (11) Motion for Continuance of Hearing of August 25, 2010, filed by Janice Haagensen, Esquire on August 12, 2010;
- (12) Clerk Letter dated August 13, 2010, advising Janice Haagensen, Esquire, of the postponement of the August 25, 2010 hearing date;
- (13) Clerk Letter dated August 16, 2010 advising Janice Haagensen, Esquire of the current contents of the record in C.A. No. 10-8013;
- (14) Letter from Janice Haagensen, Esquire dated August 20, 2010 filed in C.A. Misc. No. 10-8013 advising that she will be presenting Mr. Robert Grine as a witness and that she wishes to waive confidentiality;
- (15) Clerk Letter dated August 27, 2010 advising Janice Haagensen, Esquire that her request to waive confidentiality in C.A. Misc. No. 10-8013 was granted;
- (16) Motion filed August 30, 2010 in C.A. Misc. No. 10-8013 by Janice Haagensen, Esquire for Designation of Documents Relevant to Respondent's Defense;
- (17) Order of the Standing Committee on Attorney Discipline dated September 14, 2010 denying Respondent's August 30, 2010 motion in C.A. Misc. No. 10-8013;
- (18) Motion filed by Respondent Janice Haagensen, Esquire on October 1, 2010 to reconsider Order dated September 14, 2010;
- (19) Order of the Standing Committee on Attorney Discipline dated October 13, 2010 denying Respondent's October 1, 2010 motion for reconsideration in C.A. Misc. No. 10-8013;
- (20) Respondent's "Objection on Jurisdictional Grounds to Third Circuit Suppression of Record in Federal Environmental Action at No. 95-342E and Appeal at No. 03-3028, and Jurisdictional Objection to Clerk's Attempt

to Alter Underlying Record in Federal and/or State Court Proceedings,”
filed November 1, 2010;

- (21) Amended Order of the United States District Court for the Eastern District of Pennsylvania dated September 23, 2010, suspending Janice Haagensen, Esquire from the practice of law in that court for a period of one year and one day, effective thirty days from February 17, 2010, and until further order of the court;
- (22) Clerk Order filed November 18, 2010 consolidating C.A. Misc. Nos. 10-8013 and 10-8046 for all purposes;
- (23) Clerk Letter dated November 19, 2010 advising Janice Haagensen, Esquire of the time, date, and location of a hearing in C.A. Misc. Nos. 10-8013 and 10-8046;
- (24) Respondent’s Jurisdictional Objection to Docketed Clerk Order of November 18, 2010, Consolidating Disciplinary Proceeding at No. 10-8046 as Originating from Appeal at No. 09-1957, *Haagensen v. State Supreme Court, et al.*, with Order Scheduling Reciprocity Hearing Convened Under Local Rules of Attorney Disciplinary Enforcement at No. 10-8013 as Allegedly Derived From and Secondary to the Null and Void Order of February 17, 2010, of the State Supreme Court of Pennsylvania, filed December 1, 2010;
- (25) Clerk Letter dated December 1, 2010 sent to Janice Haagensen, Esquire advising her that the Standing Committee on Attorney Discipline will be composed of Judge Fisher, Chairperson, as well as Judge Ambro and Judge Hardiman;
- (26) Confirmation statement received from Janice Haagensen, Esquire advising the Court that she will personally appear at the hearing on January 10, 2011 at 3:00 p.m.;
- (27) Order of the Standing Committee on Attorney Discipline denying Respondent’s “Objection on Jurisdictional Grounds”, dated December 16, 2010;

- (28) Order of the Standing Committee on Attorney Discipline denying Respondent's "Jurisdictional Objection", dated December 16, 2010;
- (29) Clerk Letter dated December 17, 2010 advising Janice Haagensen of the documents constituting the record in C.A. Misc. Nos. 10-8013, 10-8046;
- (30) Motion filed on December 27, 2010 by Respondent for Continuance;
- (31) Opinion of the Third Circuit Court of Appeals dated August 11, 2010 (C.A. No. 09-1957) referring the behavior of Janice Haagensen, Esquire to the Standing Committee on Attorney Discipline;
- (32) Order to Show Cause dated September 1, 2010 issued in C.A. Misc. No. 10-8046 by the Standing Committee on Attorney Discipline;
- (33) Clerk Letter sent September 1, 2010 enclosing Order to Show Cause and Declaration Form in C.A. Misc. No. 10-8046; and
- (34) Response to Order to Show Cause filed in C.A. Misc. No. 10-8046 by Janice Haagensen, Esquire on September 29, 2010 (attaching completed Declaration Form);
- (35) Order denying "Motion for Continuance" in part and granting in part dated January 4, 2011;
- (36) Appellant's Emergency Motion to Restore her right to present oral argument on May 18, 2010, filed May 7, 2010 in C.A. No. 09-1957;
- (37) Motion filed by Respondent Janice Haagensen for recusal of Judge Nygaard, filed May 12, 2010 in C.A. No. 09-1957;
- (38) Order denying emergency motion by Appellant to restore her right to present oral argument on May 18, 2010, filed May 12, 2010 in C.A. No. 09-1957;
- (39) Order denying Motion for recusal of Judge Nygaard, filed May 13, 2010 in C.A. No. 09-1957; and

- (40) Petition for Discipline filed by the Office of Disciplinary Counsel on November 15, 2006 before the Disciplinary Board of the Supreme Court of Pennsylvania (document from Janice Haagensen presented at attorney discipline hearing on January 10, 2011).