IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 1834 Disciplinary Docket No. 3
	:	No. 168 DB 2009
v.	:	Attorney Registration No. 54767
DONALD SAUNDERS LITMAN, Respondent	:	(Montgomery County)

ORDER

PER CURIAM:

AND NOW, this 12th day of July, 2012, upon consideration of the Report and Recommendations of the Disciplinary Board dated March 6, 2012, it is hereby

ORDERED that Donald Saunders Litman be subjected to public censure by the Supreme Court.

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

A True Copy Patricia Nicola
As Of 7/12/2012

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 168 DB 2009
v.	:	Attorney Registration No. 54767
DONALD SAUNDERS LITMAN Respondent	:	(Montgomery 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.

1) HISTORY OF PROCEEDINGS

On October 18, 2010, Office of Disciplinary Counsel filed a Petition for Discipline against Donald Saunders Litman. The Petition charged Respondent with professional misconduct arising out of allegations that he pursued frivolous and unwarranted legal remedies and engaged in a pattern of deliberate misrepresentation. Respondent filed an Answer on December 10, 2010.

A disciplinary hearing was held on March 10, 2011, before a District II Hearing Committee comprised of Chair Dennis D. Brogan, Esquire, and Members Kelly

S. Sullivan, Esquire, and John P. Elliott, Esquire. Respondent was represented by Samuel D. Miller, III, Esquire. A Joint Stipulation of Fact and Law was submitted by the parties. Petitioner introduced Exhibits ODC A-G. Respondent introduced Exhibits R 1-12. Respondent offered the testimony of three witnesses and testified on his own behalf.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on August 5, 2011 and recommended that Respondent be publicly censured by the Supreme Court of Pennsylvania.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on October 18, 2011.

2) FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, 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.

2. Respondent is Donald Saunders Litman. He was born in 1958 and was admitted to practice law in the Commonwealth in 1989. He maintains his office at

P.O. Box 35, Lansdale PA 19446. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no history of discipline in Pennsylvania.

Background

4. Respondent's employer and client, Donald Metzger, through several corporations and trusts, embarked on a scheme whereby he acquired a Pennsylvania landfill in a bankruptcy auction sale and thereafter sought to avoid the expenses of obtaining necessary permit(s) and posting the required bond.

5. In 1981, the Pennsylvania Department of Environmental Protection (DEP) issued a solid waste permit (Permit) to Quaker Alloy Casting Company (Quaker Casting) for a landfill at 200 East Richland Avenue in Myerstown, Pennsylvania (Landfill); DEP modified the permit on several occasions thereafter, including a modification on September 29, 1986, to authorize the transfer of the Landfill's ownership from Quaker Casting to Quaker Alloy, Inc. (Quaker Alloy) and on July 5, 2000, to allow captive processing of residual waste. The application for the latter modification identifies the applicant as "Quaker Alloy, Inc." and includes Quaker Alloy's employer and taxpayer identification numbers.

6. On August 4, 2003, Quaker Alloy's parent company, Atchison Casting Corporation, filed voluntary petitions for Chapter 11 bankruptcy relief in the United States Bankruptcy Court for the Western District of Missouri on behalf of itself and 12 domestic subsidiaries, including Quaker Alloy.

7. Quaker Alloy's bankruptcy petition identifies the debtor as "Quaker Alloy, Inc." and, like the application for the July 2000 modification, includes Quaker Alloy's taxpayer identification number.

8. On August 4, 2003, the Bankruptcy Court entered an order that authorized the joint administration of the Debtors' assets, and directed that all pleadings be filed at the docket number of the Atchison case.

9. On January 15, 2004, the Bankruptcy Court entered an order authorizing the sale of Quaker Alloy's assets (Sale Order) and, one week later, appointed Erlene Krigel as the trustee in bankruptcy for the debtors.

10. At a March 23, 2004, auction of Quaker Alloy's assets, Hanoverian, Inc., a Delaware corporation, submitted the winning bid for the Landfill.

11. Respondent was not employed by Hanoverian at the time of the purchase of the landfill and was not involved in any of the bidding for or the purchase of the Landfill or the subsequent transfer of the name Quaker Alloy to Hanoverian.

12. By statute, the permit was not freely transferable. 25 Pa. Code Section 287.221(a)(2008).

13. Ms. Krigel sold the Landfill to Hanoverian by a quitclaim deed dated April 9, 2004.

14. Neither the bankruptcy court sale order nor the quitclaim deed purport to sell the Permit along with the Landfill.

15. Sometime after purchasing the Landfill, Hanoverian contacted Ms. Krigel about purchasing the corporate name of Quaker Alloy, Inc.

16. On June 30, 2004, Ms. Krigel moved in the Bankruptcy Court for authorization to sell the corporate name of Quaker Alloy, Inc., to Hanoverian for $1,500. The Court subsequently issued an order authorizing the sale and by bill of sale dated August 3, 2004, Ms. Krigel transferred "unto Hanoverian, Inc., Trustee for the 200

Cascade Drive Ordinary Trust...all of Seller's right, title and interest in and to the corporate name of Quaker Alloy, Inc."

17. Neither the order nor the bill of sale transferred provided for the sale of any rights Quaker Alloy, Inc. previously had under the Permit.

18. On April 29, 2004, Donald Metzger, President and CEO of Hanoverian met with representatives of DEP concerning the Landfill.

19. On April 19, 2005, Mr. Metzger and Craig Edwards, Esquire, met with representatives of DEP about the Landfill.

20. On March 31, 2006, representatives of DEP had a conference call with Mr. Edwards about the Landfill.

21. By letter dated March 31, 2006, addressed to Mr. Edwards, James F. Bohan, Esquire, Assistant Counsel to the DEP, explained that Hanoverian would most likely have to apply for a new permit or possibly obtain a reissuance of the permit; sought documentation demonstrating that Hanoverian was authorized to do business in Pennsylvania, and explained that there were ongoing issues of concern to DEP including a lack of closure, a lack of a permit and a lack of water quality monitoring that had persisted since the sale of the site in April of 2004.

22. On April 24, 2006, Mr. Edwards responded to Mr. Bohan's letter and stated that "With regard to the ownership of [the landfill], the deeded owner is Hanoverian, Inc. as trustee. The landfill parcel is being transferred to Quaker Alloy, Inc.,...To my knowledge as "[t]rustee for the 200 Cascade Drive Ordinary Trust, Hanoverian, Inc., is not required to be registered to do business in Pennsylvania."

23. Fifteen days later the DEP sent a letter to Ms. Krigel, notifying her that the Permit had been revoked due to Quaker Alloy, Inc.'s dissolution and its abandonment of the permitted facility without providing for final closure.

24. DEP sent a copy of the letter to Quaker Alloy at its address of record in Myerstown, Pennsylvania that same day, although the letter was subsequently returned as undeliverable.

25. In addition, DEP published notice of the revocation in the July 29, 2006, issue of the Pennsylvania Bulletin.

Respondent's Involvement

26. In June of 2006, Respondent joined the Land Group, Ltd. and Edwards & Litman; Respondent has described himself as captive counsel for the Land Group.

27. On August 28, 2006, Respondent, acting on behalf of "Hanoverian, Inc. d/b/a Quaker Alloy, Appellant" filed a notice of appeal with the Pennsylvania Environmental Hearing Board (EHB) challenging the DEP's decision to revoke the Permit; the letter head on the cover letter accompanying the August 28, 2006 Notice of Appeal and all subsequent filings by Respondent with the EHB are from Edwards & Litman Law Office.

28. In early September, DEP declared the bond for the Landfill, submitted by Quaker Alloy, Inc. in 1986, forfeited and proceeded to collect thereon.

29. On October 4, 2006, DEP served Hanoverian with the first set of interrogatories and first request for production of documents in connection with the Permit Appeal.

30. Certain of the interrogatories questioned Hanoverian's authority to do business in Pennsylvania either under the name "Hanoverian" or under fictitious names with the words "Quaker" or "Alloy".

31. On November 15, 2006, DEP filed a motion to compel discovery with the EHB.

32. Five days later, Respondent filed a notice of appeal with the EHB, contesting the forfeiture of the bond.

33. On November 2, 2006, Hanoverian filed an application for a certificate of authority and an application for registration of the fictitious name "Quaker Alloy" with the Corporations Bureau of the Pennsylvania Department of State. Mr. Edwards executed both applications in his capacity as Hanoverian's general counsel.

34. On December 7, 2006, the EHB issued an order granting DEP's motion to compel discovery and an order consolidating Hanoverian's appeals under the docket number for the Permit Appeal. That same day, DEP issued an administrative order to Hanoverian and its president Donald Metzger for past and ongoing violations at the Landfill, namely, owning and operating the Landfill without first obtaining a permit reissuance or submitting a bond, and failing to implement an approved closure plan or provide adequate sampling and analysis.

35. Respondent answered the order in a letter he sent to Mr. Bohan the following week, where he asserted, among other things, that "Quaker Alloy, Inc., is no longer the bankrupt entity, as Quaker Alloy, Inc. belongs to my client, Hanoverian, Inc." and "Quaker Alloy is alive and well..."

36. On December 26, 2006, Mr. Edwards filed articles of amendment to Quaker Alloy's articles of incorporation - the articles of incorporation filed by a Missouri

attorney in 1994 - with the Pennsylvania Corporations Bureau. In the filing form Mr. Edwards indicated that Quaker Alloy's registered office was "c/o Hanoverian, Inc. " in Coopersburg, Pennsylvania, and attested that "the amendment was adopted by the board of directors."

37. The Amendments provided, among other things, that the corporation name henceforth would be Quaker Alloy, Inc.; that the corporation had the following officers: Donald C. Metzger, president, secretary & treasurer; and restructured the capitalization of the corporation in terms of the amount of outstanding stock and types of shares.

38. On January 8, 2007, Hanoverian, Metzger, and the 200 Cascade Drive Ordinary Trust filed a third notice of appeal with the EHB, charging DEP with engaging in unlawful conduct under the federal bankruptcy law by taking adverse actions contrary to the automatic stay pursuant to federal law against the bankrupt entity Quaker Alloy, without first obtaining the allowance of the bankruptcy court. The unlawful conduct alleged included revoking the permit and forfeiting the bond without allegedly affording any direct notice, but instead providing notice to the bankruptcy trustee, and engaging in slander through a press release that improperly maligned the reputation, name and character of the Appellants and the bankrupt entity.

39. On January 12, 2007, the EHB issued an order consolidating all three appeals under the docket number of the Permit Appeal.

40. On April 19, 2007, on behalf of Respondent's clients, Hanoverian, Donald Metzger and Quaker Alloy, Respondent filed a notice of removal with the United States District Court for the Middle District of Pennsylvania. The case was docketed before the Honorable Yvette Kane, Chief Judge.

41. The Notice of Removal sought by Respondent's motion attempted to remove the consolidated proceedings pending before the EHB to the District Court.

42. On May 9, 2007, DEP filed a motion to remand the case to the EHB and requested that the District Court award the Department attorneys' fees incurred in connection with the removal of the action.

43. On June 1, 2007, Respondent filed a brief in opposition to the motion to remand.

44. On June 13, 2007, the Department filed a motion for sanctions seeking attorneys' fees.

45. On July 11, 2007, Respondent filed a brief in opposition to the motion for sanctions.

46. On March 31, 2008, Judge Kane entered a Memorandum and Order.

47. The Court considered the substantive issues first, and found the removal motion untimely pursuant to Subsection 3 of the Federal Rules of Bankruptcy Procedure 9027(a).

48. A notice of removal must have been filed within 30 days of the commencement of the most recent appeal (the Order Appeal); but as the record clearly reflected, with the notice of removal filed on April 9, 2007, it was filed 224, 140 and 91 days after commencing the Permit, Bond and Order Appeals, respectively.

49. Respondent sought to avoid the timeliness issue by blaming DEP, first for failing to provide "direct notice" of the permit revocation and bond forfeiture to his client, and second, for its alleged failure to comply with discovery until April 2007.

50. Because the deadlines for removal are calculated from the dates that the notices of appeal are filed, the Court explained, with respect to the first claim, that whether or not DEP provided Respondent's clients with actual notice of the permit revocation or bond forfeiture was "completely inapposite."

51. Additionally, the Court rejected Respondent's claim that his client did not have actual notice of the permit revocation on the basis that there was ample evidence of constructive notice well before the filing deadline for removal, including the correspondence between Mr. Edwards and Mr. Bohan; Hanoverian's admission in the notice of appeal that it knew about the revocation action from publication in the Pennsylvania Bulletin; Hanoverian's admissions in the Bond Appeal; and Hanoverian's admissions in the Order Appeal.

52. The Court rejected Respondent's second claim – that DEP failed to comply with discovery until April 2007 – because it had "not a shred of support in the record."

53. Further, the Court found as a matter of law that the Permit was not appurtenant to the Landfill or freely transferable.

54. In considering whether to grant Sanctions under Rule 11, Judge Kane specifically identified faulty legal theories as well as false and misleading factual claims pursued by Respondent.

55. Regarding the legal contentions raised by Respondent, Judge Kane found that a reasonable inquiry would have revealed that the appeals were not "civil actions" for the purpose of 29 U.S.C. Section 1452(a) and therefore not removable under Section 1441 and, that even if they were, the opportunity for removal had long since evaporated by the time Respondent filed the notice.

56. Regarding the factual contentions raised by Respondent, Judge Kane found that reasonable inquiry would have revealed the complete lack of evidentiary support for his claims that:

(1) Quaker Alloy, Inc., was properly named as a party to the removal action;

(2) the Bankruptcy Court authorized the sale of the "corporate entity" that owned and operated the Landfill under the Permit;

(3) the "Trustee sold all right, title and interest [in] the corporate entity Quaker Alloy, Inc. to the [Plaintiffs], including the rights to any and all personalty belonging to Quaker Alloy, Inc. such as [the Permit]";

(4) each of the Plaintiffs is incorporated in and has a principal place of business in a state other than Pennsylvania; and

(5) that "Quaker Alloy Fire [sic] [had] provided written notice of [the] Notice of Removal to counsel of record for all parties and [that] a true and complete copy of [the] Notice of Removal [had] been filed in the State Court [sic] action" prior to April 27, 2007. (Memorandum pp.19-20)

57. Judge Kane found that Respondent had failed to timely file his brief in opposition, and that Respondent violated Federal Rule of Civil Procedure 11 by:

a. Averring legal contentions that were frivolous and unwarranted (Memorandum, p. 16);

b. Making gross misrepresentations of existing law (Memorandum, p. 23);

c. Failing to cite to the record, which required the Court to engage in the type of circuitous research and fact-finding that the United

States Court of Appeals for the Third Circuit has repeatedly deemed unnecessary and taxing on judicial resources (Memorandum p. 24);

d. Engaging in a pattern of deliberate misrepresentation and using this as a litigation tool (Memorandum p. 25);

e. Intentionally, unnecessarily delaying and needlessly increasing the costs of litigation for the DEP and, by extension, the citizens of the Commonwealth (Memorandum p. 26);

f. Failing to timely file a notice of removal by filing it beyond 30 days of commencing Respondent's most recent appeal in the underlying case, and filing the notice of removal on April 9, 2007, 224, 140 and 91 days after commencing the Permit, Bond and Orders Appeals, causing the Clerk of Court to receive the notice two months too late (Memorandum p. 14);

g. Asserting without a shred of support in the record that DEP "refused to comply with discovery until April 2007" (Memorandum p. 16);

h. Deliberately attempting to mislead the Court and harass DEP through filing the ill-conceived and unsupported notice of removal and by failing to withdraw or amend his papers even after DEP had belied Respondent's various "misrepresentations and obfuscations" and twice advised Respondent by letter of its intention to file a motion for sanctions unless he withdrew the notice of removal (Memorandum p. 20);

i. Accusing, without evidence, DEP of "corruption, mismanagement, and extortion" (Memorandum p. 21);

j. Rather than retreating from previous positions, persisting in advancing factual contentions that were entirely lacking in evidentiary support and that were clearly contradicted by the record, and clinging to legal contentions that were both frivolous and unwarranted (Memorandum pp. 22-23)

k. Squandering his opportunity to respond to the motion by devoting his brief to scandalous and immaterial allegations rather than responsive arguments in is defense (Memorandum p,. 29)

l. Failing to exercise his duty to conduct a reasonable inquiry into the facts and law before filing papers with the Court, an inquiry that would have proved that the lion's share of his legal and factual contentions had no basis in either existing law or the evidence, respectively (Memorandum p. 25).

58. Judge Kane found that there were no mitigating factors present.

59. With respect to Respondent's belated brief in opposition, Judge Kane noted that Respondent's continued "insistence that the fictitious name 'Quaker Alloy, Inc.' was and is the permittee or that it can rightly count itself amongst the Plaintiffs, is not only surreal, it is a gross misrepresentation of existing law."

60. Judge Kane held Respondent and his firm jointly responsible for the rule violation and imposed a monetary sanction against Respondent and the firm, Edwards & Litman. Respondent complied with the Order and paid to the Department $5,555.17.

61. Respondent was soundly criticized and penalized in the Memorandum and Order of Chief Judge Kane.

62. After the case was remanded to EHB, Respondent continued to raise the same factual and legal claims in that forum that had already been discredited and decided adversely in Federal Court.

63. As a result, DEP filed a Motion for Signing Sanctions, which included the following:

a. Respondent asserted in all three notices of appeal he filed before EHB that Hanoverian acquired all rights to the Permit;

b. Respondent asserted that Hanoverian was the "equitable owner" of the Permit;

c. Respondent asserted that the fictitious name "Quaker Alloy" was and is the permittee.

64. Respondent filed Appellants' Memorandum in Opposition of the Department's Motion for Signing Sanctions," in which, among other things, he continued to assert that:

a. Hanoverian purchased "the assets" for Quaker Alloy through the Bankruptcy Court Order;

b. The Bankruptcy Court approved the sale of the "permitted landfill" and "included in its transfer of rights was the permit for the landfill";

c. Hanoverian was the beneficial or equitable owner of the Permit; and

d. Quaker Alloy was the permittee because both its assets and its name had been acquired by Hanoverian.

65. In his opposition, Respondent raised several other frivolous arguments, including arguing that notices DEP addressed to Craig Edwards at the address shared by Respondent and Mr. Edwards, and the firm Edwards & Litman, were improperly addressed and could not constitute notice to Respondent.

66. Respondent also argued that Judge Kane's Memorandum Opinion could not be relied upon because it was an unreported opinion, citing to a Pennsylvania Code section that applies by its terms to Pennsylvania Courts only, and that provides an exception for citation to unreported opinions when relevant under the doctrine of law of the case.

67. By the time of the remand to EHB the Landfill had been sold and the purchaser sought to reissue the Permit, in essence mooting much of the substantive litigation.

68. The remaining litigation before the EHB, including DEP's motion for sanctions, was resolved by Settlement Agreement dated October 20, 2008, and that litigation was formally terminated by order of the EHB dated October 23, 2008.

69. Despite having acknowledged and stipulated that his filings before Judge Kane violated the Rules of Professional Conduct as charged, during the disciplinary hearing Respondent was unable to acknowledge that he did not have a basis for continuing to raise the same discredited claims after receipt of Judge Kane's opinion.

70. Respondent claimed for the first time at the disciplinary hearing that the pleadings signed and apparently filed by him had been altered by Craig Edwards.

71. That claim was not credible as Respondent failed to raise any such defense in either his Answer to Request for a Statement of Respondent's Position letter or his Answer to Petition for Discipline.

72. Respondent cooperated with Petitioner, as evidenced by the comprehensive joint stipulation.

73. Respondent expressed remorse for his misconduct and poor judgment.

74. David Volk, Esquire, testified at the disciplinary hearing. He worked with Respondent at Edwards & Litman and noted that Respondent expressed sorrow, remorse, and contrition on multiple occasions with respect to the handling of the Hanoverian matter.

75. Jack Mortimer Marden, Esquire, testified at the disciplinary hearing. He is Respondent's father-in-law. He credibly testified that Respondent expressed contrition for his actions.

76. Four letters written in support of Respondent from members of Respondent's community were submitted into evidence.

77. Respondent left the firm of Edwards & Litman in January 2010 and no longer works for or with Mr. Metzger or Mr. Edwards.

78. Respondent is the parent of two special needs children and he currently devotes most of his practice to advocating for special needs children.

3) CONCLUSIONS OF LAW

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

1. RPC 1.1 – A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. RPC 3.3(a)(3) – A lawyer shall not knowingly offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence before a tribunal or in an ancillary proceeding conducted pursuant to a tribunal's adjudicative authority, such as a deposition, and that lawyer comes to know of its falsity, the lawyer shall take reasonably remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant, in a criminal matter, that the lawyer reasonably believes is false.

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

4. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

IV. DISCUSSION

In the instant case Respondent repeatedly crossed the line of permissible advocacy by advancing baseless claims, seeking unwarranted legal remedies, and misrepresenting both the facts and the law before two tribunals. As a result he was charged with violating Rules of Professional Conduct 1.1, 3.3 (a), 8.4 (c) and 8.4(d). Respondent's admissions to these Rules violations as well as the exhibits and other

testimony presented before the Hearing Committee lead us to conclude that Petitioner met its burden of proving Respondent's misconduct by a preponderance of the evidence that is clear and convincing. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981).

The remaining issue for our consideration is the appropriate discipline for Respondent's admitted transgressions.

The record reveals that Respondent entered his appearance during the course of extensive ongoing litigation between Respondent's employer and the DEP. Even though he did not initiate the case Respondent wasted no time in pursuing frivolous legal arguments and advancing spurious factual assertions. For example, Respondent removed the case to U.S. District Court for the Middle District of Pennsylvania even though it was properly before the Pennsylvania Environmental Hearing Board. Moreover, he did so long after the deadline for removal had passed in direct contravention of the relevant Rules on the subject. As a result DEP filed a motion to remand the case to the EHB and requested sanctions and attorneys fees under Rule 11 of the Federal Rules of Civil Procedure.

DEP's motions were granted on March 31, 2008 by the Chief Judge of the Middle District of Pennsylvania, the Honorable Yvette Kane. Judge Kane, in a Memorandum opinion, expressed her strong disapproval of Respondent's lawyering and recounted his frivolous arguments and misrepresentations in great detail. As a result she reprimanded and penalized Respondent for his conduct.

Regrettably, Judge Kane's scathing appraisal of Respondent's behavior did not deter him from raising many of the same false and misleading factual claims and tenuous legal theories when the case was remanded to the EHB in June 2008.

On the positive side of the ledger, Respondent has been a member of the Pennsylvania Bar since 1989 and has no history of discipline. His reputation for honesty and integrity was established at his disciplinary hearing by live testimony and written submissions. Respondent's current practice is dedicated to the representation of disabled and developmentally delayed children in their quest for needed services from the public schools. Further, the Hearing Committee concluded that Respondent poses no risk of danger to the public or the profession. We concur with its assessment.

It is on this backdrop that we look to the relevant decisional law for guidance on the appropriate discipline in this matter. Our review of the cases reveals that public censure is the appropriate discipline for an attorney who, like our Respondent here, resorts to litigation practices that involve gross distortions of fact, misrepresentations, false allegations and unsupportable legal theories. In Office v. Disciplinary Counsel v. Scott Leonard Feldman, 101 DB 2006, 1212 Disciplinary Docket No. 3 (Pa. Dec. 21, 2006), an attorney received a public censure for filing outrageous inappropriate pleadings in Bankruptcy Court and violating a Court Order by accepting payment from his client. Similarly, in Office of Disciplinary Counsel v. Allen J. Fellheimer, 44 Pa. D.&C. 4th 299 (1999), an attorney whose conduct included the filing of false and frivolous pleadings to gain advantage for the principal of a corporate debtor, failing to correct a material misrepresentation to the Bankruptcy Court, and engaging in a representation that amounted to a conflict of interest received a public censure. Finally, in Office of Disciplinary Counsel v. Donald B. Hoyt, 68 DB 1997, 41Pa. D.&C. 4th 38 (1998), public censure was ordered for an attorney whose misconduct included making intentional false statements to the Court and failing to disclose his client's identity in a civil suit.

In light of the forgoing precedents and our review of the record we agree with the parties and the Hearing Committee that the appropriate discipline in this matter is public censure. Accordingly, we recommend that Respondent receive a public censure for his violations of the Rules of Professional Conduct.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Donald Saunders Litman be subjected to a Public Censure before the Supreme Court.

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: _____
Howell K. Rosenberg, Board Member

Date: March 6, 2012

Board Member Todd recused.