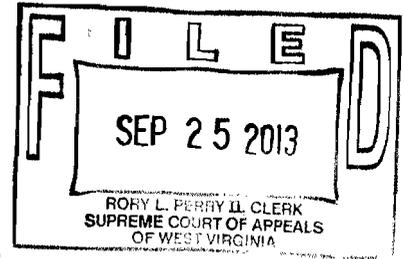


NO. 13-0954



**BEFORE THE SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA**

OFFICE OF LAWYER DISCIPLINARY COUNSEL,

Petitioner,

v.

**C. Michael Sparks, a member
of the West Virginia State Bar,**

Respondent.

**SUPPLEMENT TO AMENDED PETITION SEEKING IMMEDIATE
SUSPENSION OF A LAWYER PURSUANT TO
RULE 3.27 OF THE RULES OF LAWYER DISCIPLINARY PROCEDURE**

NOW COMES the Office of Disciplinary Counsel by Rachael L. Fletcher Cipoletti, its Chief Disciplinary Counsel, and reports additional relevant information to this Court in support of its previously filed amended petition pursuant to Rule 3.27 of the West Virginia Rules of Lawyer Disciplinary Procedure seeking the immediate suspension of Respondent's license to practice law.

In further support of this request, the Office of Disciplinary Counsel states as follows:

FACTS

1. Respondent was admitted to the West Virginia State Bar on September 30, 1996, and is therefore subject to the lawyer disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and the Lawyer Disciplinary Board. Respondent is the elected Prosecuting Attorney of Mingo County, West Virginia.
2. On or about August 14, 2013, an Indictment was issued and unsealed in the United States District Court for the Southern District of West Virginia against now suspended Circuit Court Judge Michael Thornsby.
3. The indictment alleged that Respondent, the Prosecuting Attorney for Mingo County, had knowledge that in 2008, 2009, and 2012, that the Circuit Court Judge “engaged in criminal conspiracies to violate the rights of R. W., using the authority of the police, the state grand jury, and the courts. R.W. was the husband of Judge Thornsby’s secretary, with whom Judge Thornsby had an extramarital relationship. Judge Thornsby conspired to plant illegal drugs on R.W.’s pickup truck; to have R.W. arrested for thefts he did not commit; to commandeer a state grand jury and use it to oppress R.W. and his family; and his family; and, after an incident in which R.W. was the victim of an assault, to arrange for R. W., rather than the perpetrator, to receive an exceptionally harsh sentence.”

4. To date, based upon information and belief, Respondent has not reported Judge Thornsberry pertaining to the conspiracy as alleged in the Indictment to the Judicial Investigation Commission in violation of Rule 8.3(b) of the Rule of Professional Conduct, which provides:

Rule 8.3 Reporting professional misconduct.

(b) A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

5. By failing to protect the interests of R.W. and by failing to report Judge Thornsberry and the other individuals listed in the indictment to the appropriate authorities, Respondent has violated Rule 3.8; Rule 8.4(a); Rule 8.4(b); Rule 8.4(c); Rule 8.4(d) and Rule 8.4(f) of the Rules of Professional Conduct, which provides:

Rule 3.8 Special Responsibilities of a Prosecutor.

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosures to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(e) exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6.

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(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;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

6. On or about August 15, 2013, the undersigned opened and docketed a complaint in the name of the Office of Disciplinary Counsel against Respondent.¹
7. On or about September 18, 2013, a felony information was filed in the United States District Court for the Southern District of West Virginia against suspended Circuit Court Judge Michael Thornsby.

¹Rule 2.6 of the Rules of Lawyer Disciplinary Procedure indicates in relevant part that the details of complaints filed with or investigations conducted by the Office of Disciplinary Counsel shall be confidential, except that when a complaint has been filed or an investigation has been initiated, the Office of Disciplinary Counsel or the lawyer may release information confirming or denying the existence of a complaint or investigation.

8. The Information was presented to the Southern District Court by the United States Attorney R. Booth Goodwin, II, and Assistant United States Attorneys Steven R. Ruby and C. Haley Bunn.
9. The Information states in relevant part that “[i]n or about March 2013, in Mingo County, West Virginia, and within the Southern District of West Virginia, Judge Thornsberry, Sheriff Crum, Prosecuting Attorney Sparks, Commissioner Baisden, Glenn White, and others known and unknown to the United States Attorney did knowingly conspire to injure, oppress, threaten and intimidate, under color of law, a person, that is, G.W., in the free exercise of rights and privileges secured to him by the Constitution and laws of the United States, including his right to counsel of his choosing under the Sixth and Fourteenth Amendments to the Constitution, in violation of Title 18, United States Code, Section 241.”
10. Moreover, the Information further states that “[i]t was a part of this conspiracy that Sheriff Crum and Commissioner Baisden, among others, with the approval of Judge Thornsberry, would and did advise Glenn White that G.W. would receive a lighter sentence if he would fire C.W. and replace him with an attorney favored [by] Sheriff Crum, Prosecuting Attorney Sparks, and Commissioner Baisden, for the purpose of preventing G.W. from further communicating to the FBI and others incriminating information regarding Sheriff Crum.”

11. The Information indicates that the conspiracy, the manner and means of the conspiracy and the overt acts associated with the conspiracy are in violation of Title 18, United States Code, Section 241.
12. On or about September 19, 2013, the undersigned opened and docketed a second complaint in the name of the Office of Disciplinary Counsel against Respondent.²
13. To date, based upon information and belief, Respondent has not reported the actions of Judge Thornsby as contained in the Information to the Judicial Investigation Commission in violation of Rule 8.3(b) of the Rule of Professional Conduct, which provides:

Rule 8.3 Reporting professional misconduct.

(b) A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

14. By failing to protect the interests of G.W., by failing to report Judge Thornsby and the other individuals listed in the Information to the appropriate authorities, by overtly participating in the conspiracy against G.W. in violation of his civil rights, Respondent has violated Rule 3.8; Rule 8.4(a); Rule 8.4(b); 8.4(c); Rule 8.4(d) and Rule 8.4(f) of the Rules of Professional Conduct, which provides:

Rule 3.8 Special Responsibilities of a Prosecutor.

The prosecutor in a criminal case shall:

²See FN1.

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosures to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(e) exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6.

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(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;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

PROCEDURAL HISTORY OF THE INSTANT PETITION

15. On or about September 20, 2013, Respondent filed a motion for leave to file a response to the instant extraordinary petition. In the same, Respondent attached a verified response to the August 15, 2013 disciplinary complaint.³
16. By Order entered September 20, 2013, this Court granted Respondent's motion for leave.
17. On or about September 23, 2013, Respondent filed a second motion for leave to file second response to the extraordinary petition. In the same, Respondent attached a verified response to the September 14, 2013 disciplinary complaint.⁴
18. By Order entered September 23, 2013, this Court granted Respondent's motion for leave. The Court also granted the undersigned until Thursday, September 26, 2013 at 9:30 a.m. to file any additional responsive pleading.

ADDITIONAL FACTS IN SUPPORT OF ODC'S REQUEST FOR IMMEDIATE SUSPENSION

19. Paragraphs 1-14 are incorporated and referenced herein.
 - A. **Stated intentions of review of Fletcher indictments by Respondent.**

³Respondent explicitly waived his confidentiality afforded to him under Rule 2.6 of the Rules of Lawyer Disciplinary Procedure.

⁴Again, Respondent explicitly waived his confidentiality afforded to him under Rule 2.6 of the Rules of Lawyer Disciplinary Procedure.

20. In or about January of 2009, Judge Thornsbery empaneled a grand jury and appointed his business partner Fletcher to serve as the grand jury foreperson. At the time of the appointment, Fletcher occupied the position of Mingo County Director of Emergency Services.
21. Upon information and belief, Fletcher's grand jury returned approximately 100 indictments.
22. The appointment by Judge Thornsbery of Fletcher as the grand jury foreperson is in violation of WV Code §52-1-8(d).
23. After Judge Thornsbery was indicted by the United States Attorney for the Southern District of West Virginia, upon information and belief, on or about August 19, 2013, according to the news reports, Respondent gave an interview to WSAZ wherein he was asked by the reporter about his concerns about the cases involving West Virginia State Trooper Brandon Moore and grand jury foreperson Jarrod Fletcher to which he responded "[w]e intend to review those cases".
24. Upon information and belief, according to the WSAZ report, Respondent further indicated to the reporter that he does not anticipate a different outcome in many of the cases, but says it is his office's duty to give them a second look.
25. At a minimum, Respondent's failure to take any action or report Judge Thornsbery's actions is deplorable. However, Respondent's overt involvement in the G.W. conspiracy, brings into question his fitness to serve as an attorney, and to allow

Respondent to conduct a review of the 100 indictments issued by the Fletcher grand jury is a conflict of interest and a clear example of an appearance of impropriety.

26. Upon information and belief, to date, Respondent has not sought a special prosecutor to conduct the review of the above-referenced cases.

B. Affidavit of Attorney Charles Stanford West and Affidavit of G.W.

27. Attorney Charles Stanford West has prepared an affidavit detailing the conspiracy as alleged in the Thornsby Information that involved West's client, G.W.. [Exhibit A].

28. The West affidavit is consistent with the allegations about Respondent's involvement in the conspiracy contained in the Thornsby Information.

29. On or about January 30, 2013, Respondent presented the testimony of Commander Dave Rockel to the grand jury in the matter of State of West Virginia v. George Ruben White.

30. A three (3) count indictment was returned by the grand jury based upon the presentment of Dave Rockel's testimony by Respondent.

31. On or about February 1, 2013, Attorney West represented G.W. in the arraignment and Respondent appeared for the State of West Virginia. G.W. entered a not guilty plea. [The case numbers in these matters are 13-F-73 and 13-F-59.]

32. Under oath, Attorney West states in paragraph 14 of the affidavit, that approximately one week prior to the 404(b) hearing in his client's case that he provided Respondent with a motion to dismiss detailing the allegations of Sheriff Crum's misconduct as it

pertained to his client. Attorney West asked Respondent to review the same and get back to him as to whether Respondent wanted to proceed to trial.

33. The court file indicates that for cases 13-F-73 and 13-F-59 an Order entered by Judge Thornsby appointing Attorney R. Rumora to represent G.W. in the criminal matter was entered on or about March 27, 2013.
34. A petition to enter a guilty plea was filed on or about April 8, 2013, in 13-F-73 and 13-F-59.
35. The guilty plea was entered by the Court on or about April 12, 2013.
36. The sentencing order was entered on or about June 6, 2013.
37. On or about June 27, 2013, a Motion for Reconsideration was filed by Attorney Rumora.
38. On or about July 15, 2013, an Order was entered by Judge Thornsby setting the Motion for Reconsideration for hearing for September 26, 2013.
39. On or about September 24, 2013, G.W. signed a statement that sets forth his knowledge of the events as set forth in the Thornsby Information. [Exhibit B].
40. Upon information and belief, despite being named in the Information as part of the conspiracy against G.W., and previously admitting to federal authorities that he overtly participated in the conspiracy (see Paragraphs 41-48 *infra*), Respondent has neither disqualified himself as the Prosecuting Attorney on this case, nor has he sought the appointment of a special prosecutor.

D. The Office of the United States Attorney for the Southern District of West Virginia.

41. There has been no grant of immunity to Respondent by the United States Attorney for the Southern District of West Virginia.
42. By Sealed Order entered on or about September 23, 2013, pursuant to a sealed motion by the United States Attorney for the Southern District, the Chief Judge for the United States District Court issued an Order authorizing the United States Attorney to disclose to the Office of Disciplinary Counsel grand jury materials that pertains to the disciplinary matter against Respondent.[Sealed Exhibit C].
43. The sealed Order states that pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure, the materials shall be used only in the course of the Sparks proceeding. The Order requires that the grand jury material must be destroyed or returned to Government at the close of the Sparks proceeding.
44. Upon information and belief, the United States Attorney will be forwarding the grand jury materials regarding Respondent forthwith.
45. By letter dated September 25, 2013, Assistant United States Attorney Ruby details admissions made by Respondent to federal authorities as it pertains to the conspiracies as outlined in the Thornsby Indictment and the Thornsby Information. [Sealed Exhibit D].
46. The Assistant United States Attorney Ruby attached a sworn affidavit from Special Agent Joseph I. Ciccarelli, that details Respondent's admissions as to the involvement

and knowledge of Respondent in the conspiracies as outlined in the Thornsby Indictment and the Thornsby Information. [Sealed Exhibit E].

47. By his own admissions against his own interest, Respondent has admitted to his involvement and knowledge of the conspiracies as outlined in the Thornsby Indictment and the Thornsby Information to both the United States Attorney and the Special Agent of the Federal Bureau of Investigation.
48. By his own admissions to the United States Attorney and the Special Agent of the Federal Bureau of Investigation, Respondent's verified response to the ethics complaints filed with this Court are false.

RULE 3.27 OF THE RULES OF LAWYER DISCIPLINARY PROCEDURE

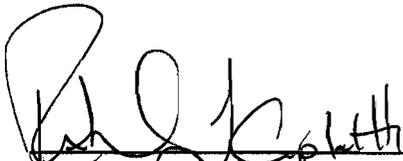
49. "The primary purpose of the ethics committee (Office of Disciplinary Counsel) is not punishment, but is the protection of the public and the reassurance of the public as to the reliability and integrity of attorneys." Lawyer Disciplinary Board v. Albers, 214 W.Va. 11, 12, 585 S.E.2d 11, 12 (2003) *citing* Committee of Legal Ethics v. Ikner, 190 W.Va. 433, 436, 438 S.E.2d 613, 616 (1993).
50. Rule 3.27 of the West Virginia Rules of Lawyer Disciplinary Procedure provides a mechanism to immediately suspend the license of a lawyer who (1) is accused of violating the West Virginia Rules of Professional Conduct and (2) who is alleged to pose a substantial threat of irreparable harm to the public.

51. The procedure outlined in Rule 3.27 of the West Virginia Rules of Lawyer Disciplinary Procedure is an extraordinary proceeding that should be used only in “the most extreme cases of lawyer misconduct.” *See* Syllabus Point 1, Office of Disciplinary Counsel v. Battistelli, 193 W.Va. 629, 457 S.E.2d 652 (1995).
52. Respondent, the elected, chief law enforcement officer in Mingo County, has engaged in a continued pattern of egregious misconduct under the color of his position as the Prosecuting Attorney of Mingo County, West Virginia.
53. As evidenced by the admissions made by Respondent, at a minimum, he has admitted to his role, overt actions and knowledge of the conspiracy as well as other misconduct to the United States Attorney’s Office.
54. Respondent’s actions shock the conscience of the public who expect a neutral and detached prosecutor whose duty is to seek justice and his course of misconduct clearly demonstrates his refusal to uphold this duty.
55. Respondent’s license should be immediately suspended, in part, because “lawyers holding public office [are held] to a higher standard of conduct.” Syllabus Point 3 of Committee on Legal Ethics v. Roark, 181 W.Va. 260, 382 S.E.2d 313 (1989), states, “[e]thical violations by a lawyer holding a public office are viewed as more egregious because of the betrayal of the public trust attached to the office.”
56. Because of the “enormous amount of trust that the public places in its lawyers, this Court must insure that the public's interests are protected and that the integrity of the

legal profession is maintained.” See Office of Lawyer Disciplinary Counsel v. Albers, 214 W.Va. 11, 585 S.E.2d 11 (2003).

57. There is more than sufficient evidence to establish that Respondent has violated the Rules of Professional Conduct and continues to do so; that Respondent is a substantial threat of irreparable harm; he is unable and/or unwilling to represent and protect the interests of the citizens of Mingo County, West Virginia; and there is good cause shown to immediately suspend his law license in the State of West Virginia.

WHEREFORE, the Office of Disciplinary Counsel requests that the Court immediately suspend the license of the Respondent until the underlying disciplinary proceedings against him before the Lawyer Disciplinary Board have been completed.



Rachael L. Fletcher Cipoletti [Bar No. 8806]
Chief Lawyer Disciplinary Counsel
City Center East, Suite 1200C
4700 MacCorkle Avenue SE
Charleston, West Virginia 25304
(304) 558-7999
(304) 558-4015 – *facsimile*

Respectfully submitted,
Office of Disciplinary Counsel, by

CERTIFICATE OF SERVICE

This is to certify that I, Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 25th day of September, 2013, served a true copy of the foregoing **"Supplement to Amended Petition Seeking Immediate Suspension of a Lawyer Pursuant to Rule 3.27 of the Rules of Lawyer Disciplinary Procedure"** upon Lonnie C. Simmons, counsel for Respondent, C. Michael Sparks, via electronic mail and first class mail at the following address:

Lonnie C. Simmons, Esquire
604 Virginia Street East
Charleston, West Virginia 25301
Lonnie.Simmons@dbdlawfirm.com



Rachael L. Fletcher Cipoletti

Exhibit A

AFFIDAVIT OF CHARLES STANFORD WEST**STATE OF WEST VIRGINIA****COUNTY OF MINGO, TO-WIT:**

I, Charles Stanford West, Affiant, having first been duly sworn, upon my oath, do hereby depose and state as follows:

1. I am a resident and citizen of Mingo County, West Virginia.
2. I am a licensed attorney, practicing in the State of West Virginia and Kentucky.
3. I am competent to give this sworn statement.
4. In my capacity as an attorney, I represented George White in recent criminal proceedings in the Circuit Court of Mingo County, West Virginia.
5. Mr. White was indicted by a Mingo County Grand Jury and charged with selling drugs.
6. One of the first things I did after being retained by Mr. White was to conduct a comprehensive interview of him.
7. During this interview, Mr. White informed me that he had been arrested by Eugene Crum, Sheriff of Mingo County, and Dave Rockel, Drug Task Force Commander. Mr. White was very angry with Eugene Crum because Crum still owed him approximately \$3,000.00 for signs Mr. White had done for him when he had run for Sheriff.
8. Mr. White also informed me that Eugene Crum had sold him moonshine whisky and had brought oxycodone from him while he was Magistrate of Mingo County. Mr. White indicated that Mr. Crum had made several buys of oxycodone from him.
9. I wrote down what Mr. White had told me about his dealings with Mr. Crum and told Mr. White that I would bring all of this to the attention of the jury if necessary.
10. A few days later, I received a telephone call from a man who said he was an agent of the FBI. He stated that he wanted to talk with George White.
11. I told the FBI agent that I would ask Mr. White and if he wanted to talk to him I would get back with him. I presented the request to Mr. White who agreed to talk to the FBI. I then contacted the FBI agent and informed him that Mr. White wanted to talk to him. We set down a time and place. The agent said they would provide a proffer from the U.S. Attorney.
12. I sat next to Mr. White during the interview. He detailed his drug activity with Eugene Crum and told them why he was so upset with him.
13. The case progressed toward the trial date and Mr. White and I were in court each time we had pre-trial proceedings scheduled. I had several of the conversations with the FBI agent during this period of time.
14. Approximately one week prior to the 404(b) hearing I delivered an envelope with a motion and memorandum enclosed to Michael Sparks. I asked him to take a look at it and get back to me and to tell me if he wanted to go to trial with this information (The document was a motion to dismiss based upon allegations of misconduct by Sheriff Eugene Crum, together with some case

law and other supporting information.) The misconduct of Sheriff Crum would have been very damaging to the State in all of the Indictments.

- 15. On or about the 25th day of March, 2013, Mr. White had a pre-trial hearing before Judge Thornsbury.
- 16. Prior to the March 25 hearing, I was sitting in front of the County Clerk's office in the Courthouse. I was waiting for George White. Approximately 10 to 15 minutes prior to our hearing, Mr. White showed up, accompanied by Glen White, his brother. George sat down with me and Glen went down the hall and into the area of the County Commission offices. During the next few minutes there was a lot of coming and going by Sheriff Crum, County Commissioner David Baisden, and Michael Sparks.
- 17. After about 10 minutes, Glen came back to where George and I were sitting, at which time Glen told George that they were offering a good deal to him. The deal would have George pleading guilty and he would get approximately 30 days in jail and then home confinement for the rest of his sentence. There was one condition, that is, George would have to fire me as his lawyer.
- 18. We then went up the stairs to Circuit Court and when the case was called, I asked to approach the bench. At the bench I informed Judge Thornsbury that my client wanted to discharge me. The Court granted the request and granted me leave of court to leave the court room.
- 19. After this, I was no longer involved in any way with George White's case.
- 20. And further, affiant sayeth naught.


 Charles Stanford West

Taken, sworn to, acknowledged, and subscribed before me, in my said State and County,

by Charles Stanford West, on this date the 23rd day of September, 2013.

Nov 2, 2021
 MY COMMISSION EXPIRES


 NOTARY PUBLIC

(SEAL)

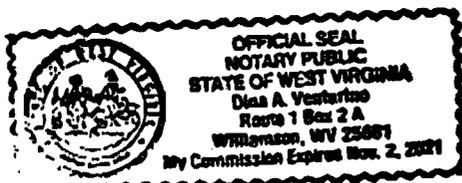


Exhibit B

WRITTEN AFFIDAVIT / STATEMENT

(Please print legibly)

I, George R. White, hereby affirm that the following written account is true to the best of my recollection (sign below):

I was advised by my brother Glenn White, that he had met with Michael Sparks, Doug Baisden, Eugene Crum and Dave Rockett during the time that Charles "Butch" West was my attorney.

Glenn told me that he was instructed to tell me that if I dismissed Mr. West I would receive a lighter sentence.

My sentence was to be 30 days to serve jail time and the remainder on home confinement; in addition to a \$10,000⁰⁰ fine.

I do not know who advised Glenn to relay this information to me. Glenn told me this as I was sitting on a bench in the Mingo County Court House. "Butch" West was present when Glenn told me this.

I dismissed Mr. West that day.

George White

SIGNATURE

DATE: 9/24/13 TIME: 2:45 PM