

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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

RESPONDENTS ANSWER TO PETITION FOR DISCIPLINE

1. Denied. It appears Petitioner's office is located within the District 1 office which also appears to be outside the jurisdiction of where the case should be heard 85.5 (b) (1). Respondent is located in District 3 85.5 (b) (3).

2. Admitted in part, denied in part. Admitted Respondent is subject to the disciplinary jurisdiction of the undersigned under the proper jurisdiction; however Respondent's District is (3). Petitioner is attempting to use District 1 office to prosecute Respondent and at least appears to be acting outside the District to prosecute Respondent. 85.5 (b) (1) and 85.5 (b) (3).

3. Admitted. But Petitioner should be disciplined within Respondents jurisdiction. Further respondent knows of no exception to the applicability of the 1st Amendment to Pennsylvania disciplinary process, or for that matter, an exception to Pennsylvania Constitutional Provisions.

CHARGE

4. Admitted.
5. Admitted.
6. Admitted.

5. Admitted in part. By way of further response any objective reading of the Third Circuit responses or the responses by Judge Jones and Judge Muir would demonstrate conclusively that there were parts of the underlying complaint that should have been left in, but were improperly removed (such as the Fourth Amendment violations attributed to Mr. Breiner as only one small example). It is noteworthy that during this process Patti Bednarik, an investigator for the Disciplinary Board, and a colleague of petitioner (who also works for Mr. Killion) had investigated Mr. Bailey. Her activities included numerous improprieties that led back to issues related to Mr. Lewis and his case. These included her complicity with individuals who were unlawfully trafficking in dogs from outside the state (an extremely lucrative business) one of whom directly implicated Bednarik in the unlawful activities (a Ms. Deborah Smith) while Bednarik was telling a friend of respondents that she was not involved, if memory serves, in dog activities. This was false. She was conducting this unlawful business from her desk while on assignment at the disciplinary board. The implications were clear and they were that the state was victimized by a theft of services. Mr. Killion has had her quietly removed and placed in a position where she is dealing with attorney applications. It appears she's being hidden. One of her investigations included a purported complaint against respondent where evidence exists that he was used as a way to get at Mr. Bailey. This included an apparently unlawful acquisition of attorney Bailey's joint bank account, which by the way, yielded absolutely nothing indicating any impropriety on his part. It is ironic that a later letter by Mr. Freese (another disciplinary board investigator) refused to deal with Mr. Beckerman or help him because he supposedly had "brain damage". This was not only dishonest, it was absolutely outrageously improper to use Mr. Beckerman to get at

Mr. Bailey while denying him assistance where he clearly was deservant of it. The reason plainly is that while Mr. Beckerman was being deprived of tens of thousands of dollars by scurrilous attorneys about which the disciplinary board would do nothing he was told the reason was because of his own medical infirmities. The only trouble with that analysis is that they preceded by many many years Mr. Killion's and Ms. Bednarik's using Mr. Beckerman as a vehicle to get at Don Bailey.

6. Upon recollection I believe this is correct.

7. This is also correct. However it is important to note that this first amended complaint merely made some corrections, this is based upon recollection but respondent believes that this was filed in a few days for this purpose.

8. This is true. Judge Muir's law clerk was a personal friend of Joe "Joey the See" Curcillo. It is interesting that petitioner would raise this relatively minor issue in this petition since Mr. Lewis (who had previously been represented by Mr. Curcillo) did not object or ask Judge Muir to recuse himself when Judge Muir offered to do so. However, Mr. Curcillo, was a close friend of Patti Bednarik. Mr. Killion successfully moved to quash a subpoena (improvidently granted, if memory serves), by Judge Muir although the requested testimony/evidence had absolutely nothing to do with the Disciplinary Board.

9. This is correct. By way of further response Mr. Lewis and Mr. Bailey firmly believe that any objective and thorough analysis of that decision would indicate that it was in error which they still emphatically assert to this day.

10. This is also correct. It is directly relevant that the Second Amended Complaint not only added a totally new defendant (at that time a John Doe), removed others, and originated a totally new cause of action. No consideration was given by Judge Muir. And

of course none was given later by Judge Jones who totally misapprehended the facts in the case later on, indicating that he merely copied what Judge Muir had done and erroneously attributed thousands of pages of documents which only obfuscated the motion to dismiss motion (which Judge Jones obviously felt might have been burdensome to you and ministration of justice) to the plaintiff Thom Lewis. The only trouble with Judge Jones' error was that the documents were submitted by the Assistant Attorney General representing the defendant. This action drew no criticism of the Atty. Gen. by the learned jurists involved. At no time did Judge Muir or Judge Jones infer or warn that Mr. Lewis's action, or actions, were frivolous. Then, months later, the defendants, who Mr. Lewis later learned was directly involved with Judge Jones at the Liquor Control Board, filed motions for attorney's fees against Mr. Lewis and Mr. Bailey. One of the more ludicrous excuses given for being late with filings and whatnot by the defendants was that their law firm (one of the largest and most prestigious in Pennsylvania) hadn't received its West rulebooks. This despite the fact that one of these lawyers is a traveling companion of a Middle District judge and serves on the Middle District Rules Committee. Although he could, respondent will not go on and on with more information indicating what he believes was and improper political effort to get at Mr. Bailey and his clients. A scenario repeated time and again.

11. This is also correct. By way of further response any objective analysis of the applicability of the of Rule 15 and the way it was so quickly applied, would not, and could not, stand objective scrutiny.

12. Respondent believes this is accurate.

13. Once more, although procedurally this is correct, the new complaint contained a new cause of action and additional claims against, it is believed, Jesse Smith, because although she and Patti Bednarik and Deb Smith and others knew perfectly well what was going on with Mr. Lewis's kennel license they had placed him on the Department of States webpage has a license violator i.e. that he was operating an unlicensed kennel. This was not only totally and completely false and was known to these defendants to be false, but it was highly injurious to Mr. Lewis and his business activities. Judge Jones dismissed the new complaint out of hand based upon the defendants' claim of res judicata. Once more Judge Jones never at any time indicated that Mr. Lewis's filings were frivolous. Furthermore based upon respondent's recollection, when this matter reached Judge Scirica at the Third Circuit, respondent's best recollection is that he did not refer to it as frivolous either. However, this does not prevent the petitioner from making this charge. It is possible that Judge Scirica's law clerk, who became the appointed master on the Third Circuit hearing regarding attorney's fees, did adopt the language of the attorney who didn't receive her rulebooks in time and called these actions "frivolous". Respondent is not certain but he believes this is what occurred.

14. Admitted.

15. Admitted. See above. It is ironic that there was virtually no basis whatsoever upon which to deny Thom Lewis a right to sue Mr. Breiner. Breiner admitted upon the record, in a court proceeding, that he cited Mr. Lewis because Lewis would "eventually" violate the 26 dog limit governing the conditions of his license. Incredibly, two United States district judges, namely Judge Muir and Judge Jones non-suited Mr. Lewis on this issue and never permitted him an opportunity to do discovery on it. These abuses alone

should be subject to investigation but instead form the basis of the petitioner and his colleagues efforts to destroy the reputation and civil rights practice of Attorney Don Bailey.

16. Admitted.

17. Admitted.

18. Admitted.

19. Admitted.

20. Respondent believes this correct.

21. Admitted only that Flaherty and Sterner's attorney Bridget Montgomery Esquire, failed to file their motion for attorneys fees within 14 days after Judge Jones had dismissed the underlying action. Instead they filed a motion for leave to file a motion for attorney's fees months late (November 26, 2008, roughly 3 months late). It is outrageous that Mr. Fulton would intentionally bypass this extremely important issue. And it is equally outrageous that Mr. Fulton would fail to point out that Judge Jones granted the defendants grossly belated motion instantly without giving either Mr. Bailey or Mr. Lewis a chance to respond. Respondent can only admit that in violation of court rules and law, the defendants filed for attorney's fees in violation of Federal Rules. The petitioner, Robert P Fulton has left these highly probative matters out of the petition. He has even left out the fact that the defendants filed their brief late which is when Ms. Montgomery claimed that she had not received her West rule books.

22. Admitted.

23. Admitted conditionally. MJ Rice is a former law clerk of Judge John Scirica. Judge Scirica has assumed the leadership, or participation, in case after case after case

after case after case after case, in a row, of Mr. Bailey's appeals on behalf of deserving clients. This was done despite the fact that the staff of the clerk of the Eastern district and the staff of the clerk of the Third Circuit Court of Appeals says that panels and judges are normally chosen randomly (unless appointments are made by the chief judge). Judge John Scirica during the times in question was the chief judge. Judge Scirica even personally appointed Judge Jones, after these matters were on appeal, to sit by designation on the appeal of a case Mr. Bailey appealed on behalf of a number of police officers from the Eastern District where seven cases in a row were referred to the Hon. Juan Sanchez and which seven cases were dismissed one after the other. It is additionally noteworthy that Judge Jones dismissed roughly 2 dozen straight cases brought by Mr. Bailey almost on behalf of police officers complaining of public corruption, the vast majority of which were also not permitted any discovery. By way of final response MJ Rice denied Mr. Lewis and Mr. Bailey their requests for subpoenas. In fact even the attorney who had allegedly done the purported hours and hours and hours and hours spent on the appeal in the Third Circuit did not have to come into the "hearing" to testify. In addition Mr. Bailey was denied the opportunity to address the issue of judicial abuse in the Middle District of Pennsylvania, of which he alleged Judge Jones was a part, because it was among other things irrelevant (if memory serves) according to MJ Rice. Under MJ Rice there was no meaningful investigation. For example, although requested by the losers in this matter, even the nominal request to identify witnesses and serve subpoenas was denied. The fee seekers were permitted to modify, again and again, their totally abortive distorted and inaccurate fee submissions. Even the attorney who represented Ms. Montgomery and their clients was the same attorney who had sued Judge Jones when he

was chairman of the liquor control board for violating the civil rights of its students. Judge Jones (is believed in his official capacity) was ordered to pay over \$100,000 in attorneys fees. It appears it was never paid. This makes the role of Mr. Bob Hoffman Esquire one engendering a potential conflict? When MJ Rice submitted his final decision he clearly stated in a derogatory fashion that it was Mr. Bailey's desire to point out the assault he has been under by a small group of federal judges in the Middle District of Pennsylvania yet he never let Mr. Bailey address the abundant evidence of the same.

24. Denied. This charge is an absolutely outrageous and actionable falsehood by the petitioner in this case. There is absolutely no evidence to support this absurd and inaccurate charge because it is totally and completely false. Mr. Thom Lewis wrote his own Writ of Certiorari to the best of respondent's knowledge. Mr. Lewis did not consult with Mr. Bailey in any way. Not a single word of his submission to the Supreme Court of the United States was written or contributed in any way by Don Bailey. The petitioner should be sanctioned for making totally misleading and prejudicial charges of this nature. The petitioner is attempting to prejudice the Supreme Court of Pennsylvania and the Disciplinary Board improperly. He is also obviously, or so it appears, attempting to back up attorney Bridget Montgomery and support her scandalous charges because she was the first one to make these totally outrageous and dishonest allegations. Sometimes lawyers fall victim to its strange to strange deceits i.e. that they are somehow intellectually superior and more capable than others. Thus no poor layman could ever compete as the author of a lofty document like a Writ of Certiorari. As a class we are not. Mr. Lewis is very bright and very capable. To the best of petitioner's knowledge he wrote his own Writ of Certiorari. Not only should this charge be dismissed but the petitioner should be

challenged and required to produce the evidence he had which caused him to write this scandalous and scurrilous charge (beyond his apparent consultation with Paul Killion and Bridget Montgomery). If he is found wanting he should be sanctioned. Putting such a charge in a petition where he has already decided along with Paul Killion what's going to happen at the disciplinary board is outrageous.

25. Admitted.

26. Respondent admits this is probably correct.

27. Admitted conditionally. Given the fact that the defendants were permitted to make numerous resubmission's and corrections to their fee requests which evidence alone should've caused the highly questionable submissions to be dismissed it is believed that the amount stated is correct. The amount is exorbitant and it was not supported neither by the evidence nor was it achieved in compliance with the rules or with the law. It is currently under appeal.

28. Admitted in part denied in part. It is admitted for the first time that MJ Rice introduced into all of these matters the concept of frivolity. It is denied there was anything frivolous about the underlying action or the appeals involved. Furthermore Judge Rice's finding was late, unjust, and unsupported by the evidence. In fact the best evidence in support of this contention by petitioner is that of the three judges prior to MJ Rice who merely held a protracted afternoon hearing on attorney's regarding the entire matter, which was also later submitted to the Supreme Court of the United States, not one single jurist commented or opined in any way that the matter was "frivolous".

29. Admitted.

30. Admitted that judge Jones did this. By way of further response Judge Jones did this after the underlying defendants are out of time and late with their motions and their brief and judge Jones also refused to sanction or cite attorney Bridget Montgomery who made an improper and sanctionable request for attorneys fees accusing respondent of writing Mr. Lewis's Writ of Certiorari to the Supreme Court of the United States. There is virtually no possible evidence in support of this contention either by Montgomery or Fulton and both should be sanctioned therefore.

31. Admitted

32. Admitted

33. a. Admitted in part, denied in part. Your respondent made this allegation against Judge Scirica and Judge Rice in good faith and furthermore your respondent alleges these allegations are supportable (and believed to be true). As to MJ Rice see above. It is a mockery of due process, let alone equal protection and the Privileges and Immunities clause, that an attorney, particularly one who knows that there is an assault on his license taking place at the disciplinary board involving the complicity of a small clique of federal judges (where significant evidence exists that they are being directly assisted by Judge John Scirica) has some metaphoric duty to amble politely and quietly to the guillotine and place his neck beneath the blade. Perhaps more than any other, in an abrogation of the incredible value and contribution that the First Amendment makes to American life, let alone to the good of the human race, it is being betrayed by the very judicial process which was put in place to protect it. The irony of these proceedings is that of all American institutions, it is our judicial system, at least on the federal side,

which is found most wanting in avoiding the arbitrary and capricious violation of the First Amendment.

33 b. Admitted. By way of further response petitioner believes that there is rampant judicial misconduct, indeed arbitrary and capricious misconduct in the matters pertaining to Mr. Bailey occurring in certain Middle District judicial offices. At least two federal judges, namely the Hon. Christopher C Conner, and the Hon. John E Jones III have had direct (and in the case of Judge Conner), repetitious contact with the petitioner Robert P. Fulton. Paul Killion personally told petitioner at a Christmas Eve meeting in this Board's Harrisburg office that Judge Conner was "pestering" Bob Fulton. This was before Mr. Killion clearly imparted a message to Mr. Bailey that he should consider what happened to Bob Surrick. Respondent also alleges that Judge John E Jones III personally called the disciplinary board (it is believed that it was Mr. Fulton that he called, however Mr. Bailey is not certain) but Mr. Bailey is certain that Judge Jones called and told the person he was addressing to "hurry up and do something about Andrew Ostrowski (whose punishment was suspiciously upgraded before this Board) because he was going to "be helping Don Bailey". See attached hereto a letter to Don Bailey from a prominent Pennsylvania attorney (if necessary Mr. Bailey can and will produce the original unredacted thus giving the staff of this Board namely Mr. Killion and Mr. Fulton one more target to go after. Last, this matter indeed has not ended. There are now dozens of people who are active in an impeachment process and who progress on a daily basis in the disclosure of the misconduct about which Mr. Bailey complains.

33 c. Admitted. Furthermore this is true and correct. By way of further response it appears that members of this Board, and certainly Mr. Killion and other staff members

such as Mr. Fulton and Ms. Bednarik, who is currently more or less in hiding, are obviously part of this process.

33 d. Admitted.

33 e. Admitted. Respondent alleges and asserts that McClure (now deceased), Muir, and Rambo engaged in and created this unlawful conspiracy (first effectuated through the "Beam" manipulations by Judges McClure and Rambo) at a judicial conference of federal judges. Respondent knows that this allegation is true and correct because the source of the information was a high federal official. Furthermore, although this complaint was placed in probably at least a dozen briefs and pleadings it is indeed ironic that respondent was not called on it until these judges were named. Certainly it has been expressed to the staff of this Board previously and indeed was expressed to Mr. Killion on Christmas Eve a couple of years ago. Just like respondents repeated requests to learn of the complaints against him neither Killion nor Fulton responded. Consequently respondent demands a full and complete hearing with the right to call witnesses and question complainants. Does due process have the same meanings for lawyers as it does for criminal and civil process?

33 f. Admitted. Furthermore this is not only true, but the staff of the Disciplinary Board has an ethical and moral duty not to respond to the pressure of a complaint from a sitting judge, let alone a federal judge who does not appear to have jurisdiction or control over the Pennsylvania disciplinary board and its staff. This is more evidence that Mr. Killion and his staff are merely political operatives performing political duties as they see their political fealty all in violation of the civil rights of the respondent and others (including the American citizens represented by Mr. Bailey).

33 g. Admitted.

33 h. Admitted. The evidence of these allegations are uncontroverted and plain on the face of any examination of the treatment afforded respondent and his clients by Judges Conner, Kane, and Jones.

33 i. Admitted that this is true, and because it is true, it can not be used as a basis of this discipline.

33 j. Admitted that this is true, and because it is true, it can not be used as a basis of this discipline.

33 k. Admitted that this is true, and because it is true, it can not be used as a basis of this discipline.

33 l. Admitted that this is true, and because it is true, it can not be used as a basis of this discipline.

33 m. Admitted. By way of further response this information was based upon the knowledge and experiences of Mr. Thom Lewis who is willing to testify to and confirm them. Evidence was attached to the subject motion out of an abundance of caution to substantiate this claim.

33 n. Admitted that this is true, and because it is true, it can not be used as a basis of this discipline.

34. Denied. Respondents allegations are based upon facts. Respondent had reached a point where the misconduct of these federal judges had achieved a level devoid of any doubt as to their misconduct and what their misconduct was. Respondent's civil rights practice, but far more importantly the rights of his clients to access our courts were under assault. Interminable and intentional delays and stays in the administration of his

clients cases, an endless litany of snide and vituperative attacks on not only respondent, but his clients, intentional denial of case management practices in the Middle District of Pennsylvania in case after case after case suffering dismissal by the same clique of federal judges only to have the cases referred case after case after case when a decent and honest appeal was taken to the same repetitive panels of the Third Circuit (these decisions were administered by John Scirica) where time and time again the rules and practices of the vast majority of decent and honest judges was set aside and violated. It is plain and obvious that the administration and actions by a small group of Middle District judges is corrupt and out-of-control. It is also plain that a "thin blue line" type of mentality dominates the actions and, reactions our judicial community. These dishonest judges are assisted in this effort by need achievers like Paul Killion and Mr. Fulton who not only lack the moral courage to do what is right, but instead justify their abuses by distorting and abusing process and denying procedural due process to those persons, like respondent, who are under attack. The real question is whether the federal judicial system is capable of disciplining itself. It is not. The second question is whether and to what extent the federal system controls jurisdictionally the Pennsylvania lawyers disciplinary process? Respondent simply put was at the end of his rope and consequently every allegation that he made was meant to appeal or at least pique the interest of at least (hopefully) one judge on the Third Circuit Court of Appeals. Furthermore there is significant evidence to demonstrate that respondent is and was correct. The punishment attempted here is because respondent has nowhere to go and because he has encouraged others to speak up. His efforts have failed. Respondent believes the system is badly in need of reform and that change is only possible with resort to the political process if our

judges cannot administer the system in a fair manner. There is no place anywhere in the United States to which any meaningful appeal or complaint of judicial abuse can be meaningfully made. Respondent understands that many of his clients made complaints of judicial misconduct and indiscretions. None have enjoyed a response!

35. Denied. Ironically petitioners own actions and words betray the sincerity of this accusation. Mr. Fulton has been part of the dishonest effort to shut Mr. Bailey up and destroy his efforts to represent his clients most of whom are law enforcement persons.

36-38. Admitted.

39. Denied. Respondent did not violate the Rules of Professional Conduct reflected in this paragraph. Furthermore based upon following new matter and the responses above the respondent demands that an investigation into the misconduct of Judges Conner, Kane and Jones and in addition into the misconduct of Paul Killion, Robert Fulton, Patti Bednarik and Ed Frese be undertaken immediately.

New Matter

40. Respondent alleges that he has been victimized by a persistent pattern of misconduct entered into and carried out by a small group of Middle District (federal) judges who have been joined by at the very least the staff of the lawyers disciplinary system in Pennsylvania more specifically Messrs. Killion, Fulton, Edwin W Frese, and Ms. Patti Bednarik. In support of his view that he (and his clients) are being victimized respondent offers the following exhibits (numbered sequentially) in support:

41a. *Exhibit 1* - A copy of Don Bailey's Writ of Certiorari to the Supreme Court of the United States (currently pending).

41b. *Exhibit 2* - A copy of Thom Lewis's Writ of Certiorari to the Supreme Court of the United States (the Writ has been denied).

41c. *Exhibit 3* - A copy of Deborah Venesevich Writ of Certiorari Supreme Court of the United States (the Writ has been denied).

41d. *Exhibit 4* - A copy of the December 19, 2008 memorandum written by the Hon. Christopher C Conner scandalously, and intentionally attacking Don Bailey in the Venesevich case. This is the opinion which led to the aforementioned Writ of Certiorari.

41e. *Exhibit 5* - A copy of a letter from Mr. Frese to Mark Beckerman. Please note that the date on this letter is April 16, 2010. Please also be aware that Mr. Beckerman's "brain damage" occurred on or about 1986. Also be advised that Mr. Killion, Patti Bednarik, Don Bailey, Sam Stretton, and Josh Lock were and are aware that Mr. Bailey was "investigated" by Patti Bednarik regarding a complaint by Mr. Beckerman. Clearly not only Mr. Beckerman but Mr. Bailey, his wife, and his rights were violated.

41f. *Exhibit 6* - A copy of Mr. Bailey's December 20, 2006 communication from Patti Bednarik regarding Mr. Beckerman's alleged complaint dated December 20, 2006.

41g. *Exhibit 7* - A copy of a Report and Recommendation filed by MJ Carlson under the auspices of Judge Kane.

41h. *Exhibit 8* - A copy of Mr. Bailey's objections to the R&R.

41i. *Exhibit 9* - Submission In re judicial misconduct against Yvette Kane.

41j. *Exhibit 10* - Submission In re judicial misconduct against Juan Sanchez.

41k. *Exhibit 11* - Submissions by Mr. Andrew J Ostrowski to the Disciplinary Board.

41l. *Exhibit 12* - Order from Judge Kane (initiated because on a break Mr. Bailey called attorney Devon Jacob an "ass hole"). When Mr. Bailey called Mr. Jacob an "ass hole" he did not do so in a loud and raucous or discourteous fashion. Yet six

41m. *Exhibit 13* - A copy of four "Amending Orders" filed by the Hon. Christopher C Conner in the "Raphael Christopher" case.

41n. *Exhibit 14* - A copy of a complaint and the subject memorandum filed by MJ Prince in Judge Conner's court.

41o. *Exhibit 15* - A copy of the (Sealed) deposition of Debra Smith.

41p. *Exhibit 16* – Deposition of Thom Lewis

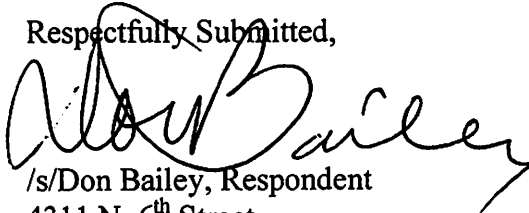
41q. *Exhibit 17* – Declaration of Thom Lewis

41r. *Exhibit 18* – Transcript of Proceedings held before Magistrate Rice.

42. The Pennsylvania Disciplinary Board lacks jurisdiction over these matters because they occurred exclusively in the federal courts.

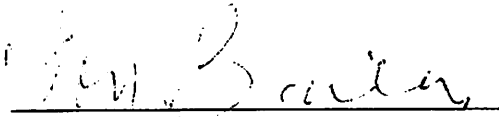
Wherefore a complete and full hearing including an opportunity to conduct discovery, call witnesses, and invite the public, is demanded.

Respectfully Submitted,


By: /s/Don Bailey, Respondent
4311 N. 6th Street
Harrisburg, Pa 17110
717 221-9500

VERIFICATION

I, Don Bailey do hereby verify that the aforementioned statements contained in the Disciplinary Response are true and correct to the best of my knowledge, information and belief. I make this verification knowing that it is unlawful pursuant to 18 P.A. C.S. §4904 both criminally and civilly, to provide false information in a legal proceeding. I intend to be legally bound hereby.



Don Bailey

Dated: 3-21-11