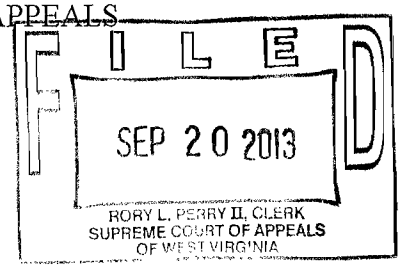
BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS



No._____

OFFICE OF LAWYER DISCIPLINARY COUNSEL,

Petitioner,

v.

C. MICHAEL SPARKS, a member of the
West Virginia State Bar,

Respondent.

**RESPONDENT'S MOTION FOR LEAVE
TO FILE FORMAL RESPONSE TO DISCIPLINARY COUNSEL
COMPLAINT IN RESPONSE TO THE
PETITION SEEKING IMMEDIATE SUSPENSION OF A LAWYER
PURSUANT TO RULE 3.27 OF THE RULES OF LAWYER
DISCIPLINARY PROCEDURE**

On September 19, 2013, Petitioner Office of Lawyer Disciplinary Counsel filed **PETITION SEEKING IMMEDIATE SUSPENSION OF A LAWYER PURSUANT TO RULE 3.27 OF THE RULES OF LAWYER DISCIPLINARY PROCEDURE.** Although Rule 3.27 apparently does not contemplate the filing of any response before the Court acts on the **PETITION**, Respondent C. Michael Sparks respectfully moves this Court for leave to consider the attached formal response filed today to the August 15, 2013 ethics complaint initiated by Petitioner.

Under the rules, responses to a lawyer ethics complaint are confidential. However, Respondent willingly waives the confidentiality of his response because so many of these allegations already have been made public, including through the filing of the **PETITION** in this case. The attached response is limited to addressing the complaint filed by Petitioner, based upon the indictment issued against the Honorable Judge Michael Thornsbury. So far, Respondent has not yet

been asked to file any response relating to the allegations made in the information filed on September 19, 2013. Respondent gladly will file a very detailed response to those allegations at the appropriate time, but for purposes of this proceeding, Respondent categorically denies taking any improper actions or being involved in any scheme as suggested in the information.

Respondent has not been charged with or convicted of any crime. He voluntarily on his own initiative, without a subpoena or immunity agreement, cooperated with the federal investigation into the actions of Judge Thornsbury. While the news coming out of Mingo County changes on a daily basis, Respondent has continued carrying out his obligations as the Mingo County Prosecuting Attorney. Respondent respectfully submits there is no factual basis to support the assertion by Petitioner that Respondent's law license must be suspended immediately because Respondent "poses a substantial threat of irreparable harm to the public."

C. MICHAEL SPARKS, Respondent

–By Counsel–

Lonnie C. Simmons (W.Va. I.D. No. 3406)
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BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

No._____

OFFICE OF LAWYER DISCIPLINARY COUNSEL,

Petitioner,

v.

C. MICHAEL SPARKS, a member of the
West Virginia State Bar,

Respondent.

CERTIFICATE OF SERVICE

I, Lonnie C. Simmons, do hereby certify a copy of the foregoing **RESPONDENT'S MOTION FOR LEAVE TO FILE FORMAL RESPONSE TO DISCIPLINARY COUNSEL COMPLAINT IN RESPONSE TO THE PETITION SEEKING IMMEDIATE SUSPENSION OF A LAWYER PURSUANT TO RULE 3.27 OF THE RULES OF LAWYER DISCIPLINARY PROCEDURE** was served on counsel of record by email and by hand-deliver on the 20th day of September, 2013, to the following:

Rachael L. Fletcher Cipoletti
Chief Lawyer Disciplinary Counsel
2008 Kanawha Boulevard, East
Charleston, West Virginia 25311

Lonnie C. Simmons (W.Va. I.D. No. 3406)

RUDOLPH L. Di TRAPANO
JOSHUA I. BARRETT †
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ROBERT M. BASTRESS III
OLUBUNMI T. KUSIMO-FRAZIER
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KATHERINE R. SNOW*

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September 20, 2013

Rachael L. Fletcher Cipoletti
Chief Lawyer Disciplinary Counsel
2008 Kanawha Boulevard, East
Charleston, West Virginia 25311

Re: C. Michael Sparks
I.D. No. 13-03-378

Dear Rachael:

I.

Introduction

This letter is in response to the complaint opened by your office on or about August 15, 2013. We appreciate your office's courtesy in extending the time to file a response until September 20, 2013.

Attached to your August 15, 2013 letter was a copy of the indictment issued by a grand jury in the United States District Court for the Southern District of West Virginia against the Honorable Judge Michael Thornsbury. Based upon the evidence presented, including the testimony provided by Mingo County Prosecuting Attorney C. Michael Sparks, the grand jury found probable cause exists to support the various criminal allegations against Judge Thornsbury.

The criminal prosecution of Judge Thornsbury, who is presumptively innocent of all charges, is an ongoing matter at this time. Whether there exists evidence to prove all of the charges beyond a reasonable doubt has not yet been determined.

The indictment references Mr. Sparks, who fully, voluntarily, and without any immunity agreement cooperated with the federal authorities and provided information relevant to some of the charges alleged against Judge Thornsbury. In your complaint, you have asked Mr. Sparks to review Rules 3.8, 8.3(b), 8.4(b), 8.4(c), 8.4(d), and 8.4(f) of the West Virginia Rules of Professional Conduct. We have reviewed these rules and pursuant to Rule 2.5 of the West Virginia Rules of Lawyer Disciplinary Procedure, provide the following response.

II.

Background information

A.

Mr. Sparks' biographical information

Mr. Sparks is married and the father of two daughters. In 1992, He received his undergraduate degree in History from the University of Pikeville and in 1996, he obtained his law degree from the West Virginia University College of Law. After receiving his law degree, Mr. Sparks was employed from 1996 through 2002 as a Mental Hygiene Commissioner. From 2002 through 2004, he was employed as an Assistant Prosecuting Attorney in Mingo County. From 2005 to the present, Mr. Sparks has served as the elected Mingo County Prosecuting Attorney.

As a prosecuting attorney, Mr. Sparks has carried out his legal and ethical obligations zealously and successfully. When he has sufficient evidence to support a criminal charge, he has not hesitated to prosecute the case. During his term in office, Mr. Sparks has obtained over 700 felony convictions, including 20 murder convictions.

In addition to his duties as a prosecutor, Mr. Sparks is a member of the Board of Directors for the West Virginia Association of Counties, Chairman of the Board of Directors for the Southwestern Regional Day Report Center, and is a Deacon and Teacher in the Williamson Baptist Church.

B.

Mingo County politics

Before going through the chronology of events set out in the indictment, some additional background information will be helpful in placing some of the actions in the proper context. Mingo County is a single judge circuit, which gives Judge Thornsbury a lot of authority within the county. Politically, Mingo County for several years has been divided into two different political factions within the Democratic Party. Most people involved in politics in Mingo County would identify Judge Thornsbury as the head of one faction and Truman Chafin as the head of the other faction. Thus, in addition to being the only circuit court judge in the county, Judge Thornsbury also has a lot of political power as the head of one faction of the Democratic Party in Mingo County.

Through the years, Mr. Sparks has been perceived, at times, as being included in the Judge Thornsbury faction while at other times in the Truman Chafin faction. Mr. Sparks has made an effort to be neutral, but complete neutrality is impossible to achieve. Mr. Sparks was never a part of Judge Thornsbury's inner circle and he never wanted to be included in that group.

C.

Mingo County grand jury procedure

Mingo County has three regular judicial terms--January, April, and September. Judge Thornsbury was the exclusive authority responsible for empaneling the grand jury and he also selected the grand jury foreperson from the group of grand jurors reporting for service. As prosecutor, Mr. Sparks had the authority to call for a special or intermittent grand jury, but this request would have to be coordinated with Judge Thornsbury. The initial contact Mr. Sparks would have with the grand jury was when he was presenting cases for possible indictment.

III.

Indictment against Judge Thornsbury

A.

Count One: The Romantic Relationship

In paragraphs 12 and 13 of the indictment, it is alleged Judge Thornsbury had a romantic relationship with K.W., his secretary. At the time of the alleged relationship, K.W. was married to R.W. According to the indictment, this relationship occurred in the 2008-09 time period.

Working in the same courthouse with Judge Thornsbury, Mr. Sparks certainly was aware of rumors going around regarding this alleged affair. However, while Mr. Sparks sometimes perceived K.W. as being protective of Judge Thornsbury and other times sensed tension in Judge Thornsbury's office, he had no actual knowledge of this alleged affair.

B.

Count One: The Scheme to Plant Drugs on R.W.'s Pickup Truck

In paragraphs 14 through 16 of the indictment, it is alleged Judge Thornsbury was involved in a plan or scheme to have illegal drugs planted on a pickup truck owned and driven by R.W. At the time of the events alleged in the indictment, Mr. Sparks had absolutely no knowledge of this alleged scheme.

C.

Count One: The Arrest of R.W.

In paragraphs 17 through 26 of the indictment, it is alleged R.W. was arrested for grand larceny for allegedly stealing scrap mine bits. On December 1, 2008, R.W. was charged by WVSP Trooper Moore with Grand Larceny [08F-668], Transferring Stolen Property [08F-669] and False Pretenses [08F-670]. The arrest warrant was issued by then Mingo County Magistrate Eugene Crum. Neither Mr. Sparks nor any assistant employed in his office was involved in the process of obtaining these arrest warrants.

On or about December 15, 2008, after Mr. Sparks learned of the criminal charges against R.W., he called Michael Callaghan, counsel for R.W., and explained he intended to seek the appointment of a special prosecuting attorney in this case. On December 18, 2008, Mr. Sparks filed his Request for Appointment of Special Prosecuting Attorney with Judge Thornsbury. In the request, Mr. Sparks explained he was disqualified from proceeding in this criminal case because he regularly on a weekly basis for about eleven years had worked with R.W.'s spouse, K.W., who was employed as Judge Thornsbury's secretary. At the time this Request was filed, Mr. Sparks believed that was a good faith basis for seeking the appointment of a special prosecutor.

In addition to that official reason, Mr. Sparks was suspicious of these charges being filed against R.W., based upon the rumors regarding Judge Thornsbury having an affair with K.W. While Mr. Sparks did suspect these criminal charges may have been filed at the request of Judge Thornsbury to somehow further his relationship with K.W., Mr. Sparks had no substantial proof either of any romantic relationship between Judge Thornsbury and K.W. and further had no evidence of Judge Thornsbury's involvement in obtaining these criminal charges against R.W.

The filing of this request for a special prosecutor began the process of the criminal charges against R.W. eventually being dismissed. First, on December 18, 2008, Judge Thornsbury voluntarily disqualified himself from the R.W. case. On December 30, 2008, Special Judge Chafin granted Mr. Sparks' request for a special prosecutor. On January 9, 2009, without a motion being filed by anyone, Magistrate Crum dismissed the criminal charges filed against R.W. This dismissal occurred before a special prosecutor was ever appointed.

D.

Count One: The State Grand Jury Scheme

In paragraphs 27 through 38, it is alleged on or about January 20, 2009, Judge Thornsbury empaneled a grand jury to investigate additional criminal charges against R.W. Judge Thornsbury appointed his friend and business partner, Jarrod Fletcher, to be the foreperson. Mr. Fletcher also served as Mingo County's Director of Emergency Services.

In February, 2009, Mr. Sparks observed multiple bankers boxes in the hallway. When he inquired about these boxes, Mr. Sparks' legal assistants advised him the multiple bankers boxes contained documents subpoenaed by the grand jury. The Mingo County Prosecutor's office did not request or prepare the subpoenas. At some point thereafter, Mr. Sparks asked Judge Thornsbury about the multiple bankers boxes. Judge Thornsbury advised Mr. Sparks that it was a big case involving millions of dollars in thefts from a mining company.

Mr. Sparks did present cases before this particular grand jury, resulting in the issuance of numerous indictments. As noted earlier, Judge Thornsbury was responsible for empaneling grand juries and selecting the foreperson. At that time, Mr. Sparks was not aware of any statute or case law prohibiting Mr. Fletcher from serving as the foreperson. In Mr. Sparks' experience, he knew police officers and firefighters can serve on grand juries and he considered Mr. Fletcher's job as Director of Emergency Services to be similar. To the best of his recollection, no defense lawyer raised any motion challenging any of the indictments returned based upon Mr. Fletcher being a public official. The only challenge Mr. Sparks can recall is one lawyer challenged an indictment because Mr. Fletcher's involvement in arrests that occurred subsequent to these indictments was allegedly tantamount to Mr. Fletcher acting as a "quasi-police officer."

Other than the limited facts listed above, Mr. Sparks otherwise had no actual knowledge of what evidence was presented to this grand jury in an effort allegedly to indict R.W. As noted in the indictment, this grand jury did not return any indictment against R.W.

E.

Count One: The Conspiracy, Manner and Means of the Conspiracy, Over Acts

In paragraphs 39 through 57, it is alleged the acts previously asserted constituted a conspiracy to violate the constitutional rights of R.W. Because Mr. Sparks already has addressed above his knowledge of certain facts alleged in Count One, he has nothing to add to this final section of Count One.

F.

Count Two: February 23, 2012 Arrest of R.W.

In paragraphs 58 through 67 of the indictment, it is alleged a second conspiracy to violate the rights of R.W. occurred on or about February 23, 2012, when R.W. was arrested for assault and battery. This alleged assault and battery occurred on or about January 25, 2012, near a convenience store in Gilbert, West Virginia, and involved an argument and fight between D.B., R.W.'s brother-in-law, C.B., R.W.'s nephew, and R.W. Originally, only D.B. and C.B. were arrested.

On February 21, 2012, the charges against C.B. were dismissed, at the request of the arresting officer Glanden. On February 22, 2012, the charges against D.B. were dismissed also at the request of Glanden. On February 23, 2012, R.W. was charged and arrested by Glanden on two counts of battery and two counts of assault.

On March 15, 2012, Assistant Prosecuting Attorney Chandler tendered a plea offer requiring R.W. to serve 6 months in jail as requested by the officer. R.W. rejected the plea offer. At that time, Mr. Sparks had no knowledge of the case proceedings or plea offer.

Some time in August, 2012, Jeff Cline, who is a good friend of Judge Thornsbury and active in politics, told Mr. Sparks "the big man," which is the way he referred to Judge Thornsbury, wanted R.W. to receive a sentence of 6 months in jail. Of course, Mr. Sparks had no way of knowing whether or not what Mr. Cline said was accurate or not. Shortly thereafter, in or about August, 2012, Mr. Sparks reviewed the police report and the video evidence. After reviewing this evidence, Mr. Sparks concluded the evidence was insufficient to prosecute R.W. and he immediately notified R.W.'s lawyer, Mike Callaghan, that the charges were going to be dismissed.

On October 31, 2012, the motion filed by Mr. Sparks to dismiss the criminal charges against R.W. was granted, over the objection of the arresting officer.

G.

Mr. Sparks' Decision to Speak with Federal Authorities

In the early months of 2013, it became generally know in Mingo County that a federal investigation was being conducted involving Judge Thornsbury. On April 3, 2012, Sheriff Crum was murdered. This date is important because shortly after Sheriff Crum's death, Mr. Sparks, who up to that time had never been contacted by any federal officer, had a discussion with his investigator, Jim Gilman, that he wanted to assist the federal investigation in any way he could. Mr. Sparks directed

Gilman to schedule a meeting with West Virginia State Police officers and an FBI agent in Chapmanville. This meeting began the cooperation by Mr. Sparks with the federal investigation.

Eventually, Mr. Sparks did testify before the grand jury, without any immunity agreement or consultation with counsel. At that time, Mr. Sparks provided truthful testimony regarding his actual knowledge regarding the events set out in the indictment. When all of the testimony from all of the cooperating witnesses was put together, a more complete story as to Judge Thornsbury's actions was developed, as alleged in the indictment.

IV.

Mr. Sparks has not violated any ethical rules

A.

Rule 3.8: Special responsibilities of a prosecutor

Rule 3.8 provides:

> 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.

In reflecting back on the actions he took during the time period covered by the indictment against Judge Thornsbury, Mr. Sparks is not aware of any action he took inconsistent with any of these responsibilities. As soon as Mr. Sparks reviewed the evidence and videotape from the January 25, 2012 incident between D.B., C.B., and R.W., he immediately called counsel for R.W. and stated he would move to dismiss the charges. This action was consistent with Rule 3.8(a) and (d). Mr. Sparks is not aware of any facts triggering his obligations under 3.8(b), (c), or (e). If counsel for Mr. Sparks has misunderstood your inquiry and you want to direct his attention to how these provisions may be implicated, Mr. Sparks respectfully would request an opportunity to respond to any such additional information from you.

Mr. Sparks takes his professional and ethical duties as a prosecutor very seriously and strives to meet these responsibilities on a daily basis. He specifically denies violating any provision of Rule 3.8.

B.

Rule 8.3(b): Reporting professional misconduct

Rule 8.3(b), which addresses the obligation lawyers have to report misconduct, provides:

> 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.

The indictment is based upon a combination of facts asserted by multiple cooperating witnesses, including Mr. Sparks. Many of these witnesses, such as Mr. Sparks, knew only some of the relevant facts. Thus, it would be erroneous for anyone to read the entire indictment and conclude Mr. Sparks had knowledge of every fact, plan, and scheme alleged therein.

At no time did Mr. Sparks have actual knowledge that Judge Thornsbury had "committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office." A review of the allegations reveals what information Mr. Sparks had regarding the matters alleged in the indictment.

Romantic relationship allegations: Many people in the Mingo County Courthouse, including Mr. Sparks, had heard rumors regarding an alleged romantic relationship between Judge Thornsbury and his secretary, K.W. Although Mr. Sparks believed these rumor, he did not have actual knowledge of this affair. Furthermore, a judge having an affair with his secretary, which raises other issues not pertinent to this discussion, does not rise to the level of raising a "substantial question as to the judge's fitness for office." In other words, a judge can have a romantic affair and still be perfectly fit to carry out his or her judicial duties.

Plan to plant illegal drugs on R.W.'s pickup truck: As explained above, Mr. Sparks had no knowledge of any plan or scheme by Judge Thornsbury to plant illegal drugs on R.W.'s pickup truck.

The December 1, 2008 arrest of R.W.: When Mr. Sparks learned that R.W. was arrested on or about December 1, 2008, he was suspicious of this arrest, based upon the rumors regarding Judge Thornsbury having an affair with K.W., the wife of R.W. However, Mr. Sparks had no actual knowledge that Judge Thornsbury played any role in this arrest. It is respectfully submitted that when a lawyer files a formal complaint against a judge, claiming the judge is unfit for office, the lawyer had better have solid evidence to support such a serious charge. Mr. Sparks simply did not have enough evidence to support making such a charge. As it turns out, by disqualifying himself for very legitimate reasons, Mr. Sparks began the process, which ultimately resulted in these criminal charges filed against R.W. being dismissed.

The State Grand Jury scheme: While Mr. Sparks did learn a grand jury had been empaneled by Judge Thornsbury, that was not unusual because Judge Thornsbury had the authority to empanel grand juries and to select the foreperson. Mr. Sparks was not aware of any statutory disqualification of Mr. Fletcher to serve on this grand jury. In fact, Mr. Sparks presented his own cases for this grand jury, which returned indictments against a number of different individuals. Mr. Sparks also did not have any knowledge that the investigation into a coal company losing millions in thefts, as explained to him by Judge Thornsbury, was completely without merit and solely focused on indicting R.W. Therefore, Mr. Sparks did not have sufficient knowledge or proof that Judge Thornsbury had engaged in judicial misconduct in connection with this grand jury investigation that would raise a substantial question as to his fitness for office.

February 23, 2012 arrest of R.W.: As soon as Mr. Sparks reviewed the evidence and videotape regarding the convenience store altercation between D.B, C.B., and R.W., he called counsel for R.W. and said he would move to dismiss the charges. Mr. Sparks did file the dismissal motion, which was granted, over the objection of the arresting officer. While, once again, Mr. Sparks knew there were rumors of Judge Thornsbury having an affair with K.W., and was suspicious of this arrest of R.W., Mr. Sparks did not have any actual knowledge as to any role Judge Thornsbury played in having R.W. arrested.

Mr. Sparks did speak voluntarily on his own initiative with federal authorities and share his actual knowledge regarding some of the events outlined in the indictment. Because the federal agents had conducted their own extensive investigation and had obtained information from other witnesses, the facts provided by Mr. Sparks helped explain some of the actions and filled in some blanks. When the federal authorities put all of the facts together, resulting in the indictment of Judge Thornsbury, very soon thereafter actions were taken to suspend Judge Thornsbury's law license and immediately prevent him from serving as a judge. Thus, the actions of Mr. Sparks to voluntarily provide information to federal investigators did, in fact, in combination with other evidence unknown to Mr. Sparks, result in Judge Thornsbury no longer serving Mingo County as a judge.

Overall, it is very easy after the fact to question the actions or inactions of all persons identified as witnesses in the indictment against Judge Thornsbury. But looking back to what Mr. Sparks actually knew at the time, he simply did not have enough actual knowledge to trigger any obligation, under Rule 8.3(b), to report Judge Thornsbury's actions to the Judicial Ethics Commission.

The form for filing a complaint against a judge with the West Virginia Judicial Investigation Commission specifically advises the complainant: **"The judicial officer who is the subject of your complaint has a right to see your complaint and respond to it. By filing this complaint, you consent to such disclosure."** Since the judge, who is the subject of a complaint, will get to review the verified complaint and learn the identify of the complainant, any person filing such a complaint had better have solid evidence of wrongdoing before making any assertions. Any prosecutor filing such a complaint in a single judge county, without first having unimpeachable evidence establishing the judge had engaged in misconduct which raises a substantial question as to his fitness for office, would be committing professional and political suicide. Rule 8.3(b) surely cannot be interpreted to mean a lawyer has to file a complaint against a judge based only on suspicions, without also having actual knowledge and evidence proving the judge is unfit for office.

Asserting that a judge is unfit to serve in that office is an accusation that must never be made lightly or frivolously, and must be supported by solid evidence and actual knowledge of the complainant. Mr. Sparks simply was never in a position, based upon the actual knowledge he had, to accuse Judge Thornsbury of being unfit for office. Therefore, the obligations of Mr. Sparks to make such a report under Rule 8.3(b), was never triggered.

C.

Rule 8.4: Misconduct

Rule 8.4(b), (c), (d), and (f), identifying various acts of misconduct, provide:

> It is professional misconduct for a lawyer to:
>
> (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.

Responding to an inquiry regarding any alleged Rule 8.4 violation is always a challenge because these provisions are so general and your letter does not specifically identify what actions you claim possibly trigger these provisions.

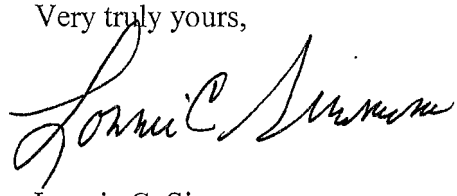
Mr. Sparks has never been charged with any criminal act, which is an essential element of a Rule 8.4(b) violation nor has Mr. Sparks committed any criminal act. Mr. Sparks has never engaged in any conduct involving dishonesty, fraud, deceit or misrepresentation, as required by a Rule 8.4(c) violation. Mr. Sparks has never engaged in any conduct prejudicial to the administration of justice, as required by a Rule 8.4(d) violation. The actions taken by Mr. Sparks, as outlined in the indictment and explained in more detail in this response, was beneficial to the administration of justice. Mr. Sparks never knowingly assisted Judge Thornsbury in violating any rule of judicial conduct or other law.

Once again, if counsel for Mr. Sparks somehow is misunderstanding your inquiry and you want to direct our attention to any specific criminal act, fraud, prejudicial conduct, or knowingly assist a judge in wrongful conduct committed by Mr. Sparks, we would appreciate having the opportunity to respond such allegations.

Based upon the actual facts known by Mr. Sparks at the time of the events alleged in the indictment, he carried out his responsibilities as a prosecutor consistent with his ethical obligations, he never had enough information to report any alleged misconduct on the part of Judge Thornsbury, and he otherwise did not personally engage in any misconduct.

For these reasons, we respectfully ask that you dismiss this complaint because there is no factual basis for your office to take any disciplinary action against Mr. Sparks. If you need any additional information from Mr. Sparks, please let us know.

Very truly yours,



Lonnie C. Simmons

cc: C. Michael Sparks

VERIFICATION

State of West Virginia

County of Mingo, to-wit:

I, C. Michael Sparks, after having been duly sworn under oath, do hereby verify and affirm that the facts asserted in the foregoing letter response to the inquiry filed by Chief Lawyer Disciplinary Counsel Rachael L. Fletcher Cipoletti regarding a formal complaint opened by the Office of Disciplinary Counsel are true and to the extent they are based upon information and belief, I believe them to be true.

C. Michael Sparks

Sworn to and signed before me this 20th day of September, 2013.

Kasey N. Potter
Notary Public

My commission expires Dec 10, 2013.