IN THE SUPREME COURT OF PENNSYVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	
	:	NO. 57 WM 2012
Petitioner	:	NO. 11 DB 2011
	:	
VS.	:	Atty Reg No Public
	:	
DONALD A. BAILEY,	:	
	:	

Petition for Review Respondent's Exceptions and Objections to the May 1, 2013 Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania

Respectfully Submitted,

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I. BACKGROUND

On May 1, 2013 a Report and Recommendation was filed, which was by rule obligated to be filed by the full Disciplinary Board of the Supreme Court. Also by rule, any action of the Disciplinary Board may only be taken by a quorum of at least 7 (seven) members, including any members who might abstain (see PA Rule of Disciplinary Enforcement 205(b). "… the Board shall act only with the concurrence of not less than seven (7) members…" and "Seven members shall constitute a quorum". The Report and recommendations shows that only 3 (three) members voted (2 for disbarment; 1 for 5 year suspension) and one abstained, and no exception to the rule applies in this case. There are 10 (ten) votes left unaccounted which means this matter has never been brought before the full board as required by rule. As has been the practice of the Disciplinary Board, this Report and recommendation is both inaccurate and seeks to cover the completely unethical conduct of its staff and the board itself.

Now this Honorable Court is being asked to suspend an attorney based on a procedure where only two members of a 14 member panel voted for disbarment, they failed to hold hearings or file findings of facts as required by rule and a plethora of other procedural shortcuts committed by individuals who forced the respondent to abide by the rules of court when they routinely did not.. This includes manipulation with the transcripts, where Mr. Bailey was denied access to see them, and when he attempted to purchase them he was charged an exorbitantly higher rate, (which he could not afford to pay and therefore was denied access to them) while the Disciplinary board and ODC were given the transcripts at a much reduced rate. Although this review is de novo, this Supreme Court of Pennsylvania has already spoken clearly and emphatically on its Disciplinary Board's practice of overlooking the rules in its proceedings".

Further, on January 17, 2013 this Court expressly acknowledged that the DB panel was in error when it quashed Mr. Bailey's subpoenas without a hearing, finding of facts, or conclusions of law. See Taylor vs. Illinois, 484 US 400, 408 (1988).

"The Supreme Court has stated it will not tolerate a lax approach to disciplinary process. Matter of Leopold, 366 A.2d 227 (Pa. 1976)".

And again in Matter of Dalessandro, 397 A. 2d 743 - Pa: Supreme Court 1979

"It is true that the Board's recommendation has no binding effect on this Court, given our mandate of de novo review; it is merely advisory at best, and comes here with no special presumption in its favor. *Matter of Glancey*, 518 Pa. 276, 542 A.2d 1350 (1987). **This does not mean, however, that procedural irregularities and constitutional violations will be countenanced or overlooked, simply because our final determination may "cure" all procedural and substantive defects.**

On its face, the Report and recommendation of May 1, 2013, simply seeks to avoid a gross procedural due process deprivation created when employees of this Honorable Courts Disciplinary system took it upon themselves to attack the federal pro se filings of both a non-attorney and the respondent in this matter, Don Bailey. There was no complaint, simply the opinions of ODC Fulton seeking to help Judge Conner. There are serious questions of jurisdictional abuse by this Court's employees, particularly when Disciplinary Board members of Pennsylvania believe they hold the authority to rule on whether or not Federal Judges John Jones, Christopher Connor and others have engaged in conduct that would violate the Federal Rules of conduct for judges. Does the Disciplinary Board of this Court hold the authority to take evidence and rule on whether or not federal judges have engaged in misconduct? Based on the vague charges levied against Mr. Bailey, he had a fundamental right to an affirmative defense which requires this Disciplinary Board to accept and consider all evidence of the misconduct of Federal Judges. Could Mr. Bailey be right? However when that evidence was subpoenaed, the ODC and Disciplinary board blocked the subpoenas without even holding the required hearings or issuing the required findings of facts and conclusions of law. See this Court's January 17, 2013 Order. This was compounded by the unjust innuendoes of ODC Robert Fulton when he

began making unsupported claims of a Nazi conspiracy almost a year into these proceedings. Even the May 1, 20123 Report and Recommendation offers opinions on the "credibility" of the witnesses, when there were never any witnesses before them. Col. Breslin, Col Cunningham, and Col. Thompson will be disappointed to learn they were not credible witnesses.

STATEMENT OF THE CASE/ PROCEDURAL HISTORY

On May 1, 2013 a Report and Recommendation was filed, which for the reasons stated above, and others listed below, Respondent objects to.

The Office of Disciplinary Counsel (ODC) filed their post hearing submission on February 17, 2012. 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 Supreme Court 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 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 right 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. 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.[1]

PROPOSED FINDINGS OF FACT IN SUPPORT OF RESPONDENT DON BAILEY

1. Robert Fulton at a pretrial conference in May 2011 told Don Bailey and Samuel C. Stretton Esq. that Judges Jones and Conner of the Middle District and Scirica of the Third Circuit, along with Third Circuit Clerk Ms. Waldron, had all complained about Mr. Bailey. Fulton would not say what they complained about.

[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).

2. Both Jones and Conner unequivocally testified at Bailey's disciplinary trial that they never complained about Don Bailey. Scirica and Waldron purportedly agreed to testify but never showed up. Waldron asked to testify by phone to which Cali assented, while at the same time quashing Bailey's subpoena of the Third Circuit Clerk.

3. Respondent subpoenaed Jones, Conner, Scirica, Rambo, and Kane for his 2011 trial. He also subpoenaed Killian, Fulton, Bednarik, Marty Carlson, Frese, and Mr. Rice among others including certain lawyers and state officials.

4. Virtually all of the person's plaintiff subpoenaed including all judges, federal officials, and state officials, to include also private attorneys and law firms filed motions to quash their subpoenas to a person except for Eckert Seamans.

5. Mr. Bailey responded to each motion to quash opposing each of them.

6. Prior to when Respondent's responses to the subpoenas were due, Chairman Cali further issued Respondent an order requiring him to respond to each motion to quash within five days while even requiring one response be filed i.e. within 24 hours.

7. Despite the harassment and intimidation Mr. Bailey responded to each and every motion to quash.

8. Mr. Cali promptly granted each motion to quash.

9. Mr. Cali held no hearings, and issued no findings of fact, or conclusions of law.

10. Mr. Cali even issued an order quashing the subpoena for one subpoenaed entity (Eckert Seaman's law firm), who did not even move to quash.

11. During the August 11 & 12 hearings Mr. Bailey was consistently and persistently interrupted and prevented from meaningfully cross-examining witnesses against him about which he vociferously complained to the Chairman Mr. Cali.

12. During the trial Samuel C. Stretton Esq. corroborated Mr. Bailey's claim that Mr. Bailey had been told that federal judges Muir, McClure, and Rambo had all met and decided to "get" Don Bailey who had mentioned this fact in over a dozen pleadings and briefs for years but had never been challenged.

13. During the trial Jones and Conner appeared voluntarily to testify for the ODC, but would not testify for Mr. Bailey while Mr. Cali refused any meaningful cross examination.

14. During the trial David Fine Esq. did participated as an attorney on behalf of Judge Conner with the permission of Mr. Cali and Mr. Fulton raising objections, and interrupting during the proceeding.

15. Later Mr. Fine and Mr. Conner attempted to get attorneys fees from Mr. Bailey for Mr. Fine's appearances at the DB hearings with Judge Conner.

16. During the trial the proceedings were taken by a court reporting firm called Commonwealth Reporting.

17. The person taking testimony was using the "mask" method.

18. This young lady was using Dragon Naturally Speaking 9 (an outdated version) of a voice recognition software to record the proceedings. She also was inexperienced and was not practiced sufficiently to qualify under state law making no efforts to be certified nor was she pre-approved as required.

19. Neither the "mask method" nor the use of voice recognition software is authorized by any judicial system anywhere in the U.S. Mr. Bailey raised these objections during the proceedings.

20. The methodology used to take the hearing was not authorized as a matter of state law.

21. The person taking the testimony was not qualified as required by state law.

22. Don Bailey personally purchased a copy of the electronically recorded (tape recording) of the August 11 & 12 hearings and had an independent notary transcribe the hearings. In violation of state law Mr. Bailey was required to purchase the tapes at an inflated price. He could not afford to do so. Mr. Cali even filed an order stating Respondent could pick up a copy of the transcripts with Elaine Bixler. When respondents sent a person down to pick-up she refused and stated the transcripts were not in her office.

23. At the conclusion of the trial the respondent filed Petitions for Review and Writs of Prohibition with the Supreme Court of Pennsylvania objecting to the lack of due process in denying Mr. Bailey the right to subpoena witnesses and objecting to the conduct and rulings of Mr. Cali and the other panel members.

24. On August 9, 2011 Respondent filed a King's Bench including all requisite copies with the Supreme Court along with exhibits raising a plethora of procedural due process deprivations and including numerous exhibits while raising proper issues and argument.

25. The King' bench was properly served and filed at the end of the Court’s business day on August 9, 2011, personally by Mr. Bailey.

26. On August 10, the next day, at 10 A.M. Mr. Bailey received an order from the Supreme Court of Pennsylvania personally signed by Ron Castile dismissing Respondent's King's Bench petition.

27. It was impossible to have lawfully distributed or considered respondents King's Bench petition and the same was unlawfully dismissed.

28. During the litigation process before the DB and ODC numerous dockets (at least 23 all of which varied from each other) were manipulated and filed at the whim of DB Secretary Elaine Bixler, who on one occasion even close her office early to prevent Mr. Bailey from filing

a crucial document.

29. On January 6, 2012 the Supreme Court ordered that Respondent Bailey's petitions for review (of the due process void subpoena motions) and writ of prohibition be denied (per curiam).

30. After the January 6, 2012 order dismissing Respondents Petitions for Review for the quashing of the subpoenas and his Writs of Prohibition the hearing panel filed a post hearing decision saying Mr. Bailey had broken some role but not identifying which role he had supposedly violated. The ODC then filed a brief.

31. On April 2, 2012 respondent filed his brief with a transcript of the August 11 & 12 hearings. The brief and transcript are appended hereto as *Exhibits A and B* respectively.

32. Then ODC then moved to strike Respondents transcripts.

33. The panel Chairman Mr. Cali struck Mr. Bailey's transcripts even though the Board's own transcripts were not in compliance with state law and Mr. Bailey’s were. Cali also struck Bailey’s exhibits.

34. A hearing was then set for September 5, 2012 which is used generally to argue mitigation or punishment.

35. Respondent issued a number of subpoenas for that hearing including subpoenas for Judges Conner, Jones, Kane, and a number of other persons including some state officials.

36. A subpoena was issued and properly served on David fine Esq. also.

37. The subpoenas were all ordered quashed by the hearing panel who issued no findings of fact or conclusions of law in abject violation of law and Mr. Bailey’s constitutional rights.

38. Mr. Bailey filed Petitions for Review once again with the Supreme Court.

39. This time the Supreme Court issued a Rule to Show Caused on ODC to demonstrate

why the panels' orders to quash should not be reversed.

40. In his response to the Rule to Show Cause ODC prosecutor Robert Fulton falsely told the Supreme Court that Mr. Bailey never responded to the motions to quash the subpoenas for the September 2012 hearing.

41. Mr. Bailey also submitted a response on the Role to Show Cause arguing that the deciding entity had a duty to issue findings of fact and conclusions of law when making a decision to quash a subpoena.

42. On January 13, 2013 the Supreme Court of Pennsylvania held in clear and precise language that even though the hearing panel had erred in failing to issue findings of fact and conclusions of law, it didn't matter, because Mr. Bailey had not responded to the motions to quash.

43. However, contrary to the false representations of Mr. Fulton, Mr. Bailey had indeed responded to the motions to quash particularly as to the subpoenas issued to the officials.

44. Mr. Bailey, incidentally, had responded properly to each and every one of the motions to quash filed by all those subpoenaed for the August 11 and 12th 2011 trial.

45. No findings of fact or conclusions of law were filed by Mr. Cali or the panel for a single witness subpoenaed by Mr. Bailey for his August 11 & 12th trial. In gross violation of Bailey's rights.

46. Mr. Bailey complained vociferously to the Supreme Court filing and "Emergency Petition for Temporary and Permanent Prospective Relief/Petition for Mandamus and Writ of Prohibition", and later a King's Bench bringing its own orders (of January 6, 2012 and January 17, 2013 to the High Court's attention.

47. The Supreme Court then asks each Disciplinary Board member to respond to Mr. Bailey's request for relief within two weeks or communicate their intention not to respond in two weeks.

48. All of this was ignored by the Disciplinary Board members.

49. On May 1, 2013 the DB unlawfully recommended that Mr. Bailey be suspended for five years.

III. PROPOSED CONCLUSIONS OF LAW

1. Mr. Bailey's rights to due process under Pennsylvania Constitution were violated by the ODC and by the Disciplinary Board of the Supreme Court of Pennsyvlania.

2. Bailey's federally guaranteed rights pursuant to the First and Fourteenth Amendments were violated egregiously by ODC and by the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Lawyers are entitled to due process in Disciplinary proceedings.

4. Lawyers are entitled to the use and protection of the First Amendment in the practice of law.

5. The striking of Mr. Bailey's Brief and Transcript was unlawful.

6. The charges by the DB were vague and overbroad, were never specific, and never provided Mr. Bailey with notice of his alleged wrongdoing.

ARGUMENT

The ODC and Disciplinary Board 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 DB 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 out of Don Bailey, 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 because he believes the truth of what he" said and has the evidence to establish that the belief is held in good faith. To prevent Bailey from speaking he was stripped of his witnesses. An unlawful prior restraint.

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. Remember M.J. Rice also denied Bailey his witnesses. 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. All of respondent's access to all of his evidence was cut off and denied, and it is disingenuous for the ODC to try now to change the debate to different charges in this manner. ODC has 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 that 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 to the contrary 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 freely.

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 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 charged 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 1 from the OFOF in 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, akin to some seditious libel of the 1700's, 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 and sounds more like sedition then professional misconduct.

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 while making this argument. 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 as 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 relates their accusations to any 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 the accused is expected to proceed only on cross-examination the government's witnesses, limited cross examination at that. Echoes of Les Miserables. Again, the ODC cites no evidence of a record to support these scandalous and false assertions, and the same reveals the entirety of the procedural due process violations in this case which exceeds being egregious.

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 qualified as such. The disappointed thing it is that these decisions are made at the ODC near the top of our judicial system in Pennsylvania i.e. before our Disciplinary Board. This is more than abundant proof that these Disciplinary Proceedings should be reviewed by this Court.

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? 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? Of course he is. 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 fear 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. The same as to Judge Scirica, and the Clerks. The reasons seem arguably clear once added up.

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 which any lawyer or judge could be proud, or trust. 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 because evidence of it is plain.

The ODC alternatively concludes that the statements were recklessly made because Bailey "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 or call his own witnesses? 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. Either he or Fulton are lying and its plain its not Fulton. 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 to 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 an 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. It’s the stuff of authoritarianism.

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 his rights.

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.

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 Bailey 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 December 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

Additionally, Mr. Fulton told attorney Stretton Don Bailey that Judges Scirica, Connor, and Jones had complained to the DB about Mr. Bailey. Both Judge Jones and Judge Connor expressly testified before the DB panel that they never complained about Mr. Bailey. 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.

The testimony of the Honorable John E. Jones and Christopher C. Conner have 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 In. 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. In. 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. In. 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. 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 In. 24-25, p. 45, In. 1-3)

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, In. 19-22). Of those about 30 (thirty) were from Don Bailey, (see Respondent's N.T. [1], p. 179, In. 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, In. 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 In. 20 through p. 238 1. 13). Judge Jones accused Ostrowski of writing a court document that Thorn Lewis had written and published online, (see Respondent's N.T. [2] p. 194 1. 25 through p. 197 1. 17).

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).

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 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, 1. 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. "

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.

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. In. 14-15).

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 In. 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. 206,1. 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.

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. 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, 1. 10 through p. 64, 1. 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, 1. 19 through p. 39, 1. 21). 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, 1. 10 through p. 64, 1. 7).

Judge Jones admits to a history of making other complaints to Paul Killion. (see Respondent's N.T. [1] p. 236 In. 20 through p. 238 1. 13). Jones accused Ostrowski of writing a court document that Thorn Lewis had written and published online, (see Respondent's N.T. [2] p. 194 1. 25 through p. 197 1. 17). Judge Jones further admits his accusations were false, (see Respondent's N.T. [1] p. 238 1. 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). 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, I. 19 through p. 39, I. 21).* 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).

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.

The panel 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 and still to this day have not responded to various complaints of Attorney Bailey's clients. 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.

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. Respondent's 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.*

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. The testimony of Mr. Ostrowski clearly indicates he was just another piece of the puzzle to get at Don Bailey.

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.

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. 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.

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.

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. Judge Conner has not been reversed by the Third Circuit court of appeals; however Judge Jones has been reversed twice. The Memorandums and Opinions were written to humiliate and harm not only respondent's practice of law but to harm innocent persons seeking to get justice.

The testimony of independent witnesses were 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.

The exhibits in questions were dwindled down to 70 exhibits. Some of which were relevant and denied by the 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 Thorn Lewis. See ODC complaint. Respondent's 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.*

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.

VI. EXCEPTIONS AND OBJECTIONS

Respondent takes exception to the entire May 1 DB R&R. He objects to its issuance and he objects to this Court accepting it. On or shortly after January 7, 2013 this Court and the DB, all qualified lawyers became aware that Respondents' rights had been violated by this Court's disciplinary process. It's plain to see that the DB/ODC office is simply out of control. Between simple errors and what seems to be the

arbitrary and capricious mistreatment of lawyers the process has been corrupted. Denying any citizen their rights to subpoena witnesses subverts the entire process of our legal profession. The DB reflects on the intent and competence of our entire system when it blatantly denied any person the right to a hearing. In accord with due process principles. It's impossible to guild this process when the extent and deity of the deprivation is so pervasive. "Moreover" the compulsory process clause of the Sixth Amendment and the due process clause of the Fourteenth Amendment secures the fundamental right of defendants to present witnesses in his defense. "See U.S. v. Soapes, 169 F.3d 257, 268 (5th Cir 1999) citing to Taylor v. Illinois, 484 U.S. 400, 408 (1988).

"Few rights are more fundamental than that of an accused to present witnesses in his own defense". Id. This Court has a duty to dismiss this matter per its January 17, 2013 Order.

Wherefore the respondent Donald A. Bailey respectfully requests that this Court dismiss the charges against him.

Respectfully Submitted,

By: _____

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CERTIFICATE OF SERVICE

I, Don Bailey do hereby certify that I served on this 7th day of June 2013 the following Petition for Review by First Class Mail, Postage Prepaid to the following attorneys:

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