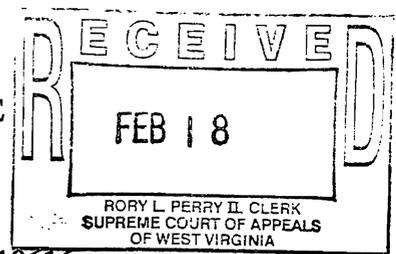


**BEFORE THE HEARING PANEL SUBCOMMITTEE  
OF THE LAWYER DISCIPLINARY BOARD  
STATE OF WEST VIRGINIA**



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

**Bar No.: 10616  
Supreme Ct. No. 13-1128  
ID No.: 12-05-448**

**DECISION AND ORDER**

**PROCEDURE**

The Respondent Jarrell L. Clifton, II, is a duly admitted member of the West Virginia State Bar, No.: 10616. This case results from a *Statement of Charges* brought October 31, 2013, by the Lawyer Disciplinary Board Investigation Panel. After considering and ruling upon prehearing motions and other preliminary matters in this case, a full hearing was held before this Subcommittee on November 10<sup>th</sup> and 11<sup>th</sup>, 2014. The allegations contained in the *Statement of Charges* relate primarily to allegations of personal and sexual interactions with those Mr. Clifton had official interaction with such as to violate rule provisions relating to conflict of interest, professional misconduct reflecting on his fitness to practice, as well as making false statements, all as more fully detailed below. While the Office of Disciplinary Counsel recommends severe sanctions including a protracted loss of the license of the Respondent, we conclude and recommend to the Court, based upon our careful consideration of the evidence before us, sanctions announced herein as sufficient to satisfy the relevant purposes.

**FINDINGS OF FACTS**

The following factual findings are made in conformity with Rule 7.3 of the *West Virginia Rules of Disciplinary Procedure*, requiring that allegations be proved by clear and convincing evidence.

Certain relative facts of this matter are uncontested. Mr. Clifton was first admitted to the West Virginia State bar on November 5, 2007. He served as an Assistant Prosecuting Attorney

from November 2007 until January 2011. On August 7, 2012, a criminal indictment was returned by the grand jury in Pocahontas County, West Virginia, charging Mr. Clifton with two counts of sexual assault in the second degree and two counts of imposition of sexual intercourse on an incarcerated person. Those charges were self-reported to the Office of Disciplinary Counsel (“ODC”) on August 8, 2012, the day following the indictment. The ODC directed that Mr. Clifton respond to the allegations in terms of implicated ethical standards, by letter request. Within the prescribed response the Respondent informed the ODC of his invocation of the Fifth Amendment privilege, and deferred a substantive response until the criminal action was resolved. Accordingly, the investigative panel stayed its proceedings on September 15, 2012. The records of this case indicate that a hearing on the criminal charges was held on December 6, 2012, and by order of the Court entered January 8, 2013, the criminal charges were dismissed with prejudice. Both the sitting Circuit Judge of Pocahontas County at the time and its Prosecutor recused themselves and the case was handled by the Honorable John Henning, sitting by designation, and the State was represented by Brian Parsons, Assistant Prosecuting Attorney of Fayette County, serving as Special Prosecutor.

Following the dismissal of the criminal case, the ODC renewed its request for a response, which was filed by Mr. Clifton. Turning to the charges alleged and heard by this Subcommittee Panel, those are discussed as organized and plead by the ODC, together with our findings. The *Statement of Charges* contains various information that describes the investigation; however, our findings are limited to the substantive charges.

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

The criminal indictment of Mr. Clifton was based upon allegations of sexual assault and

imposition of sexual intercourse on an incarcerated person, wherein T.S. was the alleged victim as to each of the counts of that indictment.<sup>1</sup>

It is uncontested that T.S. has an established history of drug abuse that precedes the facts relating to this case. (Tr. Day 1, Pg. 41). She recites a long history of opiate addiction which extended from about age 23 (she is presently 29 years of age) including Oxycontin, Xanax, “Roxys,” opiates and synthetic opiates. (Tr. Day 1, Pg. 41). She acknowledges periods of relapse which she attributes to taking a post-surgical pain reliever, Percocet. During the time of the instant proceedings, T.S. had a pending charge of driving under the influence of drugs, which she concedes resulted from an arrest in the drive-through lane of a Dairy Queen restaurant. When asked if she was “lapsing in and out of consciousness” she testified that she had her “head back on [her] seat, yes.” She further testified an ambulance had been called and both EMS and police appeared resulting in the charge. However, further questions were not answered when T.S.’s attorney, who was in attendance, objected on a Fifth Amendment basis. (Tr. Day 1, Pgs. 48-52).

T.S. was indicted in Pocahontas County, West Virginia, on August 4, 2009, for possession with intent to deliver a controlled substance, in Criminal Case No.: 09-F-22. Those charges were resolved by her plea to one of those counts on November 6, 2009, and the remaining charge was dismissed. She received a suspended sentence of 1 to 5 years, in lieu of 2 years of probation, including one year participation in the local day report program. Violations

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<sup>1</sup>While the *Statement of Charges* in this action contain a violation based on Mr. Clifton violating criminal statutes, notwithstanding the dismissal of those, the ODC withdrew the counts of its charges relating to violations of West Virginia Code § 61-8B-10 through a stipulation which was approved by the Subcommittee. Accordingly, we do not consider those charges.

of the order relating to her sentence could result in reinstatement of the suspended sentence and incarceration. While T.S. and Mr. Clifton agree, through their testimony, that there was a previous acquaintanceship between the two of them, the nature, history and events associated with that acquaintanceship are in contention.

There is general agreement that T.S. was enrolled in the day report program during the relevant time period. She initially impressed those around her with her commitment to her own sobriety as well as her work inspiring others in substance abuse recovery and drug abuse prevention. She was active in the Drug Prevention Coalition, spearheaded an effort to convert premises to a bowling alley for youth activity and was recruited by Pocahontas County Sheriff Jonese and the Sheriff's wife as a speaker to a youthful audience on the subject of drug abuse. Simply put, it is clear from the evidence that T.S. was accorded a higher level of status in the community as compared to others enrolled in day report. (Tr. Day 1, Pgs. 77-80, Tr. Day 1, Pg. 82-86 and Tr. Day 2, Pgs. 193-195).

Mr. Clifton and T.S. recall consistently that their contact leading to the events in contention here originated by Facebook contact. Mr. Clifton was a candidate for Pocahontas County Commissioner and had a dedicated Facebook page in that connection. (Tr. Day 1, Pgs. 79-80 and Day 2, Pg. 47). T.S. acknowledges that a contact was initially received on her Facebook page from Mr. Clifton which is consistent therewith. Mr. Clifton acknowledges that after receiving flattering comments concerning his Facebook pictures from T.S., he responded that he found certain of T.S. photos attractive, including one in which she was wearing only panties. T.S. replied to the effect that she looked even better now. Mr. Clifton acknowledges that he invited her to "show me" - inviting more revealing photos. (Tr. Day 2, Pgs. 56-57).

While Mr. Clifton acknowledges that he had an interest in the revealing photographs, the exchange was mutual and visits that T.S. made to his office, while he served as an Assistant Prosecuting Attorney, were largely limited to discussions of common interests in the Drug Prevention Coalition and matters relating to her community activities. T.S., however testified that Mr. Clifton demanded more sexually explicit photographs, accompanied by veiled threats of her being returned to jail. We find however, based on T.S.'s testimony, that there is little support for this, and if believable, would be conjecture.

A: Yes. Well, I mean when you're directly threatened or you take it as a threat, I mean when somebody says to you "I don't want to see you go back to jail," or, you know, things like that, I mean, you know, I took that as a threat that I'd end up back in jail. In some portion or way, I'd end up in jail.

Q: Okay. And the way you feared that might happen - - because, obviously, Mr. Clifton couldn't put you in jail, right?

A: Well, I don't know. Anybody can pull anything and do anything. I don't know. I mean I was fearing, I mean.

(Tr. Day 1, Pgs. 87, 88)

Mr. Clifton asserted that he made no statements to her that could have been interpreted as threatening. To the contrary, he encouraged her to remain compliant and stay out of trouble.

T.S. further alleges that Mr. Clifton, in connection with her perceived threats, asked and *received oral sex from her, although she was able to avert those occasions by, on one occasion saying that her mouth was too dry and on the second occasion, slightly biting his penis.* First we are somewhat troubled by T.S. own expressed lack of memory concerning those events. She has variously recounted instances of engaging in oral sex with Mr. Clifton from once to several more times. We also consider the testimony of M.F. who testified, in substance, that T.S., while the

two were both in the day report program at the same time, told M.F. she was having consensual sex with Mr. Clifton. M.F. testified that the sex between T.S. and Mr. Clifton left her thighs red and sore, and that T.S. seemed eager to go to Mr. Clifton's office for that purpose. M.F. further testified that when the allegations contained in the indictment of Mr. Clifton forcing oral sex with T.S. became know to M.F., M.F. attempted to dissuade her from that course because M.F. knew the allegations to be false. M.F. further testified that T.S. responded by trying to persuade her to be supportive of T.S. story and offered to purchase M.F. an automobile in exchange. M.F. also testified that after she told T.S. that she (M.F.) had a favorable outcome in a court appearance, T.S. took credit for that, saying that she (T.S.) had sex with the Respondent in exchange for that result. (Tr. Day 2, pgs. 225-230,234). The Respondent, while conceding the exchange of texts and receipt of photographs and videos from T.S., denies the acts of sex alleged by her. He further denies making any threats to her within any context.

T.S. testified that she expressed concerns to Elisa Taylor, who in turn instructed her to go to Sheriff Jonese. However, rather than reporting any sexual impropriety of the Respondent, she only disclosed that there had been photographs exchanged. (Tr. Day 1, Pgs. 95-99). Although T.S. had earlier stated that she had complained of the sexual abuse to Fred Taylor, a probation officer, during her testimony she changed that story and acknowledged that she had in fact not done that. (Tr. Day 1, Pgs. 99-100). Elisa Taylor who was involved in the supervision of T.S. during her probation and day report opined that T.S. came to her as a drug addicted young lady who behaved as such “. . .one day they're lying, the next day they're telling the truth, possibly. It was hard to tell. It depended upon what the situation was, what day it was, how she was that day.” (Tr. Day 1 Pg. 327). Lt. Simon opined during his testimony, “My feelings about [T.S.] is

she took advantage of the situation. I mean does that make her an evil person? No. I mean she should've just told the truth in this matter and you know, like I said we may not have been here today." (Tr. Day 1, Pg. 368).

T.S. herself acknowledges that while a former boyfriend, J.U. was a purported witness to a sexual abuse at the hands of another county employee J.U. falsely stated that he had witnessed the episode, when he had not and that T.S. had failed to disclose that, but rather used it at times in confronting him with it when it advantaged her. T.S. acknowledged that J.U. had in fact received an automobile as a reward for his participation in that case. (See Tr. Day 1, Pgs. 54-56).

Over Respondent's counsel's objection we permitted an investigating trooper, Lieutenant R.J. Simon to elaborate regarding his investigation of the criminal case against Mr. Clifton. Lieutenant Simon testified ". . . I believe she lied about the rape, about the sexual engagements with Mr. Clifton being rape." (See Tr. Day 1, Pg. 352). He had also investigated the aspects relating to M.F.. "T.S. was trying to get M.F. to change her - - to go along with the story of this sexual assault, being the rape that, obviously, I think everyone realizes now that it was a consensual sexual relationship."

Sheriff David Jonese testified concerning the character for truthfulness of T.S.:

"I've found that she is very good at manipulating. She plays the role very good, but she is untrustworthy. I don't think she knows the truth." (Day 2, p.195) "[Y]ou could not believe her even, I don't believe under oath...she perpetually lies and manipulates. (Day 2, p. 199)

As found in the *Statement of Charges* Paragraphs 24 and 52, the Respondent is charged with violating Rule 8.1 of the *Rules of Professional Conduct*, by knowingly making a false

statement of material fact. Specifically, Mr. Clifton is accused of initially denying to Lieutenant Simon and FBI Agent Fred Aldridge that he had anything beyond a professional acquaintanceship with T.S. until he was confronted with evidence to the contrary. Lt. Simon, while testifying from records contained in his completed report, confirms that an examination of his original notes from the interview contain no such reference. Simon testified that "I have a massive problem with T.S. in that - - If that's where you're going with this - - in that, you know, she elected to lie and be deceptive as far as it pertains to sex with J.L. Clifton." (Tr. Day 1, Pg. 365). Lt. Simon testified that FBI Agent Aldridge prepared a form "302" which memorialized the discussion in the interview with Mr. Clifton. (Tr. Day 1, Pgs. 356 - 357). Mr. Aldridge after examining his report to refresh his recollection testified as follows.

Q: Now, you said that when you first - - or not first, but prior to the time you disclosed to Mr. Clifton that you had sent T.S. wired up, that he did tell you they were friends on Facebook, right?

A: He did. He changed his story from being professional acquaintances to they were friends on Facebook and that they'd exchange pictures.

Q: Okay. But that was before you told him that you sent him [sic] in wired?

A: Let's see how it's worded. Yes, that is.

Q: Okay. So he didn't deny they had friendly contact or even exchanged pictures?

A: No.

(Tr. Day 1, Pgs. 411 - 412).

It is accordingly clear that while Mr. Clifton first described the relationship with T.S. as professional acquaintances during the time he believed their questions concerned matters other than his relationship with her, *without* being confronted with the fact that he had been recorded

by T.S. he disclosed not only the “friendly contact” but also the exchange of the Facebook pictures in this case. We cannot therefore conclude that the initial omission of that information constitutes the making of a false statement of material fact.

In sum, we cannot find by clear and convincing evidence that Mr. Clifton had sexual relations with T.S. as purported by her in her testimony. Hence, we further find that Mr. Clifton has not committed the criminal offense of sexual assault as found in the criminal indictment for the same reasons.

We further find that, however, that Mr. Clifton engaged in online Facebook activity with T.S. while he served in the position of Assistant Prosecuting Attorney that were improper based on the respective positions occupied by Mr. Clifton and T.S. at that time, which are discussed below in our recommended decision.

We have also considered the conduct of Mr. Clifton as recorded surreptitiously by T.S. in connection with the law enforcement investigation. At that time Mr. Clifton had left the of Office of the Prosecuting Attorney and was in private practice at a private office location. As acknowledged by T.S., she had not heard from him after being removed from her friend list on Facebook. Rather, the contact with him had been reinitiated by her “refriending” Mr. Clifton. We must therefore logically conclude that in absence of T.S. reinitiating that contact, there would have been none. Turning to Mr. Clifton’s behavior during that recorded meeting between the two, the recording clearly contains repeated requests from Mr. Clifton for T.S. to show parts of her body and to “touch” him. Based on Subcommittee Panel Member Akers’ inquiry of the Respondent on that subject, we conclude that Mr. Clifton’s behavior was based on mixed motives. Mr. Clifton candidly admits that he felt that if T.S. would have complied with his

request, it would have given him the assurance that he was not being recorded by her. It would have also apparently given Mr. Clifton the added assurance that their interaction would not then lead to personal problems in his life. Such was also the conclusion of Agent Aldridge: "I think when you listen to the transcript or the recording, I think there is -- there's dialogue between [T.S.] and Mr. Clifton where he's trying to figure out which team she's on..." (Tr. Day 1, p.407). Having found that the sexual based allegations by T.S. are without merit, we likewise conclude that he had no reason to fear consequences connected therewith. We treat the foregoing findings in that respect in our conclusions below.

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

We find based on the testimony and evidence in this case that the *Statement of Charges* as contained in Paragraphs 25 through 29 substantially undisputed, with the exception of the lack of knowledge that a video recording of a sexual act between K.M. and the Respondent was made without her consent or knowledge. It is clear that K.M. and Mr. Clifton had an historic sexual relationship that dated back to the Fall of 1995, over a decade before Mr. Clifton completed law school. K.M. had been an on-and-off employee of Mr. Clifton's in a restaurant/bar business during that time and their amicable professional and personal relationship was punctuated by episodes of acrimony, wherein K.M. would stop working for him but would return once things were patched up. (Tr. Day 1, Pg. 165).

One of Mr. Clifton's first cases as an attorney was a civil dispute concerning restaurant equipment of K.M.'s that was in dispute with the lessor of a restaurant business that she operated. Mr. Clifton apparently resolved the dispute by collecting a combination of money due to K.M. and return of certain of the equipment, to K.M.'s apparent satisfaction.

At a later time, in 2008, Mr. Clifton was approached by K.M. to handle a dispute wherein she sought to collect for unpaid meals from Allegheny Echos. It is during the pendency of that legal action that K.M. alleges the Respondent began making overtures to rekindle their sexual relationship and at times used matters relating to that case as the reason for them to meet. She further alleges that her adult son J.W., had been charged with brandishing a weapon and she sought his counsel or advice respecting that matter while the Respondent was an Assistant Prosecuting Attorney. She alleges that while Mr. Clifton agreed to meet with her concerning that, she was under the impression that her son was exposed to years of imprisonment and acquiesce to Mr. Clifton's overtures by "kissing" his penis but refused to do more. She testified that she was "terrified" concerning the potential fate of her son in connection with the criminal case and was under extreme pressure because he had vacillated with respect to whether or not he had destroyed the original sex tape made in 1996. The Respondent categorically denies the allegations offered by K.M. In reaching our findings, we consider a number of facts relating to the circumstances attendant to K.M.'s allegations.

We first note that K.M. earliest disclosure of her allegations came following the charges in connection relating to T.S.. K.M. concedes that she acknowledged a desire to support T.S.'s allegations. (Tr. Day 1, Pgs. 223-226). During her testimony K.M. further acknowledged that the Respondent was dating K.M.'s niece, M.H., at a time that K.M. and the Respondent had an intimate relationship and that she had concealed that fact until it was apparently imminent that it would be disclosed to M.H.. K.M. and M.H. were being interviewed at the same time and location by investigators in this case. With respect to the legal actions undertaken by the Respondent on K.M.'s behalf, those were apparently handled in a legally sound way to an

effective end from her perspective including her continued consultation with Respondent as the need for legal assistance arose.

As to J.W., K.M.'s son, her consultation with a long-standing friend in the form of Mr. Clifton appears not to have been misplaced. While Mr. Clifton at that time was an Assistant Prosecuting Attorney, it is a long-standing and proper function of a prosecutor to communicate directly with an unrepresented party. K.M.'s assertion that she believed J.W. was facing potential penalties of years in prison is unconvincing for several reasons. She testified that she had engaged in criminal justice studies, which she later modified to criminal corrections studies. (Tr. Day 1, Pg. 212). She also testified that she attended an initial court appearance with her son, J.W., and identified a Magistrate Court form used in those proceedings and acknowledged that the Court had indicated that the offense charged was a misdemeanor. (Tr. Day 1, Pgs. 213-219). Her testimony and that of the Respondent are in agreement that Mr. Clifton, based upon a review of the case file on the computer, found that there were conflicting witness statements. (Tr. Day 1, Pgs. 219-220). Under any reasonable interpretation, such information would be reason for optimism for a defendant. Accordingly, it is doubtful K.M. could have had even a subjective reason for feeling terrified concerning the potential fate of her son, considering the foregoing. We further note that her personal history with the Respondent discloses no reluctance on her part to stand up to him when she felt the need or desire to do so over their long-standing period of friendship. Her continuing relationship with Mr. Clifton is inconsistent with feelings of intimidation because of the sex tape; she continued to seek his help and even rented his home, where she lived while he attended law school. Because of the evidence of underlying motives and irrationality described above, we cannot credit K.M.'s allegations as sustainable.

Noting that the sexual relationship between the Respondent and K.M. was one which preceded any legal connection between the two. We turn, in that context, to the question of the alleged surreptitious video recording. The sexual act preserved on video was concedely voluntary between K.M. and the Respondent. Both agree that whether K.M. knew of it initially, she was made aware of it thereafter. Although that awareness is not critical to our analysis, a third employee of that business who worked contemporaneously with K.M., D.M., testified that, in essence, that the cameras in place at the time were in full view, that K.M. could not have escaped awareness that the cameras were on continuously, which had been denied by K.M.. The Respondent acknowledged that he kept the tape among old personal and business materials since that time, retrieved it when he was aware of K.M.'s allegations out of concern of being accused of destruction of evidence, had he done otherwise. No evidence was offered that suggested that Mr. Clifton had shown the video recording to others or reproduced it in any other way. We include discussions relating to that aspect of this case in our conclusions, *infra*.

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

It is undisputed that Mr. Clifton had a sexual relationship with L.C.B. extending back to the year 1995. In 2009 while Mr. Clifton was an Assistant Prosecuting Attorney, L.C.B. experienced acrimony between her and her boyfriend resulting in various charges being brought one against the other. While the specifications in the *Statement of Charges* allude to various offenses wherein L.C.B. was a Defendant in misdemeanor charges later resolved by pretrial diversion or otherwise, it is clear that L.C.B. was not a Defendant during a time that she alleges sexual relations took place with Mr. Clifton. L.C.B.'s testimony was that she had oral sex with the Respondent at his office at a time that she was there to complain about being the victim of a

theft. The Court records establish that at that time she had no charges pending against her. Her visit was solely for that purpose. While she testified that she had an incomplete recollection of other time frames, she recalls that she was charged at one point with destruction of property for allegedly breaking her boyfriend's windshield. In her testimony, she denied that her sexual relationship with Mr. Clifton had any connection to that case because she understood that she "wasn't in any serious trouble". (Tr. Day 1, Pgs. 271-272). Panel Member Akers inquired of L.C.B. during her testimony as to her recollection of the time frame that she alleges that the "two or three times" that she preformed oral sex on Mr. Clifton in the courthouse.

MR. AKERS: Okay. Alright. Okay. And did those instances all occur only after you had the property damage matter that you approached him for? Did those happen all after that?

THE WITNESS: I honestly don't know. Honest to God, I don't remember. All I know is it was in 2009 because that was after I had - - I moved out from R.B.'s in February and I met my now husband in December, so all I know is that time frame. I honest to God don't remember the dates.

(Tr. Day 1, Pg. 293-294).

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MR. AKERS: Okay. That particular document bates stamp 1480 dated August of 2009. Do you believe that you had performed oral sex on Mr. Clifton prior to that date or on some occasions before and after that date? Do you know as you sit here today?

THE WITNESS: I honestly don't know.

(Tr. Day 1, Pg. 296).

To summarize, the testimony of L.C.B. is that she had a historical sexual relationship with Mr. Clifton preceding his service as an assistant prosecuting attorney. She denies that the sexual relationship influenced her treatment as a complaining victim or Defendant by him or his

office. She denies being able to recall the precise number of encounters or when those occurred thus any association with a particular legal event. She was complimentary of his abilities as an attorney and assigns no unfair favorable or unfavorable treatment of her by him in his official capacity. L.C.B. also concedes that during the applicable time period she was taking “several different kinds of medication” including pain medication, diet pills, Ativan, and others. (Tr. Day 1, Pgs. 281-286). L.C.B. also acknowledges that she has historically denied to others that sex with the Respondent occurred. (Tr. Day 1, Pg. 287). The Respondent, testifying as a witness called by the ODC, denies having sex with L.C.B. in his office, but acknowledges occasions wherein he was visited by her.<sup>2</sup>

Given the above, we cannot conclude to the requisite degree that Mr. Clifton used his position to extract sexual conduct from L.C.B. or that sexual acts occurred in his office. The remaining question to be resolved is the Respondent’s role in his capacity as Assistant Prosecutor in connection with legal matters involving L.C.B. during that service, which we address below.

### **CONCLUSIONS OF LAW**

Having determined the facts applicable to the charges in this case, we turn to the law in discussion of the appropriate sanctions. While we declined that Mr. Clifton engaged in unlawful

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<sup>2</sup>We further note that the Respondent offered as a witness, B.M., whom we excluded based on the objection of the ODC as not appearing on his witness list. We permitted her testimony as an avowal or proffer only at that time. However, in view of the lack of direct evidence concerning facts relating to her, her conceded lack of memory in important areas and history of chronic drug use, we note that her testimony includes B.M.’s opinion that L.C.B. is regarded as untruthful, that she historically has lied specifically about matters of sexual relationships and in this case approached B.M. and asked her to give false testimony supporting her story. (Tr. Day 1, Pgs. 31-32).

sexual assault, abuse or used his position or public office so as to compel others to engage in sexual acts with him, our discussion does not properly end there.

While we concur with the three law enforcement agencies that investigated the sexual allegations relating to T.S., Mr. Clifton nonetheless has been determined to have engaged in the exchange of sexually explicit material while employed as Assistant Prosecutor. This is supported by Mr. Clifton's own testimony that he had a particular penchant for pornographic images and materials and sexual banter. In Lawyer Disciplinary Board v. Chittum, 689 S.E. 2d 811 (W.Va. 2010), our Court analyzed relatively analogous circumstances involving letters and telephone calls with an implied possibility of a romantic relationship. Our Court in that case found that such communications were misconduct under Rule 8.4(a) WVRPC, because they were an attempt to establish a sexual relationship with a *client*, who was an incarcerated person in a vulnerable position. While the facts in Chittum are not precisely the same as the instant case, Rule 8.4(d) prohibits such conduct "that is prejudicial to the Administration of Justice[.]" In Chittum, the violations were sanctioned by a reprimand, period of supervision, additional continuing education and further sanctions relating to a separate violation.

In the judicial disciplinary action In Re: Wilfong, \_\_\_ S.E. 2d \_\_\_, Docket No.: 14-0379 (W.Va. 2014), the Court assessed sanctions including a suspension to the close of the judge's term amounting to 17 months and other sanctions where the disciplined judge engaged in an inappropriate sexual relationship with a married person whom appeared personally or through subordination in the judge's courtroom regularly and also involved multiple other attorneys and court employees in facilitating or covering up the illicit relationship. The far reaching extent of that judge's conduct is in sharp contrast to that of Mr. Clifton. "Although both were married to

other people we normally would be loath to interfere in such personal matters. In this case, however, the private aspects of the affair are secondary to the problems it has created.” Wilfong, citing In Re: Gerard, 631 N.W. 2d 271, 277 (IA. 2001).

Our Court declined to accept an agreed upon 90 day suspension of an attorney and dismissed the *Statement of Charges* in Lawyer Disciplinary Board v. Hussel, \_\_\_ W.Va. S.E. 2d \_\_\_, Docket No.: 13-0544 (W.Va. 2014). In that case, an attorney had an acknowledged sexual relationship with a woman, after having represented her and her husband jointly. The Court based its decision on a finding that the attorney/client relationship with the woman had effectively ended at the time of the sexual relationship. In Lawyer Disciplinary Board v. Artimez, 540 S.E. 2d 156 (W.Va. 2000), the Court declined to sanction Artimez for the sexual relationship with a client’s wife, but found a violation of Rule 8.4(d). Because Artimez reached an agreed settlement with the aggrieved husband that included a monetary payment accompanied by a covenant not to pursue an action through the Office of Disciplinary Counsel, the sanction imposed was a public reprimand and cost of the disciplinary proceedings. In Lawyer Disciplinary Board v. Amos, 760 S.E. 2d 424 (W.Va. 2014), Amos, an assistant prosecuting attorney, met with a woman who was a party to an abuse and neglect case. Although the woman was represented by counsel, Amos took the woman to bars and strip clubs, visited her home, acknowledged that he kissed her on the cheek, rubbed her thigh and made remarks suggesting to her that he expected sexual favors in exchange for help in the pending abuse and neglect case. Amos acknowledged that he had kissed her twice on the cheek and maintained text-message contact with one another over a period of weeks. Though he denied touching her or asking for sexual favors, he admitted discussing the case with her. The Court

sanctioned Amos with a suspension of 75 days with automatic reinstatement, limitations on his practice in abuse and neglect cases for one year, counseling with a mental health provider, and costs of the proceeding.

In deciding on the appropriate disciplinary action for ethical violations, this Court must consider not only what steps would appropriately punish the Respondent attorney, but also whether the discipline imposed is adequate to serve as a effective deterrent to other members of the bar and that the same time restore public confidence in the ethical standards of the legal profession. Amos, citing Syl. Pt. 3, Committee on Legal Ethics v. Walker, 358 S.E. 2d 234 (W.Va. 1987). Mitigating factors in a Lawyer Disciplinary proceedings are any considerations or factors that may justify a reduction in the degree of discipline imposed. Syl. Pt.3, Amos, citing Syl. Pt. 2, Lawyer Disciplinary Board v. Scott, 579 S.E. 2d 550 (W.Va. 2003). Mitigating factors which may be considered in determining the appropriate sanctions to be imposed against the lawyer for violating the *Rules of Professional Conduct* include:

- (1) absence of a prior disciplinary record;
- (2) absence of a dishonest or selfish motive;
- (3) personal or emotional problems;
- (4) timely good faith effort to make restitution or rectify consequences of the misconduct;
- (5) full and free disclosure to the Disciplinary Board or cooperative attitude toward proceedings;
- (6) inexperience in the practice of law;
- (7) character or reputation;

- (8) physical or mental disability or impairment;
- (9) delay in disciplinary proceedings;
- (10) interim rehabilitation;
- (11) imposition of other penalties or sanctions;
- (12) remorse; and
- (13) remoteness of prior offenses.,

Syl. Pt.4, Amos, citing Syl. Pt. 3, Lawyer Disciplinary Board v. Scott 579 S.E. 2d 550 (W.Va. 2003).

Aggravating factors in a lawyer disciplinary proceeding are any consideration or factors that may justify an increase in the degree of discipline to be imposed. Syl. Pt. 5, Amos, citing Syl. Pt. 4, Scott, supra. With respect to the issue of aggravating factors we conclude that the gravamen of the Respondent's conduct is adequately represented in the violation discussed.

We do, however find certain applicable mitigating factors. The Respondent has no prior disciplinary record of any sort and while his conduct could be seen as selfishly motivated, he did not engage in any ruse or dishonesty but rather interacted directly with those implicated. Mr. Clifton acknowledged that he acted on a level of compulsion and strong interest in pornographic materials, which he is presently rectifying through spiritual and professional counseling to remediate. Mr. Clifton is clearly remorseful and freely discussed and accepted responsibility for his conduct and the consequences thereof, which extend to the community. At the time of the conduct in question, Mr. Clifton had been licensed to practice law for between 2 years and 5 years.

Regarding the Respondent's character and reputation, he is universally well regarded in

the local legal community as supported by the letters from fellow members of the Bar and the Courts in that circuit. The trust placed in him is also demonstrated by his continued appointment to guardian *ad litem* assignments and other appointed work by the Courts. He was recently appointed to the Board of Trustees of the local hospital. He was also recently elected President of the Pocahontas County Bar Association. Among the many activities Mr. Clifton spends time in devotion to his community, as a volunteer without compensation, are *pro bono* legal services, Co-ordinator of the Community Food Pantry, President of the local Humane Society, and Trustee of his church, where he also, when called upon, stands in as substitute pastor in conducting worship services and bible study. (Tr. Day 2, pgs. 251-253)

With respect to other penalties and sanctions imposed, while Mr. Clifton has not been sanctioned through another court or administrative body, in Artimez, the Court took cognizance of the fact that the Respondent had already suffered external to the disciplinary proceedings when the disciplinary sanctions were imposed. In this case, the Respondent has suffered the emotional consequences, legal expense and unwarranted effect on his reputation through the criminal action brought against him, now acknowledged by all concerned as being based on fictitious information brought by T.S..

In Chittum, *supra*, at 821 the Court made the distinction between cases where a violation of ethical standards caused no “actual injury” in relation to his conduct. Because we find that there was no resulting legal prejudice to any of the Complainants in this case, we are likewise guided, in part, by that principle.

### **CONCLUSION**

Accordingly, having found that the Respondent Mr. Clifton’s conduct warrants sanctions appropriate to the purposes discussed above, we find, and recommend to the Court: That Mr.

Clifton be publically reprimanded; that he be required to complete nine hours of continuing legal education in courses approved for ethics within one year; that he submit to, through a counselor or therapist approved by the Court, a course of rehabilitative therapy of at least six months addressing the issues discussed above, or complete the same if already commenced.

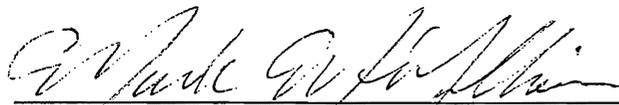
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Chairperson, Hearing Subcommittee Panel

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Date

Submitted by:



Mark McMillian (WV 9912)  
Counsel for the Respondent

**BEFORE THE HEARING PANEL SUBCOMMITTEE  
OF 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  
Supreme Ct. No. 13-1128  
ID No.: 12-05-448**

**CERTIFICATE OF SERVICE**

Mark McMillian, undersigned counsel for the Respondent, hereby certifies that a true and exact copy of the accompanying Respondent's *Proposed Decision and Order* including *Findings of Facts* and *Conclusions of Law* was served upon Jessica H. Donahue Rhodes, Esquire of the Office of Disciplinary Counsel, by regular U. S. Mail, postage paid, on this 13th day of February, 2015, addressed as follows:

Jessica H. Donahue Rhodes, Esquire  
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City Center East, Suite 1200C  
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