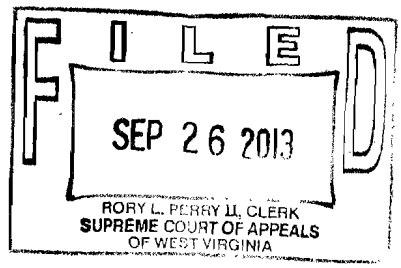
BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

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

On September 25, 2013, Petitioner Office of Lawyer Disciplinary Counsel filed a supplement to the initial **PETITION SEEKING IMMEDIATE SUSPENSION OF A LAWYER PURSUANT TO RULE 3.27 OF THE RULES OF LAWYER DISCIPLINARY PROCEDURE,** filed on September 19, 2013. Although he recognizes eventually the filing of the emergency petition, supplement to the emergency petition, and responses in opposition thereto eventually has to come to an end, Respondent C. Michael Sparks, the duly elected Prosecuting Attorney in Mingo County, respectfully moves this Court for leave to file this short response to the supplement and to ask the Court, if it still has questions about the allegations, to permit Respondent a couple of days to file a more detailed response to the new items raised for the first time in the supplement.

For the emergency relief requested to be granted, Petitioner must convince this Court first that Respondent has violated the West Virginia Code of Professional Responsibility and, second, that Respondent "poses a **substantial threat of irreparable harm to the public.**" (Emphasis added).

Overall, the emergency procedure outlined in Rule 3.27 of the West Virginia Rules of Disciplinary Procedure does not provide much guidance to the Court or to counsel and the litigants over the standard to be applied, what threshold of proof is required, and what exactly is meant by "poses a substantial threat of irreparable harm to the public." This rule permits the challenged lawyer first to be found guilty of violating one or more Rules of Professional Conduct, without any hearing or opportunity to present evidence, and then, after the law license is suspended, to provide the challenged lawyer with a hearing. Because this procedure is so contrary to accepted notions of due process, clearly it is intended only to be applied in the most extreme cases.

The facts in the few cases by this Court where this rule was applied are far removed from the facts alleged in the present case. In particular, the lawyers in these earlier cases either abandoned their practices or were charged with crimes or otherwise refused to respond to the petition for emergency relief. In contrast, Respondent continues to carry out his duties as the Mingo County Prosecuting Attorney, has not been charged with any crime, and has made every attempt to file with this Court expedited responses in opposition to the emergency relief requested, even waiving his right to keep his responses to the ethics complaints confidential.

The supplement to the emergency petition claims Respondent's law license should be immediately suspended as posing a substantial threat of irreparable harm to the public based upon the following new information:

1. In a television interview, Respondent made a statement about investigating the indictments returned from the grand jury, where it turns out the foreperson was not statutorily eligible to serve on the grand jury. As noted in the first response filed with this Court, so far, none of the defendants who were convicted based upon the indictments issued by that grand jury has filed any challenge to their convictions based upon this ground. Of course, our case law regarding the impact of any alleged prejudice when there is some defect in an indictment, but the defendant subsequently

either pleads guilty or is convicted by a jury, would not support habeas corpus relief in this circumstance. Petitioner also is not aware of what actions Respondent has taken in connection with the indictments issued by this grand jury.

2. Charles Stanford West claims to have provided a motion to Respondent detailing the wrongdoing of Sheriff Eugene Crum. Respondent absolutely denies ever receiving any motion from Mr. West, who was the unsuccessful candidate running against Respondent in the 2012 election for the Mingo County Prosecuting Attorney's office and who presently is actively seeking the judgeship. The court record does not show any such motion was ever filed by Mr. West and Respondent has witnesses in his office, who will testify no such motion was ever filed in the office, to the best of their knowledge.

3. George White, who was prosecuted by Respondent and who entered a guilty plea to two felonies, states in his affidavit that his brother told him something about a meeting that took place with Respondent, Dave Baisden, Sheriff Crum, and Dave Rockel. Ignoring for the moment the hearsay problem with this assertion, Respondent categorically denies any such meeting ever took place and he will have other witnesses to confirm this denial.

4. The matters raised in the sealed material, which suggests additional material may be provided, require a more detailed response. Some of the issues raised are more semantics than substance, but Respondent would like the opportunity to provide the Court with a more detailed response once all of the materials identified are provided, particularly if the Court is inclined to grant the emergency relief requested.

In this case, the Court is faced with a multitude of allegations and denials of those allegations. As noted in the earlier responses, Respondent denies he violated any of the Rules of Professional Conduct and denies he committed any crime. The granting of the emergency relief requested by Petitioner would be professionally, personally, and economically devastating to Respondent, who has strived to carry out his ethical duties in Mingo County in front of a judge who, as indicated in the allegations asserted in the indictment and information, was very powerful.

Due to the many factual disputes apparent in the allegations asserted and Respondent's denial of any wrongdoing, Respondent respectfully asks this Court to deny the emergency relief requested so the normal processing of these ethics complaints can proceed in the appropriate forum, where

witnesses are cross-examined and a complete record is developed. Furthermore, Respondent respectfully submits Petitioner has failed in meeting its burden that somehow Respondent continuing to carry out his duties as the duly elected Prosecuting Attorney in Mingo County poses a substantial threat of irreparable injury to the public.

C. MICHAEL SPARKS, Respondent

–By Counsel–

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v.

C. MICHAEL SPARKS, a member of the
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Respondent.

CERTIFICATE OF SERVICE

I, Lonnie C. Simmons, do hereby certify a copy of the foregoing **RESPONDENT'S MOTION FOR LEAVE TO FILE RESPONSE TO SUPPLEMENT TO AMENDED PETITION SEEKING IMMEDIATE SUSPENSION OF A LAWYER PURSUANT TO RULE 3.27 OF THE RULES OF LAWYER DISCIPLINARY PROCEDURE** was served on September 26, 2013, on counsel of record by email and through the United States Postal Service, postage prepaid, to the following:

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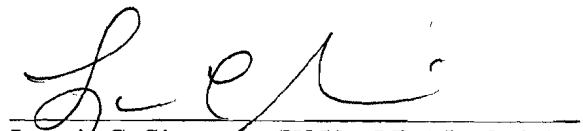

Lonnie C. Simmons (W.Va. I.D. No. 3406)