**IN THE SUPREME COURT OF PENNSYLVANIA**

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| OFFICE OF DISCIPLINARY COUNSEL, Petitioner | : | No. 1760 Disciplinary Docket No. 3 |
| | : | No. 11 DB 2011 |
| v. | : | |
| | : | Attorney Registration No. 23786 |
| DONALD A. BAILEY, Respondent | : | (Dauphin County) |

**ORDER**

**PER CURIAM:**

**AND NOW**, this 2nd day of October, 2013, upon consideration of the Report and Recommendations of the Disciplinary Board dated May 1, 2013, and the Petition for Review, the Motion to Strike Exhibits to the Petition for Review is granted and it is hereby

ORDERED that Donald A. Bailey is suspended from the Bar of this Commonwealth for a period of five years and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

Mr. Justice McCaffery did not participate in this matter.

A True Copy Patricia Nicola
As Of 10/2/2013

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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| OFFICE OF DISCIPLINARY COUNSEL<br>Petitioner | : | No. 1760 Disciplinary Docket No. 3 |
| | : | No. 11 DB 2011 |
| v. | : | |
| | : | Attorney Registration No. 23786 |
| DONALD A. BAILEY<br>Respondent | : | (Dauphin County) |

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

## I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on January 20, 2011, Office of Disciplinary Counsel charged Donald A. Bailey with violations of Rules of Professional Conduct 3.1, 4.1(a), 8.2(a), 8.4(c) and 8.4(d). Respondent filed an Answer to Petition on March 21, 2011.

A pre-hearing conference was held on May 10, 2011 and June 15, 2011, before Hearing Committee Chair Brian J. Cali, Esquire. A disciplinary hearing was held on August 11, 2011 and August 12, 2011, before Chair Cali and Members Thomas V. Casale,

Esquire, and Joseph D. Burke, Esquire. Respondent appeared *pro se*. Following the submission of briefs by the parties, the Committee determined that a prima facie violation of the Rules of Professional Conduct was established and by Order of May 15, 2012, directed that a dispositional hearing be scheduled.

Respondent filed an Application to Reopen the Record on September 4, 2012, which was denied by the Hearing Committee Chair. A dispositional hearing was held on September 6, 2012 before the Hearing Committee.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on December 6, 2012, concluding that Respondent violated Rules of Professional Conduct 4.1(a), 8.2(a) and 8.4(c), and recommending that he be suspended for a period of five years.

Respondent filed a Brief on Exceptions and request for oral argument on January 18, 2013. Petitioner filed a Brief Opposing Exceptions on January 31, 2013.

Oral argument was held before a three member panel of the Board on February 15, 2013.

This matter was adjudicated by the Disciplinary Board at the meeting on March 5, 2013.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, Harrisburg, Pennsylvania 17106, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement,

with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent is Donald A. Bailey. He was born in 1945 and was admitted to practice law in the Commonwealth of Pennsylvania in 1976. His registered office address is 4311 North 6th Street, Harrisburg, Pennsylvania 17110. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a history of discipline consisting of a Private Reprimand administered in 2009 for violations of the Rules in four separate matters.

a. in the first matter, Respondent failed to effectuate service of a complaint which resulted in the dismissal of his client's action.

b. in the second matter, Respondent failed to adhere to and comply with Federal Rules of civil procedure resulting in a motion for summary judgment being granted against his clients.

c. in the third matter, Respondent failed to adequately address issues in response to a motion to dismiss and used vulgar language.

d. in the fourth matter, Respondent engaged in a discourse on the competence of the court and persisted in attacking the court's integrity.

4. In 2007, Respondent filed two actions in the Middle District of Pennsylvania, identified as Lewis I and Lewis II.

5. After several motions were filed in Lewis I, the Honorable Malcolm Muir granted Motions to Dismiss and Summary Judgment for all defendants.

6. After several Motions were filed in Lewis II, Judge John E. Jones, III granted Motions to Dismiss all defendants on the basis of res judicata.

7. Respondent filed an appeal to the Third Circuit of Judge Jones' decision in Lewis II. The decision was upheld and the appeal was dismissed by the Third Circuit. Respondent thereafter filed a Writ of Certiorari with the United States Supreme Court which ultimately was denied by said Court.

8. Two of the defendants in Lewis II filed a Motion for Sanctions and attorney fees and costs against Respondent in the Third Circuit. The Third Circuit appointed Timothy R. Rice, Magistrate Judge of the Eastern District of Pennsylvania, as a Special Master to resolve said issue. Judge Rice recommended that the defendants be awarded $28,041.71 in attorney fees and costs. The Third Circuit, thereafter, entered an Order on August 5, 2010 directing Respondent to pay said fees and costs to the defendants. In addition, Judge Jones issued an Order on August 6, 2010, directing Respondent to pay the additional sum of $19,240.19 in attorney fees and costs. (ODC-9; ODC-17; ODC-18; ODC-22; ODC-23)

9. On August 19, 2010, Respondent filed in the Third Circuit a Motion for Rehearing En Banc, with an amended Motion filed on August 31, 2010. (ODC-18; ODC-24; ODC-27)

10. Respondent made the following statement in the Motion for Rehearing En Banc, and admitted making these statements in his Answer to Petition for Discipline:

a. "Judge Scirica and Magistrate Judge Rice are misbehaving in this case." (ODC-24; ODC-27)

b. "In reference to this Court's August 5, 2010 Order, undersigned Counsel has said 'the issue is one of "judicial misconduct," not his own, and that the matter had not ended.'" (ODC-24; ODC-27)

c. "[Respondent's] clients, are being hurt and harmed by and through an unlawful series of actions among and between members of the federal judiciary and perhaps, certain preferred attorneys and law firms, including, among others, Judge Jones, Conner, and Kane of the Middle District, and Judge Scirica of this Court." (ODC-24; ODC-27)

d. "This case has been abused by the third [sic] Circuit as a warning to other clients of [Respondent] not to testify or come forward regarding the misconduct of the Federal Judiciary in the Middle District and Third Circuit." (ODC-24; ODC-27)

e. "Several years ago [Respondent] was given information that Judges McClure, Muir and Rambo were intending to use their positions to harm [Respondent's] legal practice, i.e., they were out to 'get' [Respondent]. [sic] More recently Judges Jones and Conner are believed to have bought into this highly unethical 'clique,'..." (ODC-24; ODC-27)

f. "Judge Jones was illegally pressuring Paul Killion for one purpose and one purpose alone – stop [Respondent] but more importantly stop Thom Lewis and other civil rights complainants." (ODC-24; ODC-27)

g. "Appellant and [Respondent] submit that the judges involved in these cases, and others, believed that they 'had' [Respondent] when [Respondent] filed the second case, and that a plan was hatched right then and there to set up the case for dismissal, and later to use it as a tool

through which to administer the very punishment that has been administered, all with the ultimate purpose of impeding the career and civil rights practice of [Respondent]." (ODC-24; ODC-27)

h. "It cannot be denied that [Respondent] and [Respondent's] clients are being treated differently by certain Middle District Judges and repeating Third Circuit panelist than those similarly situated." (ODC-24; ODC-27)

i. "It would be a grave error for anyone to ignore the complaints that supposedly have been filed with the judicial conduct authorities claiming that federal judges are mishandling cases simply because of certain judges' personal animus against [Respondent] and against civil rights causes in general. This animosity from certain judges can additionally be traced back to political bitterness by new activist judges who are using [Respondent's] clients as a way to settle scores from [Respondent's] career as a U.S. Congressman and PA Auditor General, and to serve current political anti-civil rights." (ODC-24; ODC-27)

j. "The filing of Lewis II action was completely appropriate for many valid lawful reasons, and the appeal of its dismissal by Judge Jones on res judicata grounds under the circumstances was eminently meritorious, and should have prevailed, leaving the judicial misconduct of the Middle District Judges to be further addressed instead of revealing the involvement of Judges of this Court in that misconduct. (ODC- 24; ODC-27)

k. "[T]he opinion of Judge Muir only 'substantively' (but in an intellectually deficient manner) addressed the allegations of conspiracy, with

two short sentences at most directed to the defendant's [sic] individual involvement in the underlying civil rights violations." (ODC-24; ODC-27)

l. "[Respondent] allege [ ] that at its inception, i.e., at the time of the filing of Lewis II, the idea, 'plan' even, was simply to dismiss both cases for reasons related to the raw abuse of power and judicial/political favoritism, which alone is deserving of an independent investigation." (ODC-24; ODC-27)

m. "[T]he alleged cults in which the defendants, including [Judge] Jones' former colleague, were involved, upon information and belief, engage in pedophilia and other perverse sexual behaviors and activities, an unintended result of this judicial zeal to 'get' [Respondent] could possibly protect criminals and perverts." (ODC-24; ODC-27)

n. "The procedure through which these sanctions have been administered adds even further support for the conclusion that this is a case of judicial misconduct." (ODC-24; ODC-27)

11. On August 11 and August 12, 2011, a disciplinary hearing was held in the instant matter.

12. On August 11, 2011, Petitioner presented the testimony of the Honorable Christopher C. Conner and the Honorable John E Jones, III, each of whom are District Judges for the United States District Court for the Middle District of Pennsylvania.

13. The testimony of Judge Conner and Judge Jones was credible.

14. The relevant testimony of Judge Conner included the following:

a. Judge Conner was appointed Judge of the United States District Court for the Middle District of Pennsylvania in 2002, after a

nomination process that included an FBI investigation, a hearing before the U.S. Senate Judiciary Committee and a confirmation vote in the U.S. Senate. (N.T. August 11, 2011, p. 40)

b. Before ascending to the bench, he was engaged in the practice of law for 20 years and served on the Boards of the Dauphin County Bar Association and the Pennsylvania Bar Association. During his years of private practice, his only acquaintance with Respondent was to serve as a mediator in a case where Respondent served as an advocate. (N.T. August 11, 2011, p. 40, 42-43)

c. Judge Conner has disposed of approximately 2,300 to 2,400 civil cases during his tenure on the bench. Judge Conner recused himself from cases involving Respondent when he was requested by Petitioner to testify in the instant proceedings. (N.T. August 11, 2011, p.43-44)

d. Judge Conner does not have and has never had any personal animus towards Respondent or his clients. (N.T. August 11, 2011 p. 45)

e. Judge Conner is not now involved and has never been involved in any conspiracy to "get" Respondent or his clients. He is not now involved nor has he ever been involved in any clique with any fellow judges, including, but not limited to, Judges Kane or Jones, to "get" Respondent or his clients. (N.T. August 11, 2011, 44-45)

f. Judge Conner's decisions are contained in written memoranda and orders. He has not been reversed by the Third Circuit for any decision made in cases where Respondent served as counsel for a party. (N.T. August 11, 2011, p. 46-47)

g. Judge Conner treats everyone who comes before him in his Court with the same fairness and impartiality including Respondent and his clients. (N.T. August 11, 2011, p. 46)

h. Judge Conner has no animosity against civil rights plaintiffs or civil rights cases. (N.T. August 11, 2011, p. 46)

15. The relevant testimony of Judge Jones included the following:

a. He was appointed in 2002 to the United States District Court for the Middle District of Pennsylvania after a nomination process which included a screening process, an interview by the White House and a background check. (N.T. August 11, 2011, p. 144)

b. Judge Jones had been engaged in private practice for 22 years before his appointment to the bench. He was the chairman of the Pennsylvania Liquor Control Board for seven years. He does not know Respondent personally and only knows him from the cases coming before Judge Jones where Respondent was counsel. (N.T. August 11, 2011, p. 144-145)

c. Since becoming Judge he has addressed approximately 2,300 civil cases and 300 criminal cases. He has had approximately 30 cases on his docket wherein Respondent was involved. He recused himself from Respondent's cases as soon as he was notified he would be a witness in the instant proceeding. (N.T. August 11, 2011, 145-146)

d. He was the presiding Judge in Lewis II and dismissed the case on the basis of res judicata which was set forth in an opinion and order. He

did not engage in any judicial misconduct in Lewis II or any other case. (N.T. August 11, 2011, 146-148)

e. He is not now and has never been involved in a conspiracy with Judges Conner, Kane, Scirica or any judges in any cases, including cases involving Respondent or his clients. (N.T. August 11, 2011, 148)

f. He is not now and has never been a member of any clique with Judges McClure, Muir and Rambo or any other judge for the purpose of undermining Respondent or his clients. (N.T. August 11, 2011, p. 148)

g. He does not have a personal animus towards Respondent, his clients or civil rights complainants. (N.T. August 11, 2011 p. 148, 149, 154)

h. Judge Jones has never pressured Paul Killion, Chief Disciplinary Counsel, to stop Respondent, Thom Lewis or any other civil rights complainants. He has never conspired with another judge to set up Thom Lewis or Respondent so that they would fail or to make sure that the Lewis matters would be dismissed. (N.T. August 11, 2011, p. 148-149)

i. Judge Jones treats all litigants and lawyers in the same manner and this included Respondent and his clients. Respondent successfully resolved other cases that were on Judge Jones's docket and not all of Respondent's cases assigned to Judge Jones concluded adversely to the interest of Respondent's' clients. (N.T. August 11, 2011, p. 149 – 151)

j. Judge Jones has no knowledge of and did not engage in any "cults" whatsoever. He has no knowledge of, and was not involved in or engaged in "pedophilia and other perverse sexual behaviors and activities, an intended result of which was to utilize judicial zell [sic] to 'get' Mr. Bailey

and to possibly protect 'criminals and perverts'." (N.T. August 11, 2011, p. 150)

16. Respondent proffered twelve witnesses, none of whom produced credible relevant testimony to establish Respondent's burden of proving that the allegations contained in the Motion for Rehearing En Banc were true or provided Respondent with an objectively reasonable belief that the allegations were true.

17. Respondent proffered 70 exhibits, none of which, either individually or collectively, provided credible relevant evidence to establish Respondent's burden of proving that the allegations contained in the Motion for Rehearing En Banc were true or provided Respondent with an objectively reasonable belief that the allegations were true.

18. Respondent testified on his own behalf. He insists that the allegations made by him in the Motion against members of the federal judiciary are true. He refuses to acknowledge that his allegations are false and that the evidence he provided failed to establish that he had an objective reasonable belief that the allegations were true, based upon a reasonably diligent inquiry.

19. Respondent refuses to accept any responsibility for any professional misconduct attributable to making or repeating the allegations.

20. Respondent fails to accept adverse judicial decisions by an objective review of the facts or the law. He simply concludes that such decisions are the result of a conspiracy against him or his clients.

21. Respondent has not expressed regret or remorse for any statements that he made.

22. Petitioner served as a combat officer in the Viet Nam conflict. He served as Auditor General for the Commonwealth from 1984 to 1988 and as a United States Congressman from 1977 to 1983. (N.T. [4] pgs. 76-79)

## III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 4.1(a) – A lawyer shall not knowingly make a false statement of material fact or law to a third person in the course of representing a client.

2. RPC 8.2(a) – A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or the integrity of a judge.

3. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty , deceit or misrepresentation.

4. Petitioner failed to meet its burden of proof that Respondent violated Rules 3.1 or 8.4(d).

## IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges against Respondent of professional misconduct arising from a series of allegations made by Respondent against members of the Federal Judiciary in a Motion for Rehearing *En*

*Banc*. Specifically, Respondent is charged with violations of Rules of Professional Conduct 3.1, 4.1(a), 8.2(a), 8.4(c), and 8.4(d)

Petitioner has the burden of proving ethical misconduct by a preponderance of evidence that is clear and satisfactory. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). To establish the making of false accusations against judges in violation of the rules, Petitioner may meet the burden of proof by presenting documentary evidence or testimony from the person at whom the accusations were aimed that the statements are false. Office of Disciplinary Counsel v. Price, 732 A.2d 559 (Pa. 1999). The burden shifts to Respondent to establish that the accusations are true or that following a reasonably diligent inquiry, he formed an objective reasonable belief that the accusations are true. Id. at 604. A determination of misconduct hinges upon whether Respondent acted recklessly or with the support of a reasonable factual basis. Recklessness is shown by the "deliberate closing of one's eyes to the facts that one had a duty to see or state as fact things of which one was ignorant." Office of Disciplinary Counsel v. Anonymous Attorney A, 714 A.2d 402 (Pa. 1998).

Petitioner met its burden of proving that Respondent made the accusations in the Motion for Rehearing *En Banc*, and that the accusations were false. Respondent admitted in his Answer to Petition for Discipline that he made the allegations against federal judges, and he reiterated his position throughout the disciplinary hearings.

Petitioner provided direct testimony from two federal judges. The testimony of Judge Conner credibly supports the fact that he had no significant relationship with Respondent prior to or after his ascension to the bench. Judge Conner's only course of dealing with Respondent prior to his judgeship had been the mediation of a case where the judge served as mediator. Likewise, Judge Conner had no personal relationship of any

kind with Respondent and bore no personal animus toward Respondent. Judge Conner was never involved in any conspiracy against Respondent or his clients, and has never been involved in a clique with other judges.

Judge Jones testified credibly that he was not engaged in any conspiracy with other judges against Respondent and that he had no personal animus toward Respondent and was not a member of any clique. He never pressured the Office of Disciplinary Counsel to proceed against Respondent. As well, Judge Jones has never been a member of a clique and is not now and has never been involved in pedophilia.

As we find that Petitioner has proved that the allegations are false, the burden shifts to Respondent to establish the allegations are true or that following a reasonably diligent inquiry, he formed an objective reasonable belief that they were true. A de novo review of the record fails to uncover a reasonable basis for Respondent's accusations against Judge Conner and Judge Jones. None of the witnesses proffered or the multitude of documents provided by Respondent has established that the allegations were true or that Respondent had an objective reasonable belief that they were true. Respondent was unable to point to any personal relationship between him and either of the two jurists who testified, that the existence of multiple decisions against Respondent's clients in various matters and the issuance of orders and opinions by various federal judges highly critical of Respondent's conduct substantiates his claims of impropriety on the part of the jurists. Respondent was unable to demonstrate that any interests of Respondent or his clients were adversely impacted without due process of law. He failed to point to a single appellate decision that criticized or rejected the lower court findings, rulings, orders or opinions adverse to Respondent or his clients, yet he urges this Board to

consider adverse rulings as evidence supporting his claim of judicial misconduct. There is no competent evidence to do so.

The testimony of Respondent's witnesses expressed a consistent theme of respect for Respondent and confidence in his abilities and integrity. Some of the witnesses testified as to their cases brought by Respondent on their behalf in the federal court. Others testified regarding communications between them and certain judges. The flavor of this testimony was that of frustrated or dissatisfied litigants with the decision of a court of competent jurisdiction. Such dissatisfaction should not and does not in this particular matter imply impropriety on the part of the jurist rendering the adverse decision, and does not justify the accusations of judicial misconduct. There must be an acknowledgment that it is within the province of the court to chastise advocates and order sanctions if appropriate. We find that the testimony of these witnesses does not establish the truth of Respondent's accusations against the jurists.

Respondent attempted to create the perception of a far-ranging judicial conspiracy based on his subjective interpretation of events. As the Hearing Committee aptly noted, "We are led to conclude that it is Respondent who has in fact 'personalized' these outcomes and has chosen to vilify those jurists who find against him or admonish his failure to abide by rules governing advocacy." (Hearing Report, p. 44-45) Further, "The evidence reveals not a conspiracy against Respondent, but an aggressive resistance on Respondent's part to accept the proper authority of the court and to cast aspersions on anyone in a position of authority who disagrees or admonishes his behavior." [1] (Hearing Report p. 44-45) . It should be noted that this position was reiterated at oral argument on

[1] As documented in the Hearing Committee Report, the record of this disciplinary proceeding reflects a similar course of behavior by Respondent in response to rulings made by the Hearing Committee Chair and Board Chair.

his brief on exceptions. One could not have come away from this oral argument without the very distinct impression that Respondent was somehow lacking in an ability to rationally evaluate his own conduct.

Respondent's statements were made without any credible supporting evidence. Respondent violated RPC 4.1(a) by knowingly making false statements concerning judges in his Motion for Rehearing *En Banc*. Respondent violated RPC 8.2(a) by making false statements in his Motion for Rehearing *En Banc* concerning Judges of the Middle District and Third Circuit by either knowing that the statements were false or with reckless disregard as to the truth or falsity. Finally, Respondent violated RPC 8.4(c) by his reckless misrepresentations concerning the Judges. This matter is ripe for the determination of discipline, which is to be determined on a case-by-case basis with precedent considered so that radical differences in discipline are not imposed for similar misconduct. Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa. 1983).

It is appropriate to consider any aggravating or mitigating circumstances. We note that Respondent's record over many years includes extensive community involvement and service to his country. As a young man, he served with distinction as a combat officer in Viet Nam. He served as Auditor General of the Commonwealth of Pennsylvania and as a United States Congressman. His clients testified as to their confidence in Respondent and their admiration for him. Notwithstanding these factors, we note that Respondent was reprimanded in 2009 for similar misconduct, and he remained intractable in his position at the hearing and displayed no remorse or regret concerning his actions.

The guiding decisions on the appropriate sanction are Office of Disciplinary Counsel v. Price, 732 A.2d 559 (Pa. 1999) and Office of Disciplinary Counsel v. Surrick,

749 A.2d 441 (Pa. 2000). In each of those matters, the respondents made false accusations against judges or other judicial officers, and in each case the Supreme Court imposed a five year period of suspension.

In Price, the respondent filed court documents that contained false allegations against two District Judges and an assistant district attorney. These accusations included "official oppression", "coercion over various law enforcement or political officials", "prosecutorial bias to ingratiate [ ] with disciplinary and other authorities" and sexual harassment of constituents. In suspending Mr. Price for five years, the Supreme Court explained:

> Moreover, the false accusations against District Justice Farra and District Justice Berkheimer included attacks upon their performance of official duties. Such scandalous accusations erode the public confidence in the judicial system in general and in these District Justices in particular.
>
> Price, 732 A.2d at 606-607.

In Surrick, the respondent accused a Common Pleas Court judge and a Superior Court judge of wrongdoing. Mr. Surrick alleged that Judge Bradley "fixed" a verdict in a civil matter and Judge Olzewski issued orders and decisions against Respondent in order to gain favor with the Supreme Court. In addressing Mr. Surrick's allegations against Judge Bradley, the Supreme Court stated:

> [Surrick] uses his self-aggrandized role as the crusader for justice as a shield from any liability for his actions while simultaneously arguing that any judicial decisions in contravention to his position proves that he is the victim of judicial conspiracy.
>
> Surrick, *supra*, 749 A.2d at 447.

Thereafter, in addressing Mr. Surrick's allegations against Judge Olzewski, the Court stated:

> [Surrick's] accusations against Judge Olzewski resulted not from a reasoned deduction based upon objective facts, but rather from personal inability to accept any judicial decisions adverse to him.

> In other words, if [Surrick] does not prevail in a legal matter that ruling is ipso facto an example of the grand conspiracy created by former Justice Larsen to destroy [Surrick].

Surrick, *supra*, 749 A.2d at 448-449.

Respondent's conduct in the instant matter paralleled that in the above-cited cases. Accordingly, consistent with the positions of both the Hearing Committee and Petitioner in this matter, the Board is persuaded that the totality of the facts and circumstances warrants a suspension of five years. This sanction (rather than disbarment) is in line with prior determinations by our Supreme Court on very similar facts; and it takes into consideration Respondent's record of meritorious combat service as well as his years of public service. The Board recognizes that the guiding principles of our disciplinary system are protection of the public from attorneys who are unfit or unable to represent clients within the bounds of ethical conduct; and to preserve public respect for our judiciary by protecting it from unwarranted and inappropriate attacks. Should Respondent ever seek to practice law again in the future he would be required to prove his fitness to do so by clear and convincing evidence. As such, the recommended sanction would carry out the goals of both protecting the public by removing Respondent from the practice of law, and signaling the profession's intolerance for unwarranted and baseless assaults on the judiciary.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Donald A. Bailey, be Suspended from the practice of law for a period of five years.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: _____
R. Burke McLemore, Jr., Board Member

Date: May 1, 2013

Board Members Bevilacqua and Hastie dissent and would recommend Disbarment.

Board Member Momjian abstained.