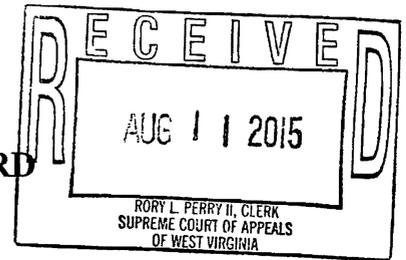


BEFORE THE LAWYER DISCIPLINARY BOARD  
STATE OF WEST VIRGINIA



**In Re:** JARRELL L. CLIFTON, II, a member of  
The West Virginia State Bar

**Bar No.:** 10616  
**I.D. No.:** 12-05-448

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**REDACTED<sup>1</sup> STATEMENT OF CHARGES**

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**To:** Jarrell L. Clifton, II, Esquire  
Route 1, Box 275B  
Marlinton, West Virginia 24954

**YOU ARE HEREBY** notified that a Hearing Panel Subcommittee of the Lawyer Disciplinary Board will hold a hearing pursuant to Rules 3.3 through 3.16 of the Rules of Disciplinary Procedure, upon the following charges against you:

1. Jarrell L. Clifton, II (hereinafter "Respondent") is a lawyer practicing in Marlinton, which is located in Pocahontas County, West Virginia. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on November 5, 2007. As such, Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.
2. Respondent served as an assistant prosecutor for Pocahontas County, West Virginia from around 2007 to around the latter part of 2010.

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<sup>1</sup> This pleading has been redacted pursuant to the July 31, 2015 Order issued by the Supreme Court of Appeals of West Virginia.

3. On or about August 7, 2012, Respondent was indicted for two counts of “sexual assault in the second degree” and two counts of “imposition of sexual intercourse on an incarcerated person” before the Pocahontas County, West Virginia Circuit Court.
4. Respondent self-reported the matter to Disciplinary Counsel and, on August 8, 2012, a complaint was opened in the name of the Office of Disciplinary Counsel.
5. By letter dated August 9, 2012, Disciplinary Counsel wrote to Respondent asking for a response to the allegations.
6. By letter dated August 21, 2012, Respondent invoked his Fifth Amendment Right until such time as the criminal matters were resolved.
7. A stay of the disciplinary proceeding was ordered by the Investigative Panel on September 15, 2012.
8. A hearing on the criminal charges was held on December 6, 2012, and by Order entered January 8, 2013, NPT 12/6/12, the charges were dismissed with prejudice.
9. At its April 27, 2013 meeting, the Investigative Panel ordered that the stay of the disciplinary proceeding be lifted.
10. By letter dated May 14, 2013, Disciplinary Counsel wrote to Respondent asking for a response to the complaint.
11. By letter dated May 30, 2013, Respondent provided a response stating “[t]he allegations set forth in the indictment are false.” Respondent also provided a copy of the Order dismissing the criminal charges.

12. Disciplinary Counsel obtained a copy of the files concerning the investigation of the matter. Based on the information contained therein, she interviewed T.N.S., K.M. and L.C..

#### **Allegations Concerning T.N.S.**

13. On or about August 4, 2009, T.N.S. was indicted with two counts of “possession with intent to deliver a controlled substance” in the Pocahontas County, West Virginia Circuit Court Case No. [REDACTED]
14. On or about November 6, 2009, T.N.S. pled guilty to one count of “possession with intent to deliver a controlled substance” and the remaining charge was dismissed.
15. On or about March 19, 2010, T.N.S. was sentenced to one to five years incarceration but the same was suspended for two years of probation and one year of participation in the day report program. T.N.S. signed the terms and conditions for the day report program on or about March 19, 2010. The terms and conditions indicated that any violation of the terms and conditions could result in an arrest and incarceration without a hearing until further order of the Court as well as reinstatement of the original sentence.
16. In or about May, June, or July of 2010, Respondent contacted T.N.S. on several occasions and asked her to come by his prosecutor’s office.
17. T.N.S. is unsure of the exact date or amount of times she went to Respondent’s office at the prosecutor’s office, but said she went around three times. T.N.S. is unable to

remember what happened at each meeting but Respondent asked to take naked pictures of T.N.S. which she did and had T.N.S. perform oral sex on him.

18. After those meetings, T.N.S. was able to get out of meeting with Respondent by sending him pictures and videos of her naked or scantily clad body or by performing sexual acts.
19. On or about March 24, 2011, T.N.S. completed all requirements of the day report program but remained on probation.
20. On or about August 15, 2011, First Lieutenant Robert J. Simon with the West Virginia State Police started an investigation against Respondent.
21. On or about April, 10, 2012, Respondent contacted T.N.S. through Facebook requesting more photographs.
22. On or about April 17, 2012, Respondent contacted T.N.S. through Facebook. T.N.S. emailed a copy of the chat to First Lt. Simon and Respondent asked T.N.S. if anyone had asked about him. Respondent also wanted to meet with T.N.S..
23. On or about April 19, 2012, T.N.S. struck up a Facebook conversation with Respondent and Respondent asked for more pictures of T.N.S.. First Lt. Simon was present along with Federal Bureau of Investigation Special Agent Fred Aldridge and West Virginia State Police Lt. D.B. Malcomb at T.N.S.'s residence when this occurred. Respondent wanted T.N.S. to come by his office.<sup>2</sup> T.N.S. informed

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<sup>2</sup> By this time, Respondent had left his position as Assistant Prosecutor for Pocahontas County, West Virginia.

Respondent that she had been contacted by investigators for interviews and Respondent insisted that T.N.S. come to his office. T.N.S. signed a “consensual monitoring form” with First Lt. Simon and agreed to wear a body recorder. When T.N.S. appeared at Respondent’s office, he asked to take pictures of her and begged her to touch his penis. The conversation also involved what to tell people about why T.N.S. had stopped by Respondent’s office at the prosecutor’s office.

24. On or about May 29, 2012, First Lt. Simon and Special Agent Aldridge interviewed Respondent. Respondent described his relationship with T.N.S. as “professional acquaintances” as she spoke about being drug free. Respondent, at first, indicated that he was not friends with T.N.S.. Later in the interview, Respondent stated that he did not have a sexual relationship with T.N.S. and that they were friends. When First Lt. Simon pointed out the contradiction from the first statement and the Facebook chats, Respondent admitted that he exchanged photographs and videos with T.N.S.. Respondent was then informed that T.N.S. was wearing a wire when she appeared at his office on or about April 19, 2012. Respondent indicated that he knew that and that it was stupid of him to ask her to touch his penis.

#### **Allegations Concerning K.M.**

25. K.M. had worked with Respondent over the years and had a consensual sexual relationship with him in the past. However, during the past consensual relationship, Respondent videotaped a sexual encounter with K.M. without her knowledge.

Respondent later showed K.M. the videotape and she asked that it be destroyed.  
Respondent told K.M. that the videotape had been destroyed.

26. In 2008, Respondent filed a lawsuit on behalf of K.M. against several individuals and [REDACTED], in the Pocahontas County, West Virginia Magistrate Court Case No. [REDACTED]
27. On or about March 27, 2009, J [REDACTED] W [REDACTED] son of K.M., was charged with the criminal offense of brandishing in Pocahontas County, West Virginia Magistrate Court Case No. [REDACTED].
28. On or about March 29, 2009, K.M. signed a "Criminal Bail Agreement: Cash or Recognizance."
29. Around a day or week after March 29, 2009, K.M. approached Respondent at a local grocery store about Mr. W [REDACTED]'s criminal case. Respondent asked K.M. to stop by his office.
30. Around a day or week after K.M. approached Respondent at the local grocery store, K.M. went to Respondent's office at the prosecutor's office. When K.M. went into Respondent's office, he indicated that she caught him looking at porn. After K.M. indicated that she was not there for that, Respondent began to talk about Mr. W [REDACTED]'s case. Respondent told K.M. about the witness statements in the file and that they did not match. K.M. wanted to know what to do about Mr. W [REDACTED]'s case and Respondent provided no guidance. At that point, Respondent brought up the videotape of the

sexual encounter and told K.M. that he did not destroy the videotape. Respondent agreed to get rid of the videotape if K.M. would let Respondent see her naked body. When K.M. refused that request, Respondent stood up from his desk with his penis exposed. Respondent requested K.M. to give him oral sex and to touch his penis. K.M. held Respondent's penis after Respondent continued to ask her and had her kiss it in an attempt to get oral sex. K.M. was able to leave before anything went further. Respondent told K.M. that she had a week and a half to make her decision. When K.M. asked about Mr. W█████'s case again, Respondent indicated that she might want to get an attorney for Mr. W█████ and that he could recuse himself from the case.

31. On or about a week and a half after K.M. went to Respondent's office, Respondent sent Facebook messages to K.M. about her time being up.
32. On or about May 11, 2009, Christine Stump, Esquire, filed a notice of appearance in Mr. W█████'s case along with a Demand for Trial by Jury and Motion for Discovery.
33. On or about May 12, 2009, Magistrate Court sent a letter to Mr. W█████, Ms. Stump and Respondent that the trial date set for May 20, 2009 was now a pre-trial conference.
34. Several pre-trial conferences were set after May of 2009.
35. On or about November 19, 2009, Ms. Stump filed a Motion to Withdraw Request for Jury Trial wherein she indicated that she had spoken with Respondent who had no objection to the Motion.

36. On or about December 3, 2009, Respondent filed a Motion to Dismiss Without Prejudice wherein it indicated that the State wanted to dismiss the matter because the victim was unwilling to cooperate. The motion was granted the same day.
37. On or about June 28, 2010, an Agreed Order of Dismissal with Prejudice was entered in K.M.'s civil case. The matter had been appealed to the Circuit Court of Pocahontas County, West Virginia.

#### **Allegations Concerning L.C.**

38. In the past, L.C. was formerly know as L.B. L.C. had a previous sexual relationship with Respondent.
39. In or around 2009, L.C. was a victim of theft. L.C. approached Respondent at his office in the prosecutor's office as to what she should do about the situation. L.C. performed oral sex on Respondent during that meeting in his office.
40. On or about March 22, 2009, R [REDACTED] B [REDACTED] was charged with domestic battery in the Pocahontas County, West Virginia Magistrate Court Case No. [REDACTED] and brandishing in the Pocahontas County, West Virginia Magistrate Court Case No. [REDACTED]. [REDACTED] L.C. was the victim in both of those cases.
41. On or about May 3, 2009, L.C. was charged with the criminal offense of destruction of property in the Pocahontas County, West Virginia Magistrate Court Case No.: [REDACTED]  
[REDACTED]

42. On or about May 20, 2009, Mr. B [REDACTED], entered into a diversion agreement regarding his criminal charges. Respondent was the prosecutor listed in the diversion agreement and signed the document.
43. On or about June 8, 2009, L.C. entered into a pre-trial diversion where she agreed to not violate the law for six months, pay restitution to the victim by the end of the diversion period, and to stay away from an individual. Respondent signed off on the agreement.
44. On or about August 6, 2009, Respondent filed a Motion to Set the matter for a bond revocation hearing wherein the grounds indicated that the "State believes there is information regarding defendant's violation of her current bond." Also, on or about August 6, 2009, a motion was filed by Respondent in Mr. B [REDACTED]'s criminal cases to withdraw the diversion agreement and to set the matters for trial.
45. On or about August 12, 2009, an Agreed Order was entered that withdrew the State's Motion and found that L.C. be released from the pre-trial diversion.
46. On or about September 16, 2009, the case against L.C. was dismissed.
47. On or about September 17, 2009, Mr. B [REDACTED] entered a guilty plea to battery and the brandishing charge was dismissed. Respondent was the prosecutor that appeared for that hearing.
48. L.C. has indicated that she thought that if she provided Respondent with oral sex, it would be beneficial to her.

49. Because Respondent was an Assistant Prosecutor when he had T.N.S., who was on probation and participating in the day report program, perform oral sex on him and provide him with sexually explicit photographs and videos, in violation of West Virginia Code 61-8B-4(a)(1) and 61-8B-10(a), Respondent violated Rules 1.7(b), 8.4(b), 8.4(c) and 8.4(d) of the Rules of Professional Conduct, which provide as follows:

**Rule 1.7. Conflict of interest: General rules.**

(b) A lawyer shall not represent a client if the responsibilities of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after consultation . . . .

**Rule 8.4. Misconduct.**

It is professional misconduct for a lawyer to:

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- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;

50. Because Respondent attempted to have K.M. perform oral sex on him when she went to his office at the prosecutor's office about her son's criminal case, Respondent violated Rules 1.7(b) and 8.4(d) of the Rules of Professional Conduct, as set forth above.

51. Because Respondent had L.C. perform oral sex on him when he was an assistant prosecutor and when she approached him as an Assistant Prosecutor when inquiring about a criminal matter, when she was a defendant in a criminal matter, and when she was a victim in a criminal matter, Respondent violated Rules 1.7(b) and 8.4(d) of the Rules of Professional Conduct, as set forth above.

52. Because Respondent provided false information to the Office of Disciplinary Counsel wherein he denied the conduct alleged in the indictment, Respondent violated Rule 8.1(a) of the Rules of Professional Conduct, which provides as follows:

**Rule 8.1. Bar admission and disciplinary matters.**

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact;

53. Because the information Respondent provided to the F.B.I. and the West Virginia State Police about his relationship with T.N.S. was false, in violation of 18 U.S.C. 1001(a) and West Virginia Code 15-2-16, which adversely reflected on his honesty, trustworthiness or fitness as a lawyer, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct, as set forth above.

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Pursuant to Rule 2.9(d) of the Rules of Lawyer Disciplinary Procedure, the Investigative Panel has found that probable cause exists to formally charge you with a violation of the Rules of Professional Conduct and has issued this Statement of Charges. As

provided by Rules 2.10 through 2.13 of the Rules of Lawyer Disciplinary Procedure, you have the right to file a verified written response to the foregoing charges within 30 days of service of this Statement of Charges by the Supreme Court of Appeals of West Virginia. Failure to file a response shall be deemed an admission of the factual allegations contained herein.

**STATEMENT OF CHARGES ORDERED** on the 26<sup>th</sup> day of October, 2013, and **ISSUED** on the 31<sup>st</sup> day of October, 2013.

**REDACTED STATEMENT OF CHARGES ISSUED** on this the 4<sup>th</sup> day of August, 2015.



**Robby J. Aliff, Chairperson**  
Investigative Panel  
Lawyer Disciplinary Board