BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL:		
Petitioner	**:**	**No. 11 DB 2011**
	:	
v.	**:**	**Atty. Reg. No. 23786**
	:	
DONALD A. BAILEY,	**:**	**(Dauphin County)**
Respondent	**:**	

BRIEF OF RESPONDENT DONALD A. BAILEY

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I hereby certify that I have this day served by First Class mail the within document upon all parties of Record in this proceeding in accordance with the Requirements of 204 Pa. Code §89.22

April 2, 2012

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Don Bailey, Esquire, Pro Se

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I. STATEMENT OF THE CASE/ PROCEDURAL HISTORY

The Office of Disciplinary Counsel (ODC) filed their post hearing submission on February 17, 2012. This response is made under reservation of all rights in connection with all matters before this Board, and on the dockets of the Supreme Court. These proceedings and those documents demonstrate a complete deprivation of respondent's constitutional rights, and those of his clients, in connection with these proceedings. These proceedings are lacking in jurisdiction since the Board itself is statutorily infirm and its procedures lack even the rudimentary requirements of due process. The aforementioned matters include the King's Bench/Petition for Extraordinary Relief, Mr. Bailey's Petition for Review, and the Motion to Dismiss filed by respondent and ruled upon, without opinion, by the Supreme Court without even being examined. All are incorporated herein. Bailey's due process rights have been egregiously violated and all rights appertaining thereto are reserved.

Respondent now and hereafter invokes all rights to be heard in connection with these proceedings by personal appearance on the public record before the hearing committee, the Board, and the Supreme Court, if necessary, Pursuant to Pa. R.D.E. 208 (d), 208 (e), and Pa. D.B.R. 89.93, 89.161, 89.201, and 89.207(d). Bailey persists in his right to be able to call witnesses which rights predate the ratification process of the Bill of Rights to the U.S. Constitution more than 200 years ago.

Respondent further invokes specific procedural rules in connection with any further proceedings in this matter. Initially, respondent invokes the abbreviated procedure provisions of D.B.R. 89.181. Respondent has not, as yet, been given a lawful opportunity to present any affirmative defense or even put on a defense of any meaningful type against the as yet

unidentified accusers against him. Indeed he has been deprived of a fair opportunity to even cross examine his accusers and the witnesses against him the reason to present witnesses of his own being fundamental violations of his 14th amendment rights and his rights under Pennsylvania's Declaration of Rights. The record as it stands, and if it can be so described, is neither full nor complete.

While the Supreme Court has denied en toto the motions and petitions placed on its docket, the Court has also been silent on any merits, with the presumption that all these proceedings would be again placed on its docket for plenary review. The Court has not directed the course of any further proceedings, but only denied matters placed on its docket. Respondent presumes that all procedural rights in connection with these proceedings are also preserved.

The underlying hearing was concluded on August 12, 2011, pending the review of matters on the Supreme Court docket, including the petition for review, which related to matters central to respondent's case. Going forward under the circumstances with the hearings on August 11 and 12, 2011 created an easily foreseen constitutionally deficient record, and respondent reserved his rights throughout, which were acknowledged by the hearing panel. Things have proceeded with a presumption that all matters have been resolved, and the case is ready to proceed to adjudication in the normal course, but this is clearly not the case.

To begin, Respondent submits that under Rule 89.181 the record before the hearing committee does not establish a violation of the rules as a matter of law. While not stated, the only way the respondent could be found to have been in violation of the disciplinary rules is if he is found not to have the right in a pleading, let alone on a street corner, as a matter of law to make statements that judges have or did misbehave. The relied upon rules defy description, are

arbitrarily and capriciously applied, and create a unique and superior judicial class lacking any respect for the rights of American citizens and their counsel to enjoy access to the courts. This has not been alleged or argued, and respondent continues to reserve the right to brief this issue.

In fact, the ODC shifts the direction and substance of its argument from the Third Circuit filing to an assertion that this matter is about filing a "frivolous" case - the Thom Lewis case(s). That was never charged in the complaint, and ODC never moved pursuant to D.B.R. 89.31 for an amendment of its pleadings in any regard. It is also an arbitrary and capricious standard. Taking someone's law license for filing a so-called frivolous action (taken from one word in Judge Rice's opinion) is facially the height of absurdity. It is also facially a monument to abuse. One incidentally (the filing of so-called frivolous cases that is) that is typically reserved to plaintiff's civil rights lawyers in our nation.

The word "frivolous" was mentioned once only in the complaint in the context of Magistrate Judge Rice's ruling, and the charges all stemmed from the allegations made in the Third Circuit Motion for Rehearing En Banc; yet the ODC uses the word "frivolous" over 40 times in ODC's brief, and its first two conclusions of law relate to filing frivolous lawsuits. By centering their entire position around one allegation in their complaint concerning an opinion stated by Judge Rice, Respondent thus makes necessarily relevant the circumstances that lead to that very observation, which constitutes an irrefutable component of respondent's defense. Respondent objects, as these issues were never part of this case, and cannot be lawfully interjected now.

Regardless, the posture and position of the ODC submission reveals an absolute need for additional evidence should the Board decide that ODC has been able to establish a case. This is an implied concession earned by arguing frivolity. Respondent's central contention is that the conditions that relate to any finding of frivolity as regards the past (as MJ Rice did) only to be seized upon by the ODC after-the-fact, relate directly to the observation of judicial misconduct that respondent admittedly made. The reason is simple, neither any trial court, nor any appellate court ever offered that the underlying complaint was frivolous nor, for that matter, that the appeal was frivolous. *See Respondent Exhibits 1-2*. Certainly the US Supreme Court would have said so if it found that the respective appeals of Mr. Lewis and Mr. Bailey were frivolous. Any relevant proof would be central to Bailey's defense, and, of course, to the ODC's claims.

By interjecting the issue, the ODC is essentially conceding that the other issues standing alone alone, i.e., the allegations in the Third Circuit petition, could not make out a claim of misconduct. This was obviously so based upon any common sense analysis of the First Amendment. Otherwise they wouldn't be arguing frivolity over 40 times after not charging it. The point for this response, however, is that respondent both responds to the newfangled claim set forth by the ODC, and demonstrates simultaneously that no viable claim has been made out, and that no claim could be made out against respondent. Had he been properly and fully heard in a proper due process proceeding, he would have a complete truth defense to every claim for which he is being charged, which is inherently not prejudicial to the administration of justice. Furthermore he has been fastidiously denied any opportunity to respond in any meaningful way to the claims against him.

Consequently the complaint against him should be dismissed pursuant to Rule 89.181. He demands dismissal.

Further, Respondent separately provides a comprehensive factual statement of the case. Pursuant to the briefing Rules, respondent submits this statement as a verified statement pursuant to D.B.R 85.2. Respondent also specifically and separately charges the Office of ODC and certain federal officials with violations of the confidentially provisions of R.D.E 401, and requests that proceedings be initiated pursuant to D.B.R 87.1, et. seq..

In the event this matter proceeds under the theories belatedly advanced by the ODC, respondent submits that the record must be reopened pursuant to D.B.R. 89.251, as clearly the respondent has not been able to put on any evidence of these matters in his case, and at no time has he or any client of his been permitted the opportunity to do so. In fact, Judge Rice himself specifically stated that the merits of the underlying facts of the Lewis matters, including the filing of the second case, were not under review or would not be considered. If so, then how could Mr. Rice find that the appeal was frivolous? Rice specifically prevented respondent from testifying to the very matters that he was then later forced to put in the petition for rehearing en banc, and his inability to so testify is now being used against him. Accordingly, also in accordance with the provisions of Rule 89.181, respondent submits that his factual representations in this brief establishes, as a matter of law, unless proven otherwise by the ODC that he has an affirmative defense as a matter of law to each and every claim against him i.e., he at least had reasonable, reliable, evidence, and in fact supported belief in the truth of every statement he has ever made implicating judicial officials in misconduct.

II. COUNTERSTATEMENT OF THE CASE/FACT HISTORY

On or about July, 2004 Bailey was retained by Thom Lewis to assist with threats being made against him by a group of attorneys and an investigator from the Pennsylvania Atty. Gen.'s office. Lewis wished to end his attorney-client relationship with Joseph Curcillo (a/k/a "Joe the See" a "psychic" at least as per his law firm's webpage) who had formerly worked in the Attorney General's office and had relatives there, as Lewis later learned, because of growing concerns over Curcillo's complicity with Lewis' detractors.

Lewis was the head of "Collie Rescue", a highly successful nonprofit animal rescue operation, Bailey later confirmed that Curcillo had called a personal acquaintance, namely Patti Bednarik, to assist Lewis by hopefully having her use her position as an investigator for the Office of Disciplinary Counsel to pressure or frighten the AG attorneys into letting Lewis alone. It later turned out that Bednarik was involved in the extensive transportation, and placement of hundreds of thousands of dollars worth of dogs. She had no interest or motivation to resolve any Collie Rescue matter in Lewis's favor. Bednarik was involved in this business with Deb Smith. Smith and Lewis had become involved in a personal relationship, beginning on or about 2004. When Lewis came to see Bailey, Deb Smith attended with him and actually lent Lewis the money to hire Bailey to provide legal services. It was Smith who recommended Bailey to Lewis.

The group of attorneys, mostly from the Attorney General's Charitable Trust Division, was persistently trying to get the Collie Rescue board to sign an AVC accusing Lewis of criminal and other misconduct. Lewis later determined that Smith and Curcillo were two of the individual's providing input to the AG in order to ensure the harassment would release the money in an estate which had been left to Lewis' charity. It also later came to light that Bednarik, along

with a person named Jesse Smith, also a lawyer who worked for the state, had used Collie Rescue's license, and its connections with veterinary services, to acquire, transport, and place the hundreds of animals referred to above.

Underlying this entire matter was a bequest to Collie Rescue in the amount of $50,000 which was made because of Lewis's efforts and work which had impressed a wonderfully philanthropic woman who had passed away. Curcillo, who was representing the Collie Rescue Board and Lewis at the same time, was eventually able to have this money diverted to animal operations run by Patti Bednarik and Jesse Smith. Unbeknownst to Lewis and to Bailey at the time, Curcillo and the group of state lawyers who were behind the "Paws" and the "Harrisburg Humane Society", respectively run or manipulated by Bednarik and Jesse Smith, were apparently working together to ensure that Lewis was put off of, or out of, the Collie Rescue Board, all in the interest of acquiring this money. Curcillo was complicit with the group of state lawyers involved with these animal rescue operations who had been harassing Lewis to accomplish this purpose.

The bottom line is that the Bednarik/Jesse Smith entities received the $50,000. This came about because Bailey advised Lewis (who had no personal interest in this money anyway) that he should dissociate himself immediately and completely from the Collie Rescue board and its operations because it appeared that they may be involved in illicit activities, and certainly the unlawful use of Thom's license by Bednarik and Deb Smith was raising a myriad of complicated problems.

At exactly the same time, Don Bailey informed the AG attorneys who were promoting the AVC with the Collie Rescue board that certain references to Thom Lewis and certain things affecting him in the AVC including a request that he sign it and agree to it were improper and unlawful and that he was composing a Section §1983 suit naming them as defendants. Discretion being the better part of legal valor apparently, the AG's office agreed to back up and the matter from Mr. Lewis's point of view was essentially resolved.

During this same time, Bednarik and Deb Smith were personally involved in the acquisition, transfer, and sale of dogs illegally using Lewis's license(s). *See R-Exhibits 11-12.* Lewis determined that at least 400 dogs were acquired and resold illegally (he had documents to support this claim) by persons using Thom Lewis identification, license, and reputation. These people included Bednarik, Deb Smith, and the defendants Sterner and Flaherty. At no time did Lewis authorize the use of any of his licenses, or his name, by Bednarik or Deborah Smith. Paperwork associated with the endpoint i.e. where these dogs ended up and what they were sold for simply vanished or was never generated. See deposition of Deborah Smith, *R-Exhibits 11-12*.

Here's is how the scam worked. A rescue, a Humane Society and entities of that sort, would advertise or let it be known that they had a surplusage or a large number of dogs available. Bednarik and Smith and those working with them needed a license as cover to acquire these dogs and bring them into Pennsylvania. It is illegal to transport animals across state lines for resale, or adoption, without a Pennsylvania State license. Neither Bednarik, Smith, Sterner, nor Flaherty have ever held, such a license. It's legally dangerous to transport these dogs without the cover of the license because the federal government in particular, might be implicated i.e., the Department of Agriculture.

A traffic stop without a license could lead to investigation and prosecution so Bednarik and Smith would arrange to have a "cur run". Typically, innocent people would volunteer to do this work. So dogs picked up in Kentucky, Maryland or Virginia for example, would be driven to transfer points in Pennsylvania by people believing the dogs were being released to Lewis and his Rescue. Then they would be taken to different places in Pennsylvania and the dogs were sold by Bednarik, Smith, and the other defendants under a different name to an unsuspecting public. Sometimes these dogs were not even healthy, could be ear-mite infested, or not even be purebred dogs, and would be prepared along with a written sob story as a rescue dog. For example, in the case of Flaherty and Sterner (they also used Lewis' licenses because these people are not licensed lawfully in Pennsylvania, and never have been). Lewis developed information (backed up by documentation) which indicated that Sterner, Flaherty, Bednarik and Deb Smith took the dogs to, among other places, a pet store in Selinsgrove Pennsylvania where puppies that were released to Lewis's license, free, as rescue dogs were then sold for up to $500 each in Pennsylvania by Deb Smith, Bednarik, Flaherty and Sterner,

Jesse Smith curried favor with people in powerful positions including some of our federal judges. The best-known examples are federal judges Rambo and Conner. When Lewis's case was filed, Judge Rambo recused herself. The case went to Judge Muir. However, a more or less related case (Golden Retriever Rescue, Chris Kougher, and Tracy Miller, a state dog law officer, were plaintiffs) which was referred to Judge Conner did not lead to recusal even after Conner learned in pleadings that there was an intention to sue Jesse Smith). Conner was obviously aware of Lewis, but most certainly he knew Jesse Smith – and in fact Lewis was originally introduced to Judge Conner and his wife at a humane society fundraiser, all while Conner was sitting on the

case where the Humane Society was a defendant while in the company of Jesse Smith. When Bailey assumed the representation of the Kougher plaintiffs, where state officials were suspiciously interfering with her operations, the incestuous political relationships revealed themselves again. If recollection serves the Lewis case where Judge Rambo recused herself had been referred to Judge Muir. Jesse Smith was a defendant in that case. Judge Rambo had recused herself in Lewis's case, while Judge Conner, with absolutely no relevant reason to do so other than his obvious derivation from briefs that Jesse Smith was going to be sued i.e., that Don Bailey was getting into more public corruption, gratuitously made a direct personal reference in glowing terms to what a wonderful person Jesse Smith was.

Other than Judge Conner sending a message in anticipation of an action against Jesse Smith, when the expected (naturally) dismissal of the civil rights suit filed by Don Bailey on behalf of Tracy Miller, Golden Retriever Rescue, and Chris Kougher was studied, the case was appealed to the Third Circuit. *See R-Exhibit 77.* There were solid claims in that case and one of the defendants was Mary Bender who later figured as a defendant in Lewis's case but on totally different facts. Direct reference was made in the Third Circuit brief by Don Bailey overtly voicing emphatic objections as to Judge Conner's inappropriate actions. Judge Conner was not acting as a judge but rather was playing politics and was attempting to discourage future civil rights plaintiffs' litigation. Ironically, the eventual Third Circuit opinion (upholding Judge Conner of course), written by Judge Van Antwerpen, but it notably did not address Judge Conner's unsolicited advocacy of Jesse Smith (whose husband is believed to be a well-placed administrative official in the Pennsylvania State Police) completely ignoring it.

It's around this time, in 2008 that state and federal investigators began contacting Mr. Lewis regarding a purported investigation into Disciplinary Board employees "arranging" for false complaints to be filed in order to influence the outcome of cases in the Middle District. *See R-Exhibit 15-16 and Affidavit of Lewis attached to ODC complaint*. Lewis believes that an individual who preceded Martin Carlson for a very brief time was US Attorney then. It is also believed that these complaints originated with Mark Beckerman. Beckerman was used as a phony basis to justify the examination of Bailey's records etc., by Patti Bednarik, all to absolutely no avail, the entire investigation being bogus. Ironically, when Beckerman sought help from ODC about attorneys taking his money unlawfully he was told that he was unreliable because of brain operations he had had in the past, all of which occurred well before he was used as an excuse by Bednarik to investigate Don Bailey.

Meanwhile, Lewis's case was before Judge Muir. Mr. Joseph Curcillo (a/k/a "Joe the See") who offered legal advice emanating from his ability to divine the future from his turban covered head on his law firms' Internet webpage (never drawing the slightest interest from the ODC), turned out to be a personal friend of Judge Muir's law clerk. Remember of course that Curcillo was a defendant. Instead of simply recusing himself, Judge Muir asked if anyone had any objections and of course, being unable to demonstrate that Judge Muir's law clerk would ever allow his friendship with "Joe the See" to interfere with his decisions and advice to the Judge, Judge Muir kept right along with the Lewis case.

In the normal course of business, Mr. Lewis subpoenaed Patti Bednarik because one of the defendants in his case was Deb Smith, who is referred to above. Bednarik also was a fact witness a la Joseph Curcillo. Paul Killion became personally involved and moved to quash the

subpoena. And although it was made clear that Bednarik was being subpoenaed as a fact witness in the Lewis case and not because she had been approached to do so by Deborah Smith as a favor i.e., pressure Lewis by investigating me (something wisely Bednarik declined to do) Killion persisted, and of course Judge Muir quashed the subpoena.

Two matters of relevant importance were occurring around the same time. Attorney Sam Stretton had informed Don Bailey that three federal judges namely, Judges Rambo, McClure, and Muir, during a meeting at a judicial conference had entered into an unlawful plan to "get" Don Bailey. This was relayed by Mr. Stretton as a warning to be delivered to me upon the advice of yet another federal judge. The words used were "tell Don they're going to get him". When Stretton testified before the Disciplinary Board, while admitting the source of this information, he also described it as a warning to himself about being around, or involved with, Don Bailey. This plan was carried out by Rambo in the extreme along with McClure, who worked together with her, on the Beverly Beam litigation, also in the extreme. They learned that Don Bailey was aware of their illegal scheme and had mentioned it in innumerable briefs and pleadings intentionally seeking to invite some sort of overt comment or challenge. No Judge ever obliged.

This situation, when combined with Bailey's successful defeat (with the help of the Philadelphia Daily News) of a second effort by Rambo to impose a gag rule on him (see *Bailey v. Systems Innovation*) in the John Shingara (a state police case) resulted in Judge Rambo literally fading out of Don Bailey cases. Judge Rambo recused herself and did not prominently figure in Bailey's cases again. Her efforts to impose sanctions on Don Bailey (as Stretton

testified to before the disciplinary board) not only failed but ended up as something she simply did not remember when Stretton approached her about it afterwards.

The Thom Lewis Saga continued. Judge Muir manipulated a perfectly good case with a number of solid causes of action, brought by Mr. Lewis, into a dismissal. This was after he had deleted everyone but Deborah Smith from Lewis I. Realizing that Judge Muir was mistreating Lewis in a seeming effort to protect the Disciplinary Board and cooperate with Paul Killion's efforts to prevent any possible related investigations into the dog business, in connection with which Patti Bednarik was using her Disciplinary counsel e-mail address – according to the D.O. webpage where it was posted – to conduct the dog business masquerading as a charitable rescue function. As a consequence it was decided to file a Lewis complaint which not only dropped a defendant but which added a John Doe defendant because the state dog law people had added false information about Lewis to their webpage in an effort to destroy his remaining rescue operations. They also unlawfully denied him licenses, maliciously prosecuted, and unlawfully searched his home and property while making totally unfounded criminal allegations because of his choice of lawyers.

As further proof, Lewis had defended a suit brought by Deb Smith where Mr. Flaherty, who had worked as an administrative law judge under Judge Jones when he had served as State Liquor Control Board Chairman, and after he had served as co–finance chairman with Tom Corbett for Gov. Ridge, appeared as an attorney assisting Deb Smith against Thom Lewis. During a later DJ hearing where false charges were brought by dog law officer Breiner at the behest of state dog law director Mary Bender, MJ Placy prophetically told Mr. Lewis in open court "you've got a target on your back". Later before Cumberland County Common Pleas Court

Judge Baylee these charges were thrown out (an extremely rare occurrence) to the great shock of the Assistant Cumberland County DA who was helping Ms. Bender and Mr. Breiner.

Recognizing exceptionally prejudicial treatment by Judge Muir (Judge Muir had erroneously provided an unsupportable Rule 15 rationale in striking an amended complaint in Lewis I within a matter of days, it was decided by Bailey and Lewis to file Lewis II instead as a new complaint instead of as a supplemental complaint). The law nowhere requires any procedural penalty or requirements for whatever choices are made in this regard i.e., a new complaint or a Rule 15 supplemental complaint. Nonetheless this case was assigned to none other than Judge Jones who, based upon information and belief acquired by Mr. Lewis was a friend of Flaherty's and a former work colleague at the Liquor Control Board where Jones was Chairman.

Judge Jones dismissed Lewis II erroneously citing "res judicata" reasons even though there had never been any discovery or any "litigation" in the underlying case. This was done even though there was a totally new First Amendment claim that should have survived whatever Judge Jones did. Judge Jones had even done such a poor, or arguably no, analysis on the case when he admonished the plaintiffs for filing thousands of pages of documents, each and every one of which, had actually been filed by the Atty. Gen.'s office on behalf of the defendants duplicating the exact same error committed by Judge Muir in Lewis I.

Regardless, these somewhat predictable actions were also appealed to the Third Circuit. By this time both Mr. Bailey and Mr. Lewis realized that they were being subjected to extreme judicial misconduct motivated by avoiding any disclosure of us the misconduct he had provided

prolific evidence of to the authorities and which would have been exposed had his case been allowed to continue.

Months later, after the Lewis case had been closed, Judge Jones, in what was an obvious preconceived strategy hatched out with Bridget Montgomery, Judge Kane's traveling companion, assessed attorneys fees against Mr. Bailey in an over the weekend five day decision where Mr. Bailey was denied an opportunity to even respond. This was done months after the case closed and months after the law precluded Montgomery's doing so. Montgomery was a self admitted traveling companion of Judge Kane, and a member of the Eckert Seaman's law firm, which figured both in complaints against Tom Corbett (LeRoy Zimmerman's clients) and the kids for cash scandal, but in another context, was being written about by a local reporter as a personal connection with Judge Kane where she accepted roughly $80,000 in gifts and a new car from a senior member of the firm.

Regardless, Lewis II had been appealed to the Third Circuit Court of Appeals. There they were directed to panels that regularly had members handling Don Bailey appeals. This was done by Anthony Scirica. Case after case of Don Bailey's would go to the same or similar panels (contrary to the public myth a lead appears to be chosen on each panel who writes the opinion and whatnot) and case after case would be dismissed. The reason for Bailey's appeals was simple. Literally dozens upon dozens of cases had been dismissed by Connor, Jones, and Kane. In the Lewis cases, Judge Scirica handled these cases himself at the Third Circuit. After upholding the trial court's Lewis decisions, Judge Scirica sent these cases to a "master"- none other than his former law clerk, and a colleague of Martin Carlson, MJ Rice.

Carlson was a self-professed enemy of Don Bailey's for years and a magistrate judge in the Middle District providing services to, among others, Judge Kane. Bailey had questioned the midnight, over the weekend, appointment of Martin Carlson by a panel judge Kane appointed. The "Merit Selection" panel included Paul Killion, Killion's former partner, Attorney Metz, and Hubert X. Gilroy Judge Kane's personally appointed investigator of Don Bailey.

Judge Rice ordered Mr. Bailey to not testify about the very facts underlying the sanctions lodged against him during the truncated hearing in the Third Circuit. Then, in a remarkable abuse of discretion, Judge Rice then used the very beginning of Mr. Bailey's testimony about which he was expressly denied an opportunity to address this as a reason for sanctioning him. This was after M.J. Rice, just like the Disciplinary Board, denied Mr. Bailey witnesses before the board, including an opportunity to subpoena or cross-examine the very person who allegedly ran up the billings against Mr. Bailey. In fact MJ Rice as a "master" also denied any opportunity for discovery. Mr. Rice's decisions were in violation of Mr. Bailey's due process rights. *See R-Exhibit 18.*

Later Don Bailey, in a motion for reconsideration, after years of the abuse visited by a system dominated by unlawful agreements and vindictiveness, committed the grave and capital offense of accusing certain judges of "misconduct". And that's what brings us to Salem today. A sick, tired, and fed up attorney with some sick, tired, and fed up clients trying desperately to believe in a court system that spouts constant decisions about justice and parity and balance while it seems lacking in the ability to control an out-of-control ODC and of even remotely policing itself, i.e., responding to blatant judicial misconduct.

Sometime in 2004, respondent also assumed the representation of Stephen Conklin, a resident of York County. In an opinion in that case Judge Christopher Conner, after a plethora of cases where he constantly nitpicked Mr. Bailey's opinions, correcting his grammar and making snide insulting remarks, rendered a decision which on its face was not only racially insensitive but demonstrated Judge Conner's inability to understand a racial issue even under long existing law. Mr. Bailey wrote an extremely courteous and respectful motion to Judge Conner asking him to vacate and reconsider his opinion. The memorandum opinion for which the reconsideration was sought was itself obviously written by Judge Conner personally (which seemed odd) but most important contained citations to cases which did not even remotely begin to support the theories and rationale of Judge Conner's unsupportable opinion. Judge Conner's underlying rationale was quite simple. It mocked Mr. Conklin and essentially took the view that since he was white he either wasn't qualified or was not in a very good position to bring a case about race. Mr. Bailey and Mr. Conklin found this to be upsetting. *See R-Exhibits 5, 6, 47 and 92.*

Christopher Conner's reaction to the motion for reconsideration was veritable outrage followed by a number of vindictive and hateful actions which have not ceased until this very day. He had invoked sanctions, also in another case where a police officer from York could not be served because he was in Iraq, something which was hidden from Mr. Bailey. That underlying case was complicated by the affected individual not being open with counsel about occurrences in his case. Regardless, in Conklin's matter, Mr. Connor was asked to recuse himself. He refused. An extraordinary writ was taken to the Third Circuit. In a notable opinion written by Judge Greenburg, although Connor was not forced by the mandamus request to recuse himself,

no fault was found with Mr. Bailey, or Mr. Conklin, and these issues were permitted to be explored by them (even though there was no practical way to do so) during the underlying litigation which Conner eventually dismissed as of course. *See R-Exhibits 5, 6, 47 and 92.*

Conner also wrote a scurrilous and intellectually dishonest decision in the case of *Venesevich v. Leonard* in which he falsely accused Bailey of plagiarism. The entire matter blew up on Conner when Bailey was able to demonstrate prolific and serious plagiarism by the US Attorney's office under Martin Carlson (the plagiarism was committed by one of his assistants) although of course no action was taken to correct the matter, apologize, or sanction the attorney who committed the plagiarism. Nonetheless, the matter was appealed to the Third Circuit, and although the panel admitted there were discrepancies among the circuits on the relevant legal issues, and even though the Third Circuit had clearly violated its own rules, the panel to which it was assigned found that because Mr. Conner (quite cleverly and quite intentionally, meaning only to smear Mr. Bailey and abuse his judicial power) had not actually "sanctioned" Mr. Bailey. Even though Judge Conner had rushed to publish the case the day after he issued his final opinion, and even though he was guilty of judicial abuse (about which nothing is ever done in our system), nothing was done to strike the totally dishonest opinion of Christopher Connor and instead the panel outrageously commented that Mr. Bailey had been warned or something to that effect about this type of thing before, <u>which was completely and totally false</u>. *See R-Exhibits 3-4.*

The *Venesevich* case was appealed to the Third Circuit and was also filed via a writ of certiorari in the Supreme Court of the United States. *See R-Exhibit 3*. Not one court or judge ever indicated, and even inferentially opined, that the issues raised by Don Bailey were not legitimate and proper legal issues worthy of consideration by the appellate courts. Yet ODC and

the current MJ Martin C. Carlson of the Middle District, in a profusion of vindictive and hateful opinions, use Conner's vindictive and totally dishonest opinion in the Venesevich case (never acknowledging the appeal decisions, or the Writ of Certiorari) even though Carlson was the US Attorney who presided over blatant plagiarism by his minions. Both the ODC and Carlson continue to use Mr. Conner's intentionally dishonest and vindictive opinion to distort and smear Don Bailey and his efforts in the courts and before this very body.

If there is no remedy to this vicious and dishonest action by official bodies of the Disciplinary Board of the Supreme Court of Pennsylvania, and by our federal courts, then where do we go? What is an abused attorney and his abused clients expected to do? There are no remedies, there is no action taken, there's just and endless stream of abuse because Don Bailey has the unmitigated gall to speak up and exercise what one would think would be his First Amendment rights to represent his clients just like the rest of the First Amendment rights we pay lip service to on behalf of other American citizens.

Although the abuse continues in a number of different cases against a number of innocent clients it has a number of different components. All need to be told, and will be told.

A totally separate arm of this so-called attorney discipline process involves the federal courts. It must be remembered that when the harassment of Mr. Bailey began it was obviously at the behest of Paul Killian and his underlings. Originally the prime mover was Patti Bednarik, who had a great deal at stake personally, but whose protection stemmed from her relatives on the Supreme Court, to whom Killian answered. Bednarik admitted in effect to Bailey's initial attorney Sam Stretton that a grossly selective investigation misusing complaints from a gentleman named Beckerman was devoid of merit. But in the same breath Bednarik (specifically

referring to Christopher Conner) complained to Stretton, "we don't know what to do about this Judge".

Mr. Fulton told attorney Stretton and Don Bailey that Judges Scirica, Conner, and Jones had complained to the DB about Mr. Bailey. Both Judge Jones and Judge Conner expressly testified before the DB panel that they never complained about Mr. Bailey. Someone is lying. When Mr. Bailey met with Mr. Killion on Christmas Eve, Mr. Killion lamented the pestering insistence of Judge Connor to have the ODC do something to get at Don Bailey.

Out of this matrix grew the political intrigues and manipulations that bring us here today.

Analysis of the ODC Brief

The argument of the ODC is, as stated, twofold: 1) that respondent made false statements in a Third Circuit filing, and 2) that respondent filed frivolous actions in the Middle District and Third Circuit. *See R- Exhibits 1-2*. The ODC gives prominence to the last item first, which, as stated, is uncharged. It is not part of this case. But it will nonetheless be addressed herein because it provides a relevant context for the prejudice that the respondent has suffered. It additionally provides a basis for the things plaintiff alleged in the *pro se* Third Circuit Motion for Rehearing En Banc. *See R-Exhibit 75.*

The ODC begins its argument by discussing the federal Thom Lewis litigation, starting with the Lewis I case filed in March 2007. There is a very complex set of circumstances involving ODC and its employees that relate factually to these matters that respondent has been deprived of the opportunity to address, but which he has fairly and openly disclosed in these proceedings through forced proffers and prehearing and post hearing motions and arguments, including this one. It directly involves efforts by disciplinary counsel to retaliate for the filing of the first Thom Lewis lawsuit, with threats of proceedings of this very nature. The primary purveyor of these threats on this Patti Bednarik Esquire followed by Mr. Killian and Mr. Fulton. The statement of facts being supplied by respondent provides much detail. These are matters that have been set forth on the United States Supreme Court docket in respondent's pro se writ of certiorari from the Third Circuit sanctions.[1]

[1] Respondent has requested, and is entitled to a hearing on his claims of prosecutorial misconduct and/or selective and/or vindictive prosecution. See Middlesex County Ethics Comm. v. Garden State Bar Assn., 457 U.S. 423 (1982) (recognizing the propriety of granting hearing upon allegations of bad faith and harassment in attorney disciplinary proceeding); See also Mattas v. Supreme Court of Pennsylvania, 576 F. Supp. 1178 (W.D. Pa. 1983) (holding preliminary injunction hearings in the context of claims relating exclusively to appeal rights under the Pennsylvania disciplinary process).

In concise but necessary summation, a punctual outline of the Lewis cases saga is required:

First: Lewis filed Lewis I.

Second: A couple of days later an amended complaint was filed correcting typos and spelling errors.

Third: Service was effected and the original service included a copy of the complaint along with a copy of the first amended complaint.

Fourth: The second amended complaint was filed under applicable rules as a matter of right.

Fifth: Judge Muir struck the second amended complaint as violative of F.R.Civ.P 15. This was despite all law and practice to the contrary, and in violation of express Third Circuit law applicable to §1983 cases to the contrary.

Sixth: Plaintiff and his counsel assumed this was the typical abuse suffered by him and other Don Bailey civil rights clients at the hands of the clique of Middle District judges who had visited a litany of abuses on Mr. Bailey, including ridiculously exaggerated lists of serial dismissals of his cases (not a single one was ever called "frivolous") thus differentiating him from all other lawyers. Respondent was denied the opportunity to introduce any evidence on these matters.

Seventh: Lewis filed a new complaint which dropped at least one defendant, added at least one new defendant, and added a totally new 1st Amendment cause of action. It also included many new and different factual averments. It is known herein as Lewis II. In response to a

12(b)(6) motion Judge Muir had dismissed all defendants from Lewis I save Deb Smith. Deb Smith, in her deposition, had directly implicated Patti Bednarik in the unlawful trafficking of dogs. Lewis subpoenaed Bednarik. For reasons totally unrelated to her being a fact witness, which she clearly was, to the Lewis I case, Judge Muir quashed the subpoena obviously because he feared other implications.

Eighth: The new case was assigned to Judge Jones who dismissed it on *res judicata* grounds in matter of days after Judge Muir granted Deb Smith's summary judgment request. In that opinion Judge Muir, in abject error, had criticized plaintiff for filing thousands of pages of documents. Even a cursory review of the underlying record, if one had ever actually been conducted, would have demonstrated that it was the defendant through their counsel in the Atty. Gen.'s office who filed the documents. When Judge Jones dismissed Lewis II, as mentioned above on res judicata grounds, he obviously plagiarized adding his own admonition about the burdensome filing of the documents. This demonstrated unequivocally that Judge Jones had never reviewed any matters pertaining to the new case at all (for which, in violation of established Middle District law, he had stayed discovery) and Third Circuit law which was also applicable. The entire matter was obviously planned and under no definition of law or practice was the situation a res judicata matter.

ODC recites the overall procedural history of the two Lewis cases, noting that Lewis chose to not appeal the first, and filed the second case while claims remained pending in the district court in the first case. As can be seen above, this is very misleading, and in fact if Don Bailey had penned the above, an attempt would be made to discipline him for it. The second case was not *res judicata* at the time it was filed for the simple reason that there was no final

judgment in the first case. In addition there were new claims that were totally unrelated to any claim in Lewis I and furthermore Lewis was totally within his rights to file such case.

As mentioned above the second case was dismissed within a week or so after the Lewis I case was finally dismissed by Judge Muir, and Lewis chose to appeal the latter as was his right. There were additional and later claims in the second case. None of the matters in the later amended pleading in the Muir case were considered because that pleading was dismissed on procedural grounds. This simple, uncontested, and inescapable fact escaped all analysis of the issue by all courts except that MJ Rice observed that res judicata could be founded in a 12(b)(6) motion or a ruling thereon which, in this case, was founded upon an egregious judicial error about who had filed thousands of documents, proving an incontestable reality that the judges involved and/or their clerks hadn't even considered the evidence. This did not prevent MJ Rice from employing the rationale he did. Even if some excusable error is provided to Judge Muir, none can be rationally found for Judge Jones or for that matter for MJ Rice. What is left argument wise for Judge Scirica is not worth addressing here.

An appeal was taken to the Third Circuit from Lewis II, and was affirmed by a panel, in an opinion written by Judge Scirica. The basis of the decision was that Lewis II was barred by *res judicata*. There was no mention of frivolity. Mr. Lewis filed a *pro se* Writ of Certiorari from this decision. Bailey did not write or contribute to this filing even though there was an effort made by defense counsel to get attorneys' fees from Mr. Bailey and Mr. Lewis, and even though, in totally irresponsible fashion without the slightest factual support other than Bridget Montgomery's request, ODC actually charged Mr. Bailey with filing this document as some form of harassment.

There was no petition for panel rehearing or rehearing en banc filed from this decision i.e., contrary to the suggestion of the ODC, there were no statements made by respondent about judicial misconduct as counsel in the Lewis proceedings. Respondent was, however, mentioned as an issue in the Lewis case itself because Joey the See i.e., Mr. Curcillo, warned Mr. Lewis about having Bailey as a lawyer as did John Breiner a dog officer, who was a defendant in Lewis's underlying civil rights complaint. Patti Bednarik made similar threats telling Sam Stretton she was questioning Bailey's mental stability as a result of the first Lewis complaint which she mysteriously acquired before it was served. This also relates to the monitoring activities done of Don Bailey's activities by different Middle District and Third Circuit judges, the ODC, certain persons in the US attorney's office and their staffs via some sort of complicity with the Middle District clerk's office. The infamous drop-down box disclosures for the dissemination of Bailey's filing activities to interested parties within the federal system even though they were unrelated to his cases. *See R-Exhibit 71.*[2]

The Third Circuit sanctions proceeding was initiated after the panel decision, and Magistrate Judge Rice was appointed on March 30, 2010, two days before Magistrate Judge Carlson circulated an opinion statewide awarding $10,000 in sanctions against respondent in a separate matter, and making dishonest, scandalous attacks against respondent personally. Within a week or so of this, respondent received a pre-complaint of stale charges from the ODC, which,

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[2] Respondent has requested, and is entitled to a hearing on his claims of prosecutorial misconduct and/or selective and/or vindictive prosecution. See Middlesex County Ethics Comm. v. Garden State Bar Assn., 457 U.S. 423 (1982) (recognizing the propriety of granting hearing upon allegations of bad faith and harassment in attorney disciplinary proceeding); See also Mattas v. Supreme Court of Pennsylvania, 576 F. Supp. 1178 (W.D. Pa. 1983) (holding preliminary injunction hearings in the context of claims relating exclusively to appeal rights under the Pennsylvania disciplinary process).

although never proceeded with formally and made public, were made part of a federal disciplinary investigation initiated by Judge Kane in January, 2011, within weeks of the formal complaint on these charges. Also within these same several weeks in March and April, 2010, respondent's colleague, Andrew Ostrowski, was suspended by the Middle District, and Ostrowski has testified to calls by and/or between Judge Jones and ODC staff concerning efforts to stop him from "helping Bailey".

It was through the Miles Thomas case that Ostrowski had been handling, that many of the connections between Judge Jones, Eckert Seaman's, and the defendants in the Lewis case were revealed. It is also worthy of note that during this period of time prolific investigative efforts by one of Bailey's previous clients, (who Don Bailey believes Judges Kane, Jones, and Connor erroneously hold him responsible) namely William Keisling, revealed significant public corruption issues about Judge Kane, and many other judges, which he caused to be published on his own. According to Mr. Keisling, Kane was socially active with a senior partner in the Eckert Seaman's law from whom she supposedly took over $80,000 in gifts and even an automobile, in addition to traveling with him, while Bridget Montgomery, another Eckert Seaman's partner, was a supposed traveling companion of Kane's. Then, even though an order supposedly existed in the Middle District where Kane noted her refusal to employ Eckert Seaman's services in any court related activity, as admitted by Bridget Montgomery, Montgomery supposedly became a lead attorney of sorts in the kids for cash litigation. Keisling claims in his writings that he learned these things from the public record.

Sanctions proceedings had also been left open on a very tardy filing for the later right to file counsel fees from Eckert Seaman's Bridget Montgomery, who somehow came to represent

two of the defendants who had some vague, but alleged, connection to Judge Jones, who also is revealed to have some connections to the Eckert Seaman's firm, as is Judge Kane. Montgomery filed extensive sanctions motions covering numerous cases, even the *pro se* writ that Lewis himself filed, and made far reaching accusations of bad faith and misconduct on respondent's part.

In response, respondent raised these issues, and suggested that they are tied to other issues that respondent had raised numerous times in the past about a plan by an identified group of federal judges to "get" him, i.e., stop his civil rights practice for many reasons relating to the sensitive nature of the cases he was filing, and the successes he was having, such as the $1.5 million in jury verdict against then-Attorney General, now Third Circuit Judge Mike Fisher. The Middle District sanctions proceedings (no actual sanctions motion had yet been filed) were mysteriously held in abeyance through the appeal, just like Judge Jones' ruling in the underlying case was mysteriously held in abeyance pending Judge Muir's dismissal – each time Judge Jones closely following his lead judge by a week or so. Again, no mention of frivolity was made in the panel decision.

Respondent made his position clear. In order to fairly consider whether there was any bad faith, or any basis for sanctions, he would have to be permitted to present witnesses and other evidence to support his claims that 1) he did not pursue any frivolous, bad faith, or otherwise sanctionable course of conduct in either or both district court cases or on appeal and, 2) that all of the evidence pointed to this being part of an unlawful agenda to do respondent and his clients harm. Judge Rice refused to permit respondent to present this defense, strictly limiting his determination to the purported frivolity of the appeal.

It was the defendants in the case who defined the scope of the issues and attempted to continue to expand them. A very permissive view of the efforts of these Eckert Seaman's attorneys had been taken throughout the litigation in what had become a clear pattern, which was unfair and inequitable to the respondent and Mr. Lewis on its' face. Judge Jones even testified at Bailey's hearing that he allowed the late filing for sanctions without an opportunity to respond because "he knew what you [respondent] would say". Mr. Ostrowski had been suspended, clients of his had been left in the dark while their cases proceeded, and Judge Kane's connection to Eckert Seaman's and the disciplinary authorities had been revealed as well. The point is respondent was never permitted any defense of any kind in any form as he was systematically denied due process.

Subpoenas were denied by Judge Rice. Respondent was called to testify, and the issue arose concerning the allegations of judicial misconduct he had raised regarding the plan to "get" him. Respondent was being subjected to a huge sanctions for filing the appeal and related cases, had been smeared statewide unfairly, was subject to old disciplinary charges, was told by Paul Killion that he was being "pestered" by Judge Conner to do something about him, and had become aware of calls by Judge Jones to disciplinary counsel as well, in addition to the connections with Eckert Seamans and the federal courts, and the permissive view taken of their negligent and deceptive litigation practices while even being denied the opportunity to question the lawyer who supposedly did the work.

Under these circumstances, respondent reasonably believed that testimony of the matters that he had complained about for years was relevant to the issues for which he reasonably believed he was being unfairly treated, but more important, was so persistently abused that no

human being should be expected to take the kind of punishment Don Bailey was forced to suffer. Judge Rice cut off all right of respondent to testify in these matters, but Bailey was later attacked by Judge Rice for raising claims of that nature. These proceedings have been and continue to be grossly unfair on their face.

Judge Rice entered his recommendation finding the appeal only frivolous, and only on the ground that there was case law stating that a 12(b)(6) motion could be *res judicata* on a later claim that respondent did not address in his brief. Judge Scirica entered a one-line order adopting Judge Rice's recommendation, making no comment on the merits, and a day later, Judge Jones entered an opinion and order imposing sanctions against respondent only, not directly stating that any filing was frivolous. The entire matter was an unjust abuse of judicial power to make a point i.e., to teach Mr. Bailey a lesson.

It was in response to the August 6, 2010 Order of Judge Scirica that the Motion for rehearing en banc was filed. At that time, respondent had personally been sanctioned nearly $50,000 for an action where there had never been any proof that he acted in bad faith or made any frivolous allegations, only that he had filed an appeal that was deemed frivolous, but this issue was never described as frivolous by the Judge (Jones) who decided the underlying case and affirmed the sanctions. Overlaid against all of the preceding for context, respondent made allegations in the motion for rehearing en banc that effectively only outlined a proffer of what his testimony would have been had he been allowed to testify, reasonably and demonstrably believing it all to be true, and all proffered in mitigation of what was clearly an unfair judgment against him, in the context of a revealed pattern of case dismissals and connections by and/or between federal judges, lawyers and law firms, and state disciplinary authorities. The allegations

were made upon a reasonable belief of their truth, and of their relevance and materiality to the issues before the court. The motion was denied and respondent filed a *pro se* writ of certiorari to the United States Supreme Court.

Apparently, the motion for rehearing en banc was sent by someone either with the Third Circuit or Middle District to the ODC directly. This is shown by the ecf script along the top of the exhibit attached to the ODC disciplinary complaint, which is a Third Circuit script. The ODC complaint also contains exhibits that respondent filed with his motion in the Third Circuit. These exhibits include a declaration of Thom Lewis and statements concerning cult activities of the defendants (these accusations were supported by the daughter of one of the cult members who had actually participated against her will). At no time did Mr. Bailey ever accuse Judge Jones of being a member thereof because he has no information to either support or refute it. In the underlying case, the defendants were represented by Eckert Seaman's attorney Bridget Montgomery. These exhibits were stricken from the Third Circuit filing after they were filed. Yet this is what was appended to the ODC complaint. It was the entire basis of the ODC complaint. Jones even testified in Bailey's hearing that Bailey had never accused him of being in a cult.

Again, this Third Circuit filing became the entire basis for the disciplinary complaint filed by ODC on January 22, 2011. The pre-complaint initiated against respondent in April 2010 fell silent, and respondent was denied access to information from ODC on those matters. On January 3, 2011, Judge Kane initiated a vague parallel proceeding in the Middle District, and appointed as an investigator/special prosecutor, Hubert Gilroy, to conduct an investigation into the allegations. This somewhat silently paralleled the formal proceedings in this matter, and a

response to the Middle District discipline was just filed on or about the middle of March 2012. The pre-complaint matters filed against respondent by ODC in April 2010 became the basis of some of the issues investigated in the federal proceeding by Mr. Gilroy, who unlawfully acquired, with the help of the ODC, Mr. Bailey's disciplinary proceedings with the state. This is not a reciprocal proceeding and demonstrates once more the abominable due process violations to which Don Bailey is being subjected.

An additional matter which adds considerable complexity to these issues is the introduction of Martin Carlson, the author of the scurrilous and dishonest April 1, 2010 sanctions opinion. Martin Carlson is a long time prosecutorial associate of ODC Chief Counsel Paul Killion, both of whom have a history with respondent, as to which testimony and evidence has been proffered and denied. Regardless, Killion was on the federal Middle District panel with Mr. Gilroy that led to the selection of Carlson to the position of Magistrate Judge in the Middle District, Harrisburg branch, where he had been a Unites States Attorney, or assistant, for a quarter century or so. Carlson had engaged in a morally bankrupt and repugnant effort fraught with falsehoods and misconduct to prosecute Mr. Bailey's former executive deputy.

The actions before this Board and Judge Kane's actions display obvious cooperation between Killion and Carlson. Unlawful actions of the US attorney’s office including by Carlson and possibly involving Killion led to this successful conclusion of a lawsuit Bailey filed against former auditor Gen. Barbara Hafer and led to his receipt of a September 8, 2000 written apology from Barbara Hafer for defaming respondent in connection with an election for statewide office. In the apology letter Hafer mentions that she was misled by federal officials. This is when the highly partisan effort to get at Don Bailey began in earnest. This is the relevant background.

III. RESPONSE TO ODC PROPOSED FINDINGS OF FACTS

8-9. Admitted in part and denied in part. While the document was styled as a "second amended complaint", it was, in reality, the first amended pleading subject to the amending "once as a matter of course" provisions of Fed. R. Civ. P. 15, as they then existed. Respondent filed the complaint on behalf of Lewis, and immediately filed an amendment to address very minor matters of form, such as name-spellings, and the like. The original complaint and the "corrected" more-so than "amended" complaint were served with the original summons. It was a clearly reasonable and appropriate interpretation for respondent to determine that the facts and circumstances suggested that the amending "once as a matter of course without leave of court" provision of Rule 15, as that rule contemplates exactly what respondent did in response to the motions that were filed after "original process" (the summons along with the corrected complaint), were served. The second amended complaint then essentially became the new complaint that respondent filed on November 2, 2007. It's merits, on the face of the record, were never before Judge Muir. By way of additional further answer, prior to the complaint being served, ODC attorney Patti Bednarik had communications with Sam Stretton about the case, claiming she knew that the facts were not accurate and that she would be evaluating further proceedings against respondent. *See Exhibit R-60 and ODC-9-10.*

12-13. (ODC No. 12 repeated twice) Admitted. By way of further response, there was no final judgment in the Lewis I case. Also on January 9, 2008 the defendants attempted to consolidate the cases. Then on January 11, 2008 they withdrew that motion. See ODC 9-10. At this time Lewis I had not been dismissed. The courts had many procedural and administrative vehicles to control the activity on its dockets that did not necessitate an appeal.

16-17. Denied. By way of further answer, the complaint was filed in a completely proper way in all procedural respects, and in accordance with all professional duties and responsibilities. The complaint filed on November 2, 2007 was, in essence, the second amended complaint that was never reviewed or considered on its merits by Judge Muir. It was stricken on wholly procedural grounds. While the document was styled as a "second amended complaint", it was, in reality, the first amended pleading subject to the amending "once as a matter of course" provisions of Fed. R. Civ. P. 15, as they then existed. Respondent filed the complaint on behalf of Lewis, and immediately filed an amendment to address very minor matters of form, such as name-spellings, and the like. The original complaint and the "corrected" more-so than "amended" complaint were served with the original summons. It was a clearly reasonable and appropriate interpretation for respondent to determine that the facts and circumstances suggested that the amending "once as a matter of course without leave of court" provision of Rule 15, as that rule contemplates exactly what respondent did in response to the motions that were filed after "original process" (the summons along with the corrected complaint), were served. The second amended complaint then essentially became the new complaint that respondent filed on November 2, 2007. It's merits, on the face of the record, were never before Judge Muir.

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By way of additional further answer, there is no duty to seek reconsideration; in fact, it is a disfavored proceeding in the Middle District. There were other strategic reasons the second

complaint was filed. Because of the prehearing and hearing limitations placed on respondent, he was not permitted to fully develop these issues.

19-22. Denied. The entire Third Circuit brief and proceedings related to the Thom Lewis litigation and appeal are attached as Respondent's *Exhibit 1, 2 and 3.* The Brief reveals that all pertinent issues were raised and argued by respondent. Though the ODC appears to suggest that respondent has some duty to concede that he is wrong on this issue, he does not. The merits of the matters before Judge Jones were never before Judge Muir, and the timing of the handling of the cases permitted respondent and his client options as to how to proceed, they chose an appeal of the latter because that included all the relevant operative claims in any event. The middle district was surely aware that these parallel cases and never took any action to control its dockets more efficiently. Also on January 9, 2008 the defendants attempted to consolidate the cases. Then on January 11, 2008 they withdrew that motion. See ODC 9-10. At this time Lewis I had not been dismissed. The courts had many procedural and administrative vehicles to control the activity on its dockets that did not necessitate an appeal. By way of further response, there is no mention anywhere in the Opinion of the Third Circuit on the merits of the appeal that the appeal was frivolous. Respondent argued that this violated the Third Circuits own rules.

23. Admitted. By way of further response, the Motion for Attorneys Fees was filed after the defendants were belatedly (they filed a motion over 100 days late) sought permission from Judge Jones to seek fees and costs after the Third Circuit proceeding was concluded. This is a part of a pattern of accommodations made on behalf of the Eckert Seaman's attorneys. See N.T. pg 219 lines 1-25. For example, another time, Bridget Montgomery used the excuse along with her colleague David Schertz that they did not receive their Law books on time when

calculating deadlines. This is one of the biggest law firms in the state and they "didn't have their law books". Although they cite to LEXIS case law in just about all their briefs filed with the Court, respondent was not even allowed to respond to the late filing that defendants filed. Judge Jones stated in his testimony "I already knew what you were going to say". The motion for Attorneys fee that were filed late in the Middle District are still pending in the Third Circuit court of appeal. N.T. pg 204 lines 20-25, pg 205-206 lines 1-25.

24. Admitted. By way of further answer, these motions were very far-reaching, and involved extensive allegations of misconduct. All issues were framed and defined by the defendant through their motions, and dictated the entire course of everything that followed, through the present. Respondent had no choice but to respond and keep responding to what is being done to him. The courts are the ones who did not make findings of frivolity or suggest wrongful conduct, and the courts did not have to keep and hold dockets open for the purpose of duplicating the proceedings to the extent they have. These matters have now effectively dragged on for three more years, and they did so because both the Middle District and Third held dockets open and entertained each and every proceeding engaged in since that time, after their judicial business had concluded in the normal course. Respondent is completely innocent of any and all misconduct.

25. Admitted in part, denied in part. The only investigation that was done by M.J. Rice was to conduct a hearing on sanctions. During the hearing when respondent attempt to speak M.J. Rice clearly stated that he was only there to conduct an investigation on attorney's fees, not the merits of the case, or even the litigation strategies leading to the filing of the second case. The Third Circuit opinion never once in their opinion stated the case was frivolous.

26. Admitted. However respondent was unable to even subpoena witnesses, or even attempt to defend himself, never given a hearing related to the motions to quash which clearly violates, all as set forth in the procedural history of this case. Respondent was totally denied due process in the hearing which was devoid of any substance, and was specifically cut off from testifying to many valid and appropriate matters. See N.T. pg 50 lines 14-17, pg 127 lines 11-12. N.T. pg 127 lines 13-22; and N.T. pg 129-130.

27. Admitted. By way of further response defendants Counsel Montgomery attempted to seek attorney's fees for numerous duplicated billings which were filed in the Third circuit and the Middle District. Defendants attempted to get costs on a Writ of Certiorari that plaintiff filed himself, which respondent was charged with in the very complaint. Ms. Montgomery was ordered to redo her billings time and time again for duplications. N.T. 219 lines 1-25. Respondent incorporates his response to item 24.

42. **Judge Conner's testimony.**

a-e. Admitted.

f. Admitted respondent did mediate a case before the Honorable Christopher C. Conner, which at the time Judge Conner was not a judge. Judge Conner personally told respondent during the mediation of this case "Beatty" that if plaintiff was offered $30-40k, that plaintiff should take it. This was a case where the plaintiff, William Beatty was shot in the back by a police officer and was seriously injured. The case later settled for six figures, without the involvement of Judge Conner. Judge Conner at the time wrote his report back to Judge Rambo, indicating he settled the matter, which was inaccurate. See N.T. pg 48 lines 18-23, N.T. pg 82 lines 13-25; pg 83 lines 1-15; and pg 84 lines 1-25; pg 85 lines 1-8.

g. Admitted. By way of further response Judge Conner had many many cases of respondent which were dismissed. On one occasion the case of "Cahill", Judge Conner found for plaintiff, of course Judge Conner knew the insurance company refused to indemnify, which indicated the plaintiff would never be unable to recover any of the judgment that Judge Conner rendered. N.T. pg 137-138 lines 1-25.

h. Admitted Judge Conner recused himself only after requested to testify against respondent during this proceeding. However by way of further response Judge Conner move to quash the subpoena that Respondent issued upon him. Judge Conner waited until March of 2011 to recuse himself from respondent's cases. Judge Conner testified that he recused himself in April sometime right after respondent answered ODC complaint, and then when Mr. Fulton requested him to testify against respondent. This is false. ODC indicated to respondents counsel at the preliminary hearing after repeated attempts by respondent asking "who the complaining

parties were". ODC counsel Mr. Fulton indicated in that hearing that Judge Conner, Judge Jones and Judge Scirica were the complaining parties. See ODC complaint and initial letter seeking respondent's response the complaining party.

Respondent's subpoenas were QUASHED, and respondent was unable to properly and adequately seek the testimony of Judge Conner, Judge Jones or any members of the judicial. Judge Conner testified he was here pursuant to a subpoena issued by Mr. Fulton. N.T. pg 50 lines 14-17; N.T. pg 127 lines 11-12. Judge Conner even stated he wondered why he didn't contest the subpoena from Mr. Fulton. See N.T. pg 127 lines 13-22. Mr. Fulton stated that the U.S. Attorney's office filed the subpoena for Judge Conner. Judge Conner admits later on in his testimony that he did indeed move to have the U.S. Attorney quash his subpoena. N.T. pg 129-130.

Judge Conner then goes on to further state the reason is:

> "that logistically will allow me to go back to my office and do some substantive work rather than sit through the entire hearing", N.T. pg 130 lines 4-7. "I think that was one of the reason for it, but –", N.T. pg 130 lines 7-8.

Judge Conner's testimony involving the issuance of the subpoena are clearly inaccurate and not truthful at all. Respondent issued a subpoena on Judge Conner and then the U.S. Attorney's office move to quash the subpoena, along with several other individuals that were subpoenaed. N.T. pg 131 lines 5-17.

i. Admitted he testified to that fact.

J.-k Judge Conner along with other members of the judicial have for years stated they were going to get respondent. The testimony of Samuel C. Stretton who testified that Judge Munley a member of this very Court told Mr. Stretton that "they were going to get Mr. Bailey,

and that he should stay away from him". Judge Conner admitted that the judges spoke amongst themselves about respondent. N.T. pg 56-57 lines 12-23 and line 1. Judge Conner was aware of respondent placing in many pleadings that the judges were out to get him, and nothing was ever requested of respondent during this time by any judges in the Middle District. N.T. pg 57 lines 8-17. This information was received by Attorney Stretton from the Honorable Judge Munley of the Middle District of Pennsylvania, which respondent believes was truthful. N.T. pg 60 lines 21-24; N.T. Day 2 pg 63-64 lines 1-25 and R-Exhibit 46.

Mr. Stretton testified that respondent repeatedly requested to know who the complaining parties were and indeed he confirm in his testimony that Mr. Fulton stated it was Judge Conner, Jones and Scirica. See N.T. pg 74 lines 1-25. Adrienne Bailey testified about her knowledge relating to the statements made by Mr. Stretton and Judge Munley warning respondent that they were going to get him. N.T. Day 2 pg 238 lines 1-25. Mr. Ostrowski knew that and confirmed that respondent was being mistreated by the judges who included Conner, Kane and Jones. N.T. Day 2 pgs 281-281 lines 1-25; pg 282 lines 7-12; pgs 284-285 lines 1-25.

Judge Conner even admitted in his own testimony he spoke several times with Paul Killion shortly after respondent met with Paul Killion in his office on Christmas Eve. Paul Killion whose subpoena was quashed threatened respondent during this time. Paul Killion also stated that Judge Conner was pestering him and he had to do something to respondent. Judge Conner made the reference that he was concerned over how long it was taking in the Conklin matter which related to the referral of discipline by "Clerks office", which is false. R-Exhibit 46.

Judge Conner indicated he did sanction respondent. N.T. pg 54 lines 7-11. Judge Conner proceeded to complain about the way respondent wrote complaints etc. During this time other

members of the Bar wrote complaints identical to respondents, if not copying his style. Not a word was mentioned, not even complaints by the members of the Middle District. Judge Conner issued two sanctions against respondent in the Conklin and Cornish matter. Judge Conner sanctioned respondent $1000.00 in the Conklin matter, which respondent protested. N.T. pg 55 lines 23-24. Judge Conner in the Cornish matter sanctioned respondent requiring him to take a continuing education course. And also a referral to the Disciplinary Board. Judge Conner testified further in his testimony that he never filed a complaint against respondent, this is false. See N.T. pg 55 lines 14-20. Judge Conner stated in his cross that he only forwarded a concern to the Disciplinary Board in the Conklin matter and that contained in an order in which he directed the Clerk of Courts to forward his opinion. N.T. pg 119 lines 12-25; pg 122 lines 8-13; pg 123 lines 6-17 and R- Exhibit 46.

Respondent took a private reprimand related to the complaint of Judge Conner is the case of Mitchell, Conklin, Cornish and Boyer. Judge Conner falsely testified he never filed a complaint against respondent is FALSE. See ODC Charging Complaint and N.T. pg 139-140 lines 1-25. In Mr. Fulton's own words he stated that the judge filed a complaint in his office. N.T. pg 147 lines 5-7. This notation that it was sent over by the Clerk's office is totally misleading and false.

Judge Conner indicated that respondent was sanctioned by other judges in the Court. The sanctions that have been levied against respondent are directly from the three accused of misconduct Jones, Conner, Kane and Rambo. Judge Conner also testified that respondent was sanctioned in the Grammel case by Judge Joyner in the Eastern District of Pa. N.T. pg 85 lines 24-25; pg 86 lines 4-23. This case was a case filed on behalf of Gisela Grammel against Judge

Conner as a private citizen and was referred to Judge Joyner who respondent sought recusal because of a prior case in which Judge Joyner and Judge Kelly were talking about sanctioning respondent in other matter and openly spoke about getting respondent. See Audio tape of communication. The Grammel case is still pending and indeed respondent was sanctioned; however in the testimony of Judge Conner he indicated respondent was already sanctioned, this was false. N.T. pg 86 lines 11-16. In re-cross Judge Conner changes his testimony and states that a Rule to Show Cause was pending. N.T. pg 154-155 lines 1-25 and R-Exhibit 54.

During another case before Judge Conner which is dismissed he indicated a defendant in that case who he described as a "distinguished member of the Dauphin County Bar" which respondent complained in his brief that it was highly unethical to put such a footnote in a brief. N.T. pg 91 lines 4-11.

l. Respondent reached out to Judge Conner seeking to meet and confer with him related to the sanctions motions in the initial case Conklin, which Judge Conner was the complaining party in that action. Mr. Conklin filed a second suit where he questioned whether the Middle District could be fair and impartial because of what they were doing to respondent and his clients. N.T. Day 2 pg 256 lines 7-13, pg 259-260 lines 1-25. Mr. Ostrowski even testified along with Ms. Palarino Bailey of "drop down boxes" that occurred during the filing of cases of clients who had filed "Disciplinary actions against the judges and attorneys involved in their cases" which at the time of the hearing were never processed by Paul Killion and Patty Bednarik. *See R-Exhibits 24 and 71* and N.T. Day 2 pg 301-302 lines 1-25. During these filings large number of individuals from various areas including the Disciplinary Board and U.S. Attorney's office appeared on the "drop down boxes "during the filings in these three cases. *R-*

Exhibits 71. N.T. Day 2 pg 297-300 lines 1-25. These "drop down" boxes have never appeared in any type of filings involved in any other case of respondents. N.T. Day 2 pg 368 lines 1-21.

Judge Conner admitted he read the 56 page opinion of Martin Carlson who sanctioned respondent $10,000.00. In that opinion Judge Carlson makes statements that respondent has been sanctioned all across the state, which is false. Judge Carlson indicated that respondent was sanctioned 11 times, and 7 times by Judge Conner, which is false. *See R-Exhibits 21-22* and N.T. pg 64 lines 6-24. Judge Conner admitted he sought a sanction in the form of legal education, and the other in the form of monetary. Judge Carlson's accusations in his Memorandum Opinion were false. Judge Conner confirms that in his testimony. N.T. pg 64 lines 18-24.

Judge Conner also indicated in the Venesevich matter he did not issue sanctions, he did however accuse respondent of plagiarizing his brief. N.T. pg 66 lines 7-9. Judge Conner accused respondent of "dishonesty, fraud, deceit, or misreprenstation". N.T. pg 71 lines 12-15. This brief was not prepare or even filed by respondent, attorney Sheri Coover, Esquire who rented and work with respondent prepared and filed this brief. N.T. pg 71 lines 19-24, pg 72 lines 16-23. In the opposing parties brief respondent reviewed and had a program run a plagiarism check on U.S. Attorneys brief and that brief was plagiarized. Respondent asked Judge Conner why he didn't investigate the U.S. Attorney's office for plagiarism when he attacked respondent in the Venesevich opinion. Judge Conner then immediately took the Venesevich opinion and had it published to again smear respondent and to injure his practice. N.T. pg 74 lines 10-25. When this case was appealed to the Third Circuit they stated they had no jurisdiction related to the footnote prepare and filed in this Memorandum. This clearly was done by Judge Conner to smear and attempt to injure respondent in his practice. N.T. pg 76 lines 19-25.

This opinion and all others written by Judge Conner, Judge Jones and Judge Kane are circulated amongst the Bar to humiliate and injure respondents practice. This was created to create an issue with the way respondent practices law. Judge Carlson used the Venesevich case in his unethical Memorandum in the Lease matter, and again stated respondent was sanctioned by Judge Conner. N.T. pg 75 lines 2-8, which was false. N.T. pg 77 lines 2-8.

Respondent's attorney Samuel C. Stretton at the time of the ongoing issues related to sanctions and whatnot sought to meet with Judge Conner and Judge Kane to discuss the situations. Judge Conner refused to confer. N.T. pg 92-94 lines 1-25. Judge Conner wrote back refusing to meet with respondent and in that correspondence and stated I should speak to my Disciplinary attorney and copied opposing counsel on that private letter, which was clearly unethical. N.T. pg 94 lines 16-25. Judge Conner stated that respondent accused him of racism. Mr. Conklin testified that when he read the opinion he was upset that Judge Conner made the comment "children of color" which he felt was racists. N.T. Day 2 pg 248 lines 2-10; pg 249 lines 1-6. Judge Conner stated he received this information which involves a number of websites, and pleadings. However Judge Conner failed to testify that the pleadings in the Conklin matter, plaintiff Conklin made the statements that he thought Judge Conner had racists' tendencies and Conner even attacked the client during those pleadings. N.T. pg 105 lines 3-25; Day 2 pg 250 lines 4-5.

As to the web site respondent does not own and/or operate any such web sites that Judge Conner indicated respondent accused him of being a racists. N.T. pg 95 -96 lines 1-25. Judge Conner even indicated he did not respect respondent as a professional which clearly indicates his bias towards respondent and his clients. N.T. pg 96 lines 9-14. Judge Conner even went to the

extreme in the Conklin matter and other cases before him criticizing respondent for grammar mistakes on numerous occasion. Mr. Conklin testified as to the grammar corrections Judge Conner did in not only his case but others. N.T. Day 2 pg 260 lines 10-25; pg 265 lines 1-11. At one point respondent found over 21 orders from Judge Conner correcting grammar errors in his own Memorandums. N.T. pg 107 lines 19-25; pg 108 lines 1-25; pgs 109-112; N.T. pg 132 lines 3-25.

Mr. Ostrowski testified that when he sent a complaint in about Paul Killion and Robert Fulton, Ms. Moore sent a response back detailing what was required and opened a docket on respondent. The complaint filed by Mr. Ostrowski the Disciplinary Board thought it was against response. See N.T. Day 2 pgs 338-339 lines 1-25.

m. Judge Conner has not been reversed by the Third Circuit court of appeals; however Judge Jones has been reversed twice.

n. That is accurate; however the memorandum and misleading information in those opinions were written to humiliate and harm not only respondents practice of law but to harm innocent persons seeking to get justice.

p. Respondent defers to differ on whether Judge Conner has animosity towards civil rights cases. It depends on who the attorney on the case is. If you have Mr. Bailey on any case involving Judge Conner you will be treated very differently them other attorneys in this District. Other cases involving the "good old boys club" who don't challenge the Court's have their cases referred to mediation by these very judges, and ultimately are settled. Respondent has won over 5 million dollars in jury verdicts (mostly from Judge Caputo’s chambers) to only be thrown out in the Third circuit Court of Appeals. These were good viable claims and a jury verdict rendered.

43. Judge John Jones testimony:

Denied that Judge Jones testified credibly. There are glaring discrepancies between Jones' testimony and the actual record on file with the federal courts that demonstrate he gave false testimony under oath in this proceeding, that he directly contradicts his own testimony at different points in the proceeding, and acted inappropriately by his own definition.

False testimony cannot be credible since it cannot be believed. (see Black's Law Dictionary – "credibility";and "credible witness") i.e.; Jones testified that he "made a determination that it would be appropriate to recuse in light of the disciplinary proceedings" (see ODC Proposed findings of fact, para. 43(h) and also Respondents N.T [1], p. 172 ln.13-15). Judge Jones then recused himself from respondent's cases on or about March 23, 2010, sometime after he learned of the Disciplinary proceedings. However; Jones did not recuse himself from the Lewis 2 case until 5 (five) months later in August of 2010. roughly 10 (ten) days before the Disciplinary hearing. The Lewis 2 case is the basis for this disciplinary matter. Jones misrepresented to the Hearing Committee that he had recused himself from all Don Bailey cases. Additionally, Jones testified when he was questioned by ODC Robert Fulton, that he reviewed Don Bailey cases that were before him in preparation for his testimony. See Respondent's N.T. [1], p. 172. ln. 23-25). However, when questioned a short time later by Mr. Bailey, Judge Jones volunteered completely contrary testimony. (see Respondent's N.T. [1], p. 180. ln. 14-15). Contradictory testimony from the same person cannot be credible. Lewis II was the only Don Bailey case he kept on his docket, and it is the source of the Disciplinary proceedings. It is a lie of omission. It is also an example of judicial misconduct as complained about in respondents "Motion for reconsideration" since Judge Jones purposely treated both

Lewis and Bailey differently than he did all other plaintiffs after he made the judicial determination regarding recusal.

(a) Admitted. By way of further response, Judge Christopher Connor, the other Judge subpoenaed in this matter, is the other judge appointed in 2002 referenced in ODC paragraph 43(a). (see Respondent's N.T [1], p. 44 ln. 24-25, p. 45, ln. 1-3)

(b) Admitted.

(c) Admitted.

(d) Denied. ODC's Proposed Findings of Fact are disingenuous and misleading. Judge Jones did not engage in the "private practice of law" for 22 years. For at least 7 of those years he was Chairman of The PLCB, and simply held a political appointment to that post, but never as a practicing attorney. Additionally, Chairman of the PLCB is a Commonwealth of PA position, and cannot be described as a "private practice". ODC has overstated Judge Jones's legal background in the Commonwealth of Pennsylvania. Additionally, the Lewis complaints 1 and 2 allege that there was a "continuing violation" of state employees misusing their state office at the PALCB back to the year 2000, when Judge Jones was Chairman. Jones may have had personal knowledge, and possible awareness of the matters in the, and an interest in the outcome, since it would have affected his legacy at the PA LCB.

(e) Admitted.

(f) Denied. Judge Jones states he's handled about 2300 civil and 300 criminal cases as a federal judge (see Respondent's N.T. [1], p. 171, ln. 19-22). Of those about 30 (thirty) were from Don Bailey. (see Respondent's N.T. [1], p. 179, ln. 2-4). Jones "knowledge" of Bailey "from cases on his docket" would be limited to the signature page. However Jones engaged other

Judges in conversations regarding Don Bailey (see respondent's N.T. [1], p. 229, ln. 23-25) "We, I discussed you with other judges in the context of judges' meetings", Judge Jones has previously had discussions with, and made complaints to, Paul Killion of the Disciplinary Board regarding other attorneys who he only "knew from the docket" based on Jones incorrect personal interpretations of their writings on his docket. (see Respondent's N.T. [1] p. 236 ln. 20 through p. 238 l. 13). Judge Jones accused Ostrowski of writing a court document that Thom Lewis had written and published online, (see Respondent's N.T. [2] p. 194 l. 25 through p. 197 l. 17).

(g) Admitted.

(h) Denied. It is a matter of record that Jones did not recuse himself from Lewis 2 until 5 (five) months after he recused himself from all other Don Bailey cases, only a matter of days before the Disciplinary hearing. Lewis had already complained that Judge Jones was retaliating against him because Lewis had truthfully participated in a criminal investigation involving Disciplinary Board employees and their relationships with Jones, Connor and Kane. (see Motion for Rehearing En Banc, p. 5, footnote 1) "Appellant Lewis asserts the sanctions proceedings, in both courts, have been in retaliation for him truthfully responding in 2008 and 2010 to federal investigators questions to him regarding Mail tampering and Disciplinary Counsel Members arranging false complaints to influence federal cases filed in the Middle District Court.

As a matter of record, there were allegations and investigations into the ODC organizing improper complaints with federal judges as far back as 2008 which would have required recusal from all Don Bailey cases going back to 2008. See R. 15-16. See also Exhibit 60 which confirms that Bednarik contacted Stretton to intervene and retaliate for the filing of Lewis in

April, 2007, before the case was even served. Respondent agrees that it was inappropriate for Judge Jones to sit on any Don Bailey case after he learned of the Disciplinary proceedings, and that Judge John Jones made that determination as a sitting federal judge in his official capacity. (see ODC Proposed findings of fact, para. 43(h) and also Respondents N.T [1], p. 172 ln.13-15) It is stipulated Jones did a group recusal of Bailey cases on or about March 23, 2010, but did NOT recuse himself from the Lewis 2 case for another 5 (five) months until August of 2010, only 10 (ten) days before Judge Jones was called to testify about that same case. (see Respondent's N.T. [1], p. 259, l. 1-8) "when I became aware that the disciplinary proceedings had been instituted and the substance of the disciplinary proceedings involved allegations that you had made against me among others, I thought it was only appropriate that I recuse, I did at that point and dealt with the cases I had. "

(i) Denied. Judge Jones stated they discuss Bailey cases at judges meetings. (see respondent's N.T. [1], p. 229, ln. 23-25) "We, I discussed you with other judges in the context of judges' meetings". ODC previously stated that Judge Jones does not know the respondent personally, (see ODC Proposed Findings of Fact, para f) so his only discussions would have to be regarding Don Bailey cases. Judge Jones claims to retain information from the individual cases filed in his Court, even to the point that he recognizes the way a filing has an attorneys "stamp" on it. (see Respondents N.T. [1], p. 237, l. 7-13) "It seemed to have his stamp on it, in terms of the way it was phrased."

(j) Denied. The Lewis matter was originally referred to Judge Rambo. Then assigned to Judge Muir. While it was assigned to Judge Muir, the second case was then assigned to Judge Jones.

(k) Denied. Neither Judge Muir nor Judge Jones dismissed the case for 7 more months, and both within one week of each other. Muir dismissal was on July 29, 2008, and about a week later Jones based his res judicata ruling on that decision from the previous week.

(l) Denied. On cross examination by the respondent, Judge Jones later directly contradicts his own testimony by admitting he has not reviewed Don Bailey cases. . "… I have not in all candor, I haven't reviewed the files in your cases so,…" (see Respondent's N.T. [1], p. 180. ln. 14-15).

(m) Denied. This paragraph by ODC is disingenuous and misleading. Nowhere in the Motion for rehearing En Banc does respondent accuse Jones of Judicial misconduct in the Lewis case. By way of further response, Judge Jones own testimony refers to his inappropriate behavior in the Lewis case, including failing to recuse himself for 5 (five) months after he knew he was required to do so. (see ODC Proposed findings of fact, para. 43(h) and also Respondents N.T [1], p. 172 ln.13-15). Additionally Judge Jones testified he refused to allow Lewis to respond to Motions filed against him and simply ruled against Lewis because "Jones considered his [Lewis'] position fully developed" (see Respondents N.T. [1], p. 206, l. 7-8) even though Lewis had not submitted any positions what-so-ever, and the Lewis 2 case was never considered on the merits by Jones.

(n) Denied. It is a matter of record that Judges Connor, Jones, Kane and Scirica have treated Respondent and his clients differently than all other individuals similarly situated. By way of further response, nowhere in the "Motion for Rehearing En Banc" does Respondent accuse Judge Jones of being in a "conspiracy", as alleged by ODC in the proposed findings of fact. Respondent received repeated information from his attorney, Sam Stretton, that he was the

target of judicial misconduct (see respondents N.T. [2], p. 63, l. 10 through p. 64, l. 7,) and Bailey's own clients noted their observations of the same in multiple Judicial and Disciplinary complaints (see Respondents Ex. 24) and in their testimony (Respondents N.T. [2], p. 38, l. 19 through p. 39, l. 21)

(o) Denied. This is a disingenuous and misleading statement by ODC. Nowhere in the "motion for Rehearing En Banc" does the respondent accuse Judge Jones of having "personal animus" towards the respondent or his clients.

(p) Denied. Nowhere does Respondent accuse John Jones of being a "member" of a "clique". It was the testimony of Sam Stretton that there was a clique of judges, but he does not include Jones. (see respondents N.T. [2], p. 63, l. 10 through p. 64, l. 7,)

(q) Denied. Judge Jones admits to a history of making other complaints to Paul Killion. (see Respondent's N.T. [1] p. 236 ln. 20 through p. 238 l. 13). Jones accused Ostrowski of writing a court document that Thom Lewis had written and published online, (see Respondent's N.T. [2] p. 194 l. 25 through p. 197 l. 17). Judge Jones further admits his accusations were false. (see Respondent's N.T. [1] p. 238 l. 16-24) Judge Jones admits it was "inappropriate" to remain on the Lewis 2 case after he learned of the Disciplinary proceedings, but he continued to do so for 5 (five). (see ODC Proposed findings of fact, para. 43(h) and also Respondents N.T [1], p. 172 ln.13-15).

(r) Denied. Bailey's own clients noted their observations of Judge Jones animus and bias in multiple Judicial and Disciplinary complaints *(see Respondents Ex. 24)* and in their testimony *(Respondents N.T. [2], p. 38, l. 19 through p. 39, l. 21*)

(s) Denied. Nowhere in the Motion for rehearing En Banc does Respondent accuse

Judge Jones of "conspiracy" with another judge against Lewis. In addition to the plaintiff in Lewis 2, Lewis also works in a position that grants him access to witness the conduct of judges. (see ODC Complaint against Don Bailey No. 11 DB 2011, Ex. B, [Declaration of Thom Lewis] "No. 1; I also hold a position that causes me to interact with multiple judges, attorneys and their clients, and grants me access to conversations and investigations that are not normally public, including those of the Disciplinary counsel, judicial complaints and criminal investigations". As a result of witnessing misconduct of judges and Disciplinary staff, in 2008 Lewis was asked to give evidence in criminal investigations concerning misconduct of Disciplinary Board employees doing favors for Federal judges in an effort to intimidate witnesses. (see Respondents Ex. 75; p.5, footnote 1; see also ODC Complaint against Don Bailey No. 11 DB 2011, Ex. B, [Declaration of Thom Lewis] " No. 3: Since 2008, I have been contacted by local and federal authorities and asked to give evidence and information in their investigations, which specifically included Middle District Judges and their staff" and "No.6: I am a witness against Judge John Jones for filing false reports against Don Bailey, and for participating in ex parte communications in other federal cases." Judge Jones knew since 2008 that Lewis had been asked to give evidence concerning him.

(t) Denied. Nowhere in the "Motion for rehearing En Banc" does respondent accuse Judge Jones of "Conspiring with another judge to dismiss Lewis 2". It has been the practice and policy of ODC Fulton in these proceedings to attribute imaginary statements such as this to the respondent's filings in an effort to inflame the hearing committee against the Respondent.

(u) Denied. Judge Jones has previously stipulated that he discusses Bailey in meetings with other judges. (see respondent's N.T. [1], p. 229, ln. 23-25) "We, I discussed you with other judges in the context of judges' meetings" However, Judge Jones also stipulates that he "has no knowledge of Bailey", so the conversations would be limited to the cases filed, including Lewis.

(v) Denied. Judge Jones misrepresented that he "recused himself" from all Don Bailey cases when he learned of the Disciplinary proceedings in March 2011. Judge Jones testified that he "made a determination that it would be appropriate to recuse in light of the disciplinary proceedings" (see ODC Proposed findings of fact, para. 43(h) and also Respondents N.T [1], p. 172 ln.13-15). However; Judge Jones mislead the Disciplinary Hearing committee and failed to tell them that he had treated Lewis differently, and retained the Lewis 2 case, a full 5 (five) months after he "made a determination" that he was required to recuse.

(w) Denied. At no time did respondent refer to Jones as a pedophile; however, the cult history of Judge Jones co-worker at the PALCB is well documented, who was operating a cult entitled "the Fraternity of Light" was performing marriage ceremonies where "family members" were required to marry each other, "pray naked in the pool", and cult members were watching the daughters of other members get undressed, and members were required to refer to Flaherty co-worker as "daddy". . (see ODC Complaint against Don Bailey No. 11 DB 2011, Ex. A,)

(x) Denied. There is a history of judicial complaints against Judge Jones, including plagiarism demonstrating he is not "successfully resolving" the cases before him. (see Respondents Ex. 24) and in their testimony (Respondents N.T. [2], p. 38, l. 19 through p. 39, l. 21)

(y) Admitted.

44. Respondent witnesses clearly demonstrated that these judges were out to get him and did so by sanction after sanction from the same group of judges who respondent accused of misbehaving. Judge Conner even testified falsely that he never filed a disciplinary complaint against respondent, this if false. See R-Exhibit 47. Respondent took a private reprimand on the advice of counsel from a complaint initiated by Judge Christopher C. Conner. *See R-Exhibit 47.* Conner denies that he ever filed any such complaints. Mr. Fulton in his own questioning and confirmed by Samuel C. Stretton on that during the pre-hearing conference he told both Stretton and respondent that Jones, Conner and Scirica were the complainant parties of this very complaint. There is beyond a reasonable doubt that this was preplanned along with Paul Killion who personally threatened respondent on Christmas Eve that he had no choice but to discipline him because Judge Conner and Judge Jones were pestering him to disciplinary Don. All of respondent's witnesses were denied the right to testify, the judicial staff refused to testify and respondent was clearly limited in any testimony that he could solicit. How can anyone defend themselves from accusations without the testimony of witnesses?

Col. Breslin's is a (Ret.) Col of 32 years in the U.S. Army, who is a client of respondents and testified truthfully and honestly about his case and the recusal sought of Judge Kane. Col Breslin's testified as to a friend of Judge Kane's who wanted to fix him up with her. Col. Breslin was not comfortable with asking her out and Dr. Thompson kept insisting that he speak with Judge Kane. Col. Breslin was given her private number to her chambers; however Col. Breslin did not contact Judge Kane. Once Col. Breslin informed respondent about this he felt as did Col. Breslin and the others that they should make opposing counsel aware of the circumstances and

seek her recusal which they felt would be appropriate for both the township interests and themselves. *See Exhibits 24, 29, and 76*; N.T. pg 133-136 lines 1-25. Respondent, of course was critized, and attacked in the Memorandum denying recusal from Judge Kane. Judge Kane responded by saying that Col. Breslin's complaint was fanciful and baseless. N.T. pg 137 lines 8-10. Of course it made it in the local newspaper the following day. However Dr. Thompson confirmed exactly what Col. Breslin said in the recusal motion, and did not deny anything statement made by Col. Breslin. *R-Exhibit 76 and* N.T. pg 137 lines 12-19. The case was then referred to Martin Carlson who continued to attack respondent in memorandum after memorandum which Col. Breslin and the other Col's sought his recusal for his bias and behavior towards respondent. Col. Breslin testified about M.J. Carlson, and his inability to comment on matters of law and not comment on things that he viewed as a personal attack in a legal opinion about respondent, which he has continued unethically till today in this case. *See R-21-22;* N.T. pg 143 lines 2-10. Even when ODC Fulton on cross asked Col. Breslin if respondent was upfront with him related to his issued related to the Courts. Col. Breslin stated he was always up front which the Col's found attractive because respondent was a loyal advocate to his clients. N.T. pg 145 lines 12-22. Col. Thompson who is a retired Col. That when M.J. Carlson took over their case from Judge Kane he was shocked and astonished of the unprofessional behavior in the 58 page Report and Recommendation that Carlson wrote attacking respondent. It was a personal attack which prejudiced their case and it was very disappointing. *See R-21-22;* N.T. pg 217-218 lines 1-25.

Rod Miller who is a retired electrical engineer who has known respondent for over 20 years testified as to respondent's abilities and courage for representing people who can't find

anyone else to represent them. He was concerned for respondents well being and for his ability to continue to represent people like him. N.T. pg 224-225 lines 1-25; pg 226 lines 16-23.

Roger Snyder who is a client, and a former client of Andrew Ostrowski. A case he had before Judge Kane which was stay continually from May of 2009 until March of 2010 and then Mr. Ostrowski was suspended from the practice of law. Mr. Snyder was then a layman and handing his case pro-se. Mr. Ostrowski was cut off immediately leaving Mr. Snyder on his own. N.T. pg 124 lines 18-25. Motions were filed without his knowledge, and even a Memorandum dismissing certain actions was filed by Judge Kane without the knowledge of Mr. Snyder. N.T. pg 126 lines 12-25. Roger Snyder then proceeded to send a letter into Judge Kane to find out what was going on in his case. Judge Kane never even responded. N.T. 114-116 lines 1-25, pg 126 lines 22-23. Snyder then proceeded to file a detailed Judicial Complaint in June 2010 at the Third Circuit Court of Appeals. After six months Snyder never even received a response. Another letter followed and no response. Almost a year later in June of 2011 he received a response from Judge McKee basically blowing Snyder off, and blaming it on Andrew Ostrowski. N.T. pg 115-117 lines 1-25. Within 35 days Snyder had to respond which he did in detail and personally filed it with the Third Circuit Court of Appeals. N.T. pg 117 lines 11-25. On another case involving respondent and Mr. Snyder, Judge Juan Sanchez from the Eastern District of Pa was in a proceeding, and ordered respondent and Mr. Snyder go under oath, of course defendants counsel did not have to, this was related to a settlement of Snyder's case. *See R-24.* N.T. pg 123 lines 12-25.

ODC makes the outlandish accusation that these witnesses didn't produce credible relevant testimony is an outrage. Col. Breslin, Col. Thompson, Roger Snyder, and Rod

Thompson are just a few former clients who have been victims of judicial misconduct which continues today in these various cases above. Respondent was unable to cross examine other witnesses because the subpoenas were quashed. Case after case clients and respondent were abused by these judges. Respondent was always open and honest with his clients and advised them of how he was treated and disliked by the judges complained of herein. There is overwhelming evidence of bias and mistreatment by not only these judges, but others. What judge refuses to respond to letters from clients makes an attorney and their client take an oath, delays case after case; respondent is forced to amend and amend and amend. ODC and the Judicial Conduct Board refuse to acknowledge their complaints. This system is broken and no one is going to have the guts to fix it. Anyone who dares to speak up for their clients will be penalized and disciplined. Innocent people with good cases are powerless and have known where to go because the Courts can't police themselves.

45. The exhibits in questions were dwindled down to 70 exhibits. Some of which were relevant and denied by this panel. One exhibit in question is the exhibit which was attached to ODC's own complaint against respondent which is not allowed to be introduced. The very exhibit attached to ODC's charges. This exhibit was the email from Wendy Witt, the daughter consisting of a "cult" that her mother and the others "Flaherty" were in. See ODC charging complaint. Respondent did not make this accusation up, this was an email directly from a family source and confirm in an affidavit by Thom Lewis. See ODC complaint.

46. Respondents witnesses were clients who are outraged by the mistreatment not only they have received, but how respondent is being mistreated by the Judges in the Middle District that is correct. Col. Breslin testified as to the outrageous and improper behavior of

Martin Carlson which continues till today in their case which originated from Judge Kane. *See R-Exhibits 24 complaints of clients.*

47-49. As to Andrew Ostrowski, he responded to each and every question asked of him, However ODC did not like the responses given. He was open and honest and spoke the truth of the outrageous conduct of these judges, which continue to be a source in the Middle District of Pennsylvania. Decent human beings who bring valid claims before this Court, and have been punished for hiring respondent as their attorney. There is no secret about how the Disciplinary Board operates, Mr. Killion in particular picks and choose the enemies he wishes to discipline, why hide from a subpoena? It has been well established around town how ODC works. Mr. Ostrowski knows ODC is sitting and waiting for him to apply for his license. However whatever he chooses to do with his license is not a part of the discipline of respondent and the attacks on Mr. Ostrowski are not warranted in this response.

The testimony of Mr. Ostrowski clearly indicates he was just another piece of the puzzle to get at Don Bailey. These Judges feared the jury verdicts coming from respondents, and they needed to stop him. A 1.5 million dollar verdict alone against a sitting Attorney General, Mike Fisher, who now happens to be sitting on the Third Circuit Court of Appeals where the very case was heard and thrown out. *R-Exhibit 55.*

PROPOSED CONCLUSIONS OF LAW

1. No issue of frivolity was charged under R.P.C. 3.1, or at all, and is not properly part of this case in accordance with basic due process notice principles. The ODC did not seek to amend its complaint to make it part of this case under D.B.R. 89.31. The ODC's frivolity argument is not properly before the Board. Regardless of the disposition of the cases in either Lewis I, Lewis II, or the appeal, and whether or not respondent agrees with it, the course pursued was based upon a good faith argument for the application, extension, modification, or reversal of existing law. The course of professional conduct engaged in by respondent was completely in accord with available procedural rules, and was an appropriate exercise of the professional discretion entrusted to him, in consultation with his client.

2. ODC did not meet its burden of showing that respondent knowingly made false statements about judges of the Middle District and Third Circuit, in violation of R.P.C. 4.1(a), and respondent had a good faith basis to believe that all such statements he made were true. ODC cited no evidence to meet their burden of establishing respondent's state of mind. To the contrary, all such statements are true, or at least a good faith basis for believing their truth has been demonstrated on the record. The denial of Respondent's procedural due process rights has deprived him of the ability to offer all evidence he has to support each and every claim he has made, though much of it does exist on the record.

3. ODC did not meet their burden of proving a violation of R.P.C. 8.2(a) on their claim that respondent made knowingly false statements, or made such statements with reckless disregard for their truth or falsity, concerning the integrity of judges of the Middle District and Third Circuit. To the contrary, all such statements are true, or at least a good faith basis for

believing their truth has been demonstrated on the record. The denial of Respondent's procedural due process rights has deprived him of the ability to offer all evidence he has to support each and every claim he has made, though much of it does exist on the record.

4. ODC did not meet their burden of proving a violation of R.P.C. 8.4(c) on their claim that respondent made knowingly false or reckless misrepresentations concerning judges of the Middle District and Third Circuit. To the contrary, all such statements are true, or at least a good faith basis for believing their truth has been demonstrated on the record. The denial of Respondent's procedural due process rights has deprived him of the ability to offer all evidence he has to support each and every claim he has made, though much of it does exist on the record.

5. ODC did not meet their burden of proving a violation of R.P.C. 8.4(d) on their claim that respondent filed a frivolous lawsuit and appeal, and that his actions in doing so were prejudicial to the administration of justice. No issue of frivolity was charged under R.P.C. 8.4(d), and is not properly part of this case in accordance with basic due process notice principles. The ODC did not seek to amend its complaint to make it part of this case under D.B.R. 89.31. The ODC's frivolity argument is not properly before the Board. The course of professional conduct engaged in by respondent was completely in accord with available procedural rules, and was an appropriate exercise of the professional discretion entrusted to him, in consultation with his client. It was in the interest of the administration of justice.

6. Pursuant to D.B.R. 89.181, the record before the Board, relied upon by ODC as complete, but clearly not complete for all respondent's due process purposes, ODC has not established any violation of any of the charged rules, R.P.C. 3.1, 4.1(a), 8.2(c), or 8.4(d), and the charges must be dismissed. Alternatively, the record must be reopened in accordance with D.B.R. 251 on all issues properly before the Board, and respondent's defenses thereto.

7. All acts of the Disciplinary Board of the Supreme Court are *ultra vires* as the Board is not properly constituted. Its actions in this matter are void *ab initio*.

V. ARGUMENT

The ODC has charged respondent with violations of R.P.C. 3.1, 4.1(a), 8.2(a), 8.4(c), and 8.4(d). The sum and substance of the argument can be boiled down to respondent making knowingly false statements about federal judges, or making such statements in reckless disregard of their truth or falsity. Respondent points out that, while there were a number of allegations made by respondent, admittedly made, ODC made no effort in its brief to separately argue each of these items, instead only arguing one main point in their brief, then bootstrapping the rest of the argument. The hearing committee cannot rely upon any specific allegations made by respondent that were not argued by ODC, even if they were charged.

In Office of Disciplinary Counsel v. Price, 732 A. 2d 599 (Pa. 1999), the Court set forth the applicable standard for proving complaints of misconduct involving allegations of misrepresentation or falsity. The Court recognized that the burden of proving professional misconduct lies with the ODC, which must prove the misconduct by a preponderance of the

evidence and the proof must be clear and satisfactory. *Id.* When the allegations involve statements of fact in a pleading, the pleader in a court proceeding bears the burden of establishing a factual basis upon which his allegations are based. Thus, to establish a prima facie case of making false statements or accusations, the ODC bears the initial burden of establishing that an attorney, based upon his own knowledge, made false allegations in a court pleading. This can be accomplished by presenting documentary evidence or testimony establishing that the allegations are false. If the DC carries its burden, "the burden then shifts to the respondent to establish that the allegations are true or that he had an objective reasonable belief that the allegations were true, based upon a reasonably diligent inquiry." When the charge involves misrepresentation in violation of Rule 8.4(c), a prima facie case is made where the record establishes that the misrepresentation was knowingly made, or made with reckless ignorance of the truth or falsity of the representation. The Court said recklessness may be described as "the deliberate closing of one's eyes to facts that one had a duty to see or stating as fact, things of which one was ignorant." *Id.* (citing Office of Disciplinary Counsel v. Anonymous Attorney A., 714 A.2d 402 (Pa. 1998).

In addition, and specifically given Paul Killion's threat that they were going to make another Bob Surrick, it must be emphasized that respondent was at all times mindful that judges were the object of his statements, and he admonition of the Supreme Court in Office of Disciplinary Counsel v. Surrick, 749 A. 2d 441 (Pa. 2000) bears repeating:

> The purpose of our system of professional responsibility and disciplinary enforcement is to protect the public, the profession and the courts from unfit attorneys. An accusation of judicial impropriety is not a matter to be taken frivolously. An attorney bringing such an accusation has an obligation to obtain some minimal factual support before leveling charges that carry explosive repercussions. When an attorney makes an accusation of judicial impropriety

> without first undertaking a reasonable investigation of the truth of that accusation, he injures the public, which depends upon the unbiased integrity of the judiciary, the profession itself, whose coin of the realm is their ability to rely upon the honesty of each other in their daily endeavors, and the courts, who must retain the respect of the public and the profession in order to function as the arbiter of justice. Truth is the cornerstone of the judicial system; a license to practice law requires allegiance and fidelity to truth. When a lawyer holds the truth to be of so little value that it can be recklessly disregarded when his temper and personal paranoia dictate, that lawyer should not be permitted to represent the public before the courts of this Commonwealth.

While respondent made numerous assertions about judges, he never made them lightly, and, as stated, made them in briefs and other legal filings in an appropriate manner under appropriate circumstances, in an effort to have an appropriate professional dialogue about these very serious matters. Respondent treated all these things with the professionalism that they warranted.

With these principles in mind, the ODC has failed to meets its initial burden, and respondent's evidence is sufficient to overcome any burden that could shift to him becase he believes the truth of what he said and has the evidence to establish that the belief is held in good faith.

A. Frivolity is Not an Issue for the Board

The ODC's entire argument is premised upon its assertion that the filing of Lewis II was frivolous. This was never charged, and it was never so found. Certainly it was never found to be such in any proceeding where there was a due process satisfying opportunity to address the issue. There is nothing to support ODC's bald conclusion, and it is tantamount to an assertion that, even assuming the *res judicata* issue was valid, that this alone made the filing of Lewis II frivolous, and that this frivolity was professional misconduct because it was prejudicial to the administration of justice. This is a classic demonstration of arbitrary and capricious actions in

this case by judicial institutions. In order for this issue to form any basis for discipline against respondent, respondent must be given a full and fair opportunity to raise and litigate the issue. He has never been given this chance. Hence the denial of his rights.

Of course, this is all the very reason that no judge would come right out and say that anything that respondent filed was frivolous, because nothing was, and the judges would have opened the door for respondent to explain his litigation strategy in response to the claims of frivolity, which would necessarily, in turn, reveal all of the connections and matters set forth in the respondent's statement of factual contentions. The ODC raising that issue now is nothing more than arguing that filing a case that is *res judicata* is the *sine qua non* of a rules violation.

The ODC's action itself begs the question of why all of this has occurred and demands an objective and independent investigation of what's behind it all. Please remember that in *Venesevich* respondent argued that our courts are incapable of disciplining themselves and should design a methodology that can do so independently. *See R-Exhibits 3-4.*

The ODC counsel here simply are not competent to pass a credible Monday morning quarterbacking judgment on a case involving a very complex set of facts, including their own staff persons' involvement, without giving respondent a fair opportunity to respond. All of respondent's access to all of this evidence was cut off and denied, and it is sheer casuistry for the ODC to try now to change the debate to different charges in this manner. ODC has to have deliberately failed to acknowledge that the 12(b)(6) *res judicata* motion filed by defendants came months before Lewis I was dismissed. Do any of us actually believe that if Judge Muir believed this case was frivolous that he would not have said so? This is not a difficult set of circumstances to see through. This situation reveals the deficiencies in ODC's own case, and there is virtually

no support of Judge Rice's conclusory decision anywhere on the record. In fact his decision's intellectual and professional integrity is impugned by the failure to provide even rudimentary discovery, the right to subpoena witnesses, and the right to allow Mr. Bailey to testify.

There was no duty, or even an opportunity, to file an appeal from the early rulings of Judge Muir. This played a significant part in the decision to file the second case. Please also remember that Judge Muir "struck" the second amended complaint in conclusory fashion on virtually insupportable procedural grounds. The ability to explain the basis for these professional judgments and challenge them must be afforded, pursuant to due process, when sanctioning an attorney for reacting to them. Unfortunately for the ODC, this basis involved efforts of their own staff, including their Chief Counsel, to retaliate for the filing of this lawsuit. Even assuming arguendo, that res judicata principles had some applicability, this does not compel the unsupported conclusion that the second suit was frivolously filed, or, further, that it was professional misconduct to do so. Finding otherwise is a classic monument to the arbitrary and capricious application of official power under these circumstances. There was no benefit to anyone by the duplication of the proceedings that is suggested including to Mr. Lewis and certainly not to Mr. Bailey.

The suggestion of ODC that it is a matter of "hornbook law" that reconsideration or appeal was an appropriate, let alone the appropriate, vehicle reflects a total ignorance of federal civil rights litigation practice which is emblematic of the entire ODC staff. In fact reconsideration's are emphatically disfavored. Respondent and his client had no interest in duplicating any proceedings. And to suggest in the circumstances that either Judges Muir or Jones given their decisions would've responded in a positive manner is facially silly.

Reconsideration is a clearly disfavored proceeding – respondent is being sanctioned for seeking it here – and the position of ODC invites further evidence on the issue of what consideration respondent gave to reconsideration and the appeal issue.

The filing of the second lawsuit, according to ODC themselves, only created another docket – it created no additional work or duplication of effort. The court has mechanisms to control proceedings with some overlap, indeed, counsel for the Commonwealth defendants filed a motion to consolidate the cases, which was later withdrawn, and the Court could have acted *sua sponte* to consolidate or otherwise manage the dockets. Significantly, the Court could have decided the 12(b) (6) issue much sooner. By waiting until right after Judge Muir dismissed the first case, making all of the prior orders appealable, Judge Jones gave respondent and his client additional options to consider. No motion for sanctions had been filed in the appeal period, and Judge Jones never made any suggestion that there was an issue of frivolity. Respondent appealed the case for his client, which is what the ODC suggests that he should have done, only on a different docket.

The filing of related cases is not inherently improper, and the courts have internal controls to check for and administer to these things. The ODC is suggesting that the middle district courts are not competent to manage their own dockets without having to involve the Third Circuit. Judge Jones never said that the filing of Lewis II was frivolous; he only found it to be *res judicata*. And it clearly was not. Respondent submits that there are reasons that the merits of these cases were not considered, and that this view is exceptionally well-founded. Respondent has never been given a full and fair opportunity to address the merits of any of these

matters, and the ODC's argument attempts to bring this issue in through the back door, so-to-speak, only accentuates the need that the evidence that they have fought should be introduced.

Regardless the issue of frivolous filings was never charged and cannot form the basis of any charge against respondent. Such accusation would be specious in any event.

The ODC bootstraps an argument that would deceptively cut off any and right to advocacy if the issue is *res judicata*. ODC argued that the facts that appealable errors in prior and disagreement over principles of *res judicata* in these cases made the appeal raising these issues frivolous, and thus constituted a duplication of proceedings, all violating R.P.C. 3.1 by raising claims without a good faith basis in the law or the extension of existing law. This is a repugnant result, and cannot form the basis of a charge against respondent. The issues inherently involve a fact-specific inquiry into all matters that affected respondent's judgment, and on this record, cannot support a claim.

B. **Respondent Made no False Statement, or any Statements Without a Good Faith Basis for Believing They Were True.**

The ODC claims that the MREB filed by respondent violated R.P.C. 4.1(a) and 8.2(a). essentially charging Mr. Bailey with making false statements, or statements without a good faith belief in, and/or a reckless disregard for, their truth or falsity. ODC cites respondent's verification of the truth of the contents of the MREB, and claims that the testimony of Judges Conner and Jones alone show that the contents were false. The ODC charges certain specific paragraphs in the complaint for discipline, and cited them as well in its proposed findings of fact; however, their post-hearing argument is much more limited. ODC states that respondent has "made at least one statement in the MREB indicative of a knowing false statement," then they string- cite items d-g, j, and l from their proposed findings of fact. They then proceed to make a

much more limited argument. To the extent that any findings of the hearing committee are based upon purported statements made by the respondent and not argued by ODC, respondent reserves the right to provide supplemental argument. Additionally, the verified statement of facts being provided by respondent fully addresses all relevant issues, and is a proffer that would warrant the re-opening of the record for further proceedings.

The ODC oddly proceeds to specifically cite item j. from the MREB, which can be summarized by respondent asserting that, even after the Judge Rice proceeding, respondent believed that Judge Jones and the Third Circuit had taken the legally wrong position on the issue of *res judicata* (which still seems obvious to Mr. Lewis and Mr. Bailey and the numerous other lawyers with whom this matter has been reviewed) and suggested that the dismissal of the cases without ever discussing the merits implicated issues of judicial misconduct. The argument is more than ambiguous it is simply incorrect.

It is obvious that respondent is referring to a wide range of judicial misconduct by a number of judges. Certainly that includes Judge Scirica and Judge Jones among others. One wonders how any member of this Board or the Supreme Court would feel or react, if in proceeding after proceeding they were refused the right to do any discovery, present witnesses, or cross-examine thoroughly? It appears that the issue as to which the ODC claims falsity respondent allegedly saying the judges were wrong as a matter of legal analysis after two of them had said otherwise. That is, of course, absurd without requiring further argument. Alternatively, if it is the suggestion of judicial misconduct or of Judges misbehaving, query what that means. For example does it mean denying due process, like the right to discovery or witnesses? But respondent has not been given the opportunity to explain what he meant when he said that,

unless, again, the saying of it alone is the offense, which cannot constitutionally be the case. Without any argument or the citation to any evidence, and after revealing the need for more evidence again, the ODC simply concludes that "hence", i.e., because they were made, the hearing committee could infer that they were knowingly false. Again, this is absurd.

Again, without any citation to the record or any testimony, the ODC goes on to charge that these "false statements" were "part and parcel to his litigation strategy" "to say anything in a continuing effort to 1) argue that the courts were wrong legally, and 2) challenge the integrity of those judges who did not agree with his position." The ODC then goes on to cite as "false testimony" Mr. Lewis's statement that additional defendants were added to Lewis II when in fact, none were. The ODC is completely mistaken. Counsel is playing with semantics. A John Doe defendant was added because a completely separate claim based upon totally false and defamatory filings on the dog law office webpage intentionally distorted the status of Lewis's license and intentionally accused him of wrongdoing. Although it plainly appeared that Mary Bender was behind this wrongdoing along with Jesse Smith and possibly Patti Bednarik expected discovery could ferret out the details. What was plain was that a state official under badge of state authority had violated Lewis his rights. Because that defendant was a John Doe does not justify the kind of distortion ODC is engaged in making this argument. More important is the fact that in Lewis to the complaint was totally unique and this claim was also separate and distinct. How they could ever be subject to any *res judicata* determination simply defies credulity. Apparently realizing this, ODC converts a John Doe defendant into Mr. Lewis is not naming a new defendant. At best this is disingenuous and besides the record speaks for itself on these matters.

The ODC concludes that "based upon the circumstances surrounding" the MREB, and respondents "ongoing and unrestrained attempts to challenge the rulings and attack the integrity of the courts in Lewis I and Lewis II", the committee could additionally infer that respondent "made his allegations" knowing that they were false. So now in a jurisdiction which purports to be quasi-criminal the new standard is to infer criminal misconduct. Don't prove it. Don't demonstrate it. Just take reputation and property rights and deny citizens legal representation based on an inference. ODC cites no evidence, and specifically relate their accusations to no other assertions than those already mentioned.

The ODC then went on to argue that the hearing committee can infer the falsity of respondent's "accusations" (respondent was the accused) from the fishing expedition in which he engaged during cross examination where "his questions gave no hint that he knew of any concrete evidence to support his wild accusations of judicial misconduct." Respondent was refused the right to subpoena his own witnesses and consistently subjected to rulings of the chair limiting his cross-examination rights which are traditionally limited in any event the accused is expected to proceed only on the government's witnesses. Echoes of Les Miserables. Again, the ODC cites no evidence of record to support these scandalous and false assertions, and the same reveals the entirety of the procedural due process violations in this case.

ODC knows that Patti Bednarik ran interference for her friend and co-dog peddler, Deb Smith, when Lewis I was first filed and respondent and Mr. Lewis knew that as well, and ODC further knows that Patti Bednarik was implicated in obvious misconduct in using her office for her dog trafficking activities. They know that she threatened Mr. Bailey through Sam Stretton. That evidence is inescapable but of course without Patti Bednarik as a witness it was merely

hearsay. There was a clear threat to take disciplinary action against respondent, and the attorney who knows all of these facts, i.e., Mr. Fulton, who goes on and makes such a scurrilous accusation, is the attorney that should be the subject of disbarment proceedings.

At the very least Fulton was a fact witness for conversations he had with different persons including Sam Stretton. Killian was a fact witness who in violation of his duties in Mr. Bailey's rights met with Mr. Bailey on Christmas Eve and made a number of comments which should have subjected him to subpoena by Mr. Bailey so that Mr. Bailey would have a chance to prove his case. Instead this fact witness was denied. The fact witness Patti Bednarik was denied although there was more than abundant proof that she qualifies the same.

What a shocking thing it is that these decisions are made at the very top of our judicial system in Pennsylvania i.e. before our Disciplinary Board and by our Supreme Court. This is more than abundant proof that these Disciplinary Proceedings are being used for unlawful purposes, and are in need of a thorough objective investigation. A simple reading of Deb Smith's deposition makes all this plain. Deb Smith deposition *R-Exhibits 11-12*. How can any lawyer in a purported democracy defend themselves in a court system which operates in this fashion? This Board has a duty and responsibility as a matter of ethics and legal principle to dismiss these accusations.

What respondent has said about misbehavior is demonstrably true, and further support for the patent dishonesty with which the ODC proceeds is the failure or the ODC to even mention the testimony of Samuel Stretton, who confirmed the central contention that respondent had raised over the years, that a judge had warned Stretton that he should stay away from respondent because they were going to "get" respondent. In fact, why not interview Judge Munley? Why

are judges above the law in the application of our nation civil rights laws? There is a host of relevant contextual evidence necessary to these claims, but the testimony of Stretton was uncontested. If Mr. Bailey was lying about the plot to get him nothing prevented ODC from bringing Judge Rambo to the disciplinary hearing and having her so testify? Why not ask Judge Munley to come in? Is not Judge Munley an honest man? Is not our Disciplinary Board and the ODC and our Supreme Court not offended by combinations of judges deciding to "get" an attorney for whatever that means? Why did Mr. Fulton lie to Mr. Stretton and Mr. Bailey about Judges Scirica Connor and Jones filing complaints against Mr. Bailey? Why was that necessary? Was it fears of these things which led to decisions denying Mr. Bailey the opportunity to subpoena witnesses with factual knowledge of what happened to him?

Now does occur to the readers of this document may be just maybe these judges "misbehaved" Judge Jones and Judge Connor appeared happy to volunteer as witnesses for the ODC but of course were afraid to appear as witnesses to be questioned directly by Mr. Bailey. So to as to Judge Scirica and the Clerks. The reasons seem arguably clear.

This is not a mechanism designed to arrive at a judiciable conclusion or to achieve any form of justice at all. It is not designed to enhance or achieve the discovery or disclosure of important factual matters incidental to any kind of deliberative process. This is not a valid or supportable procedure of any kind of which any lawyer or judge could be proud or believe in. It is merely a mechanism to carry out the non-lawful wishes of a group of interrelated friends with corroborative interests devoid of the normal procedural safeguards to which other citizens are subject. Lawyers quite frankly are an oppressed class who are at great risk if they ethically and thoroughly represent American citizens abused by government officials particularly where some

of whom operate in our judicial institutions. Why was this not addressed and explained by the ODC?

The ODC alternatively concludes that the statements were recklessly made because he "verified as facts things of which he was clearly ignorant." Why then does the ODC and this so-called disciplinary system not permit discovery or provide someone whose life and occupation is threatened an opportunity to investigate or to question? The remarkable and incredible irony is that the very system and the very persons who administer these principles, and apply these laws to our citizen's in their daily lives, are immune from and above the application of these same laws and principals to themselves. Surely this is the stuff of which public concern is made.

ODC additionally alleges that the matters (unspecified) constituted knowing or reckless false statements concerning the qualifications or integrity of a judge. ODC then summarily concludes that the direct testimony of the two judges alone was sufficient to prove falsity. This again is unsupportable. Judge Conner testified falsely on a number of scores. See the proposed findings of fact.

ODC argues that it met its burden and that the respondent could not meet his burden of establishing truth or that there was an objectively reasonable belief in the truth of the assertions. ODC argued that none of the proffered documents or witnesses tended support respondent's burden, and that the totality of the circumstances showed that respondent's assertions were nothing more than "an attempt to weave unassociated or loosely associated events – subjectively perceived and interpreted by respondent – to create the perception of a far-ranging judicial conspiracy. These are brave words uttered by that office while the ability of the accused to gather evidence and present it in a legal proceeding are totally emasculated. ODC flatly concludes that

the respondent acted without any credible evidence, and violated Rule 8.2(a). This is not a supportable argument.

Respectfully Submitted,

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