

April 1, 2022

Adrienne Meiring  
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Disciplinary Commission  
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VIA EMAIL and US MAIL

**RE: Complaint against Attorney Thomas Little and Prosecutor Anthony Sommer.**

Ms. Meiring:

The above referenced firm represents Richard Kelly and Ashley Kelly in their individual capacity in relation to this disciplinary complaint against Thomas Little and Anthony Sommer. Richard Kelly is the elected Sheriff of Clinton County, Indiana. Ashley Kelly is his wife and appointed Matron. Thomas Little serves as the attorney for Clinton County, and Anthony Sommer is the elected prosecutor for Clinton County.

For the sake of transparency, the facts below are the subject of a pending demand letter and expected civil claim against Attorney Little. We also expect to pursue a civil claim against Prosecutor Sommer. However, no civil claim can properly address the continuing misconduct at issue; therefore, my clients believe that the Disciplinary Commission is needed to investigate and address this matter.

As explained below, the facts and circumstances surrounding the conduct at issue warrant both serious investigation and discipline. It appears that both individuals have improperly colluded and used their respective positions in an attempt to personally and politically harm Sheriff and Mrs. Kelly by: (1) covering up clear malpractice and using the same to support both civil and criminal liability against Sheriff and Mrs. Kelly; (2) providing information known to be false to the court without any attempted correction; (3) demanding that a journalist attend a meeting and revise a news report that appeared partially favorable to Sheriff and Mrs. Kelly; (4) providing false information to the same journalist for publication; (5) using prosecutorial authority to collude in the support of civil litigation against the Sheriff's Office, Sheriff Kelly, and Mrs. Kelly; (6) issuing a subpoena to and falsely representing to an employee of the Sheriff's Office that she had no right to an attorney in order to obtain information regarding Sheriff and Mrs. Kelly; (7) communicating with and taunting Mrs. Kelly regarding a subject matter for which she was represented; (8) secretly strongarming news sources to prevent the publishing of any stories favorable to Sheriff and Mrs.

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Kelly; and (9) colluding to file trumped up charges against Sheriff and Mrs. Kelly during a time period that would assist in civil litigation and be politically damaging.

Of course, this is not an exhaustive list of the known and potential misconduct at issue. It is likely that email and text correspondence between Prosecutor Sommer and Attorney Little, as well as the Commissioners and Council will reveal direct collusion and misconduct. The information below is provided in chronological format in order to assist your evaluation. In order to protect the integrity of the practice of law and criminal justice system in Clinton County and the State of Indiana, the Disciplinary Commission should immediately investigate this conduct and impose discipline.

**A. Attorney Little Agrees to Complete and Submit a Commissary Contract, Conflict of Interest Form, and Nepotism Form.**

On January 1, 2019, Richard Kelly took office as the Clinton County Sheriff. Prior to and after taking office, Sheriff Kelly sought the legal counsel of Attorney Little regarding Mrs. Kelly's service as Clinton County Jail Matron and Commissary Manager. Attorney Little indicated to Sheriff Kelly and Mrs. Kelly that past Clinton County Sheriffs, historically, named their wives as the Jail Matron and Commissary Manager, which is provided for in Indiana Statute. Moreover, Attorney Little outlined the agreed compensation structure for the Commissary Manager as including a 50/50 split of profits, which is both less expensive than hiring an outside vendor and the exact same structure agreed upon and utilized by prior Sheriffs.

Sheriff Kelly informed Attorney Little that he did not want to make sweeping changes to any standard arrangements regarding the Commissary and informed him that he would name Mrs. Kelly as Jail Matron and Commissary Manager. Attorney Little advised that the arrangement was appropriate, valid, and legal, and Attorney Little also affirmatively agreed to "set up" and "take care of" the arrangement. Moreover, Attorney Little affirmatively agreed to file the conflict-of-interest disclosure and nepotism forms, if any, necessitated by the arrangement. He further indicated that he had performed similar services for prior sheriff administrations and represented that both the Matron and Commissary Manager arrangement were perfectly acceptable and appropriate. Based upon Attorney Little's representations and promises to provide the necessary services, Sheriff and Mrs. Kelly acted accordingly.

Afterward, on December 18, 2018, Attorney Little followed up with Sheriff Kelly and confirmed his agreement to handle the Matron and Commissary Manager arrangement, as well as file the necessary conflict and nepotism forms, by stating:

Hey Rich, this is Tom. Shoot me your home address whenever you get a chance[.] *I need it for the conflict of interest document.*

(Exhibit A – Little Text Message)(emphasis added). Sheriff Kelly responded with his address, and Attorney Little replied with a “👍”. (Exhibit A). Thus, Sheriff and Mrs. Kelly were assured that Attorney Little, as a competent and well-meaning attorney, would take the necessary and recommended actions.

Shortly thereafter, Attorney Little acknowledged his independent obligations and duty to Sheriff and Mrs. Kelly during subsequent negotiations regarding Sheriff Kelly’s salary contract. After Clinton County determined that it would not pay Sheriff Kelly a salary at the proscribed statutory rate, Attorney Little initially represented the County in the negotiations regarding Sheriff Kelly’s salary contract. Sheriff Kelly retained attorney Jay Moore. However, on December 20, 2018, Attorney Little left a voicemail with attorney Moore explaining that he believed he had a conflict in continuing to represent the County in a matter adverse to Sheriff Kelly. As a result, Attorney Little withdrew from the negotiations, and neither he nor the County appointed or retained anyone to continue the negotiations. (Exhibit B – Email from Jay Moore).

At no time thereafter did Attorney Little ever advise Sheriff or Mrs. Kelly of any problems or concerns with the Matron or Commissary Manager arrangement, nor did he ever withdraw or explain that he could not perform the services that he had agreed to perform.

**B. Sheriff and Mrs. Kelly Discover that Attorney Little Never Filed the Forms as Promised and Prosecutor Sommer Reports Alleged Misconduct to the SBOA.**

After following and relying upon Attorney Little’s advice and representations for nearly 2 years, Mrs. Kelly operated the Jail Commissary in such an efficient and effective manner that the Commissary Fund experienced what is likely the most successful period in the history of the fund, which resulted in considerable funding for the County without a single cent of tax dollars. In 2019, the Jail Commissary added e-cigarettes to the products offered for sale, which also increased revenue for the County.

However, in January of 2021, Sheriff and Mrs. Kelly were shocked to learn that their actions regarding the Matron and Commissary Manager positions had been reported to the Indiana State Board of Accounts (“SBOA”) and were the subject of an investigation into allegations of theft and misappropriation of funds. The SBOA investigation continued for the majority of 2021, and the investigation focused heavily on the sale of e-cigarettes through the jail commissary, which was alleged to have contributed to the increase in revenue to the Commissary Fund. Throughout the entire process, Sheriff and Mrs. Kelly were adamant and consistent in their assertion that they had done absolutely nothing wrong. However, they were unaware of the extent to which Attorney Little and other officials would misrepresent the facts and collude to harm them.

Upon information and belief, Prosecutor Anthony Sommer made the report to the SBOA following his issuance of Investigatory Subpoenas regarding Sheriff Kelly in February of 2021. (Exhibit C – Investigatory Subpoenas).<sup>1</sup> The relationship between Prosecutor Sommer and Sheriff

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<sup>1</sup> Sheriff and Mrs. Kelly learned of the source of the report through a news report. However, they do not have any personal knowledge to confirm the accuracy of the report.

Kelly had soured earlier, and Prosecutor Sommer has publicly supported Sheriff Kelly's political opponent in the upcoming primary election. Both Sheriff and Mrs. Kelly would soon learn that Prosecutor Sommer's involvement and potential coordination with Attorney Little went much further.<sup>2</sup>

**C. Attorney Little Conceals his Involvement and Represents Clinton County in Related Litigation Against Sheriff and Mrs. Kelly.**

Following the reveal of the SBOA investigation, on March 19, 2021, Attorney Little filed a complaint against Sheriff and Mrs. Kelly, on behalf of the County, entitled *The Board of Commissioners of Clinton County, The County Council of Clinton County v. Leonne LLC, Ashley Kelly, Richard Kelly et al.* 79C01-2104-PL-000035, and the case is pending in Tippecanoe County.<sup>3</sup> The suit alleges that Sheriff and Mrs. Kelly illegally operated the Jail Commissary without a vendor contract, and the suit further relied upon the ongoing SBOA investigation in order to imply wrongdoing.

The complaint filed by Attorney Little admits that "before 2019, with prior commissary contractors, one-half (1/2) of the commissary profits would be income to the Contractor and the other one-half (1/2) would be deposited back into the Commissary Fund". However, what is startlingly absent from the complaint is a full disclosure of the facts that (1) the purported "commissary contractors" were the prior sheriffs' wives, many of whom also served as the Jail Matron and/or maintained separate employment with the State or County – exactly as Mrs. Kelly did, (2) Attorney Little directly informed Sheriff and Mrs. Kelly of the historical arrangement and recommended the same, and (3) Attorney Little had agreed to undertake the required actions to continue this procedure and arrangement.

In fact, the complaint further alleges that "since taking office in 2019, Sheriff Kelly has refused to sign any compensation agreements with Clinton County". However, at no time did Attorney Little disclose that conversations and negotiations regarding his compensation agreement/contract stalled because Attorney Little, himself, withdrew from the negotiations, and neither Attorney Little nor the County appointed or retained anyone else to engage on behalf of the County with Sheriff Kelly. Indeed, Attorney Little had good reason to omit this fact, since his withdrawal was the result of his admitted conflict of interest resulting from his simultaneous

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<sup>2</sup> As a point of clarification Sheriff and Mrs. Kelly requested a 1099 for Leonne, LLC from Clinton County. Therefore, there was no reasonable basis to conclude that there was any attempt to hide money. A 1099, itself, provides complete transparency, and as the SBOA discovered, every cent of funds was completely accounted for. Thus, any claim by Prosecutor Sommer that the request for a 1099 gave rise to a reasonable suspicion of theft is completely without merit, and he likely had other motives based upon his poor personal relationship with Sheriff Kelly.

<sup>3</sup> The Court denied Attorney Little's Emergency Preliminary Injunction requesting control of the Commissary Fund.

representation of Sheriff and Mrs. Kelly and the County, which would have revealed his own responsibility and malpractice regarding the contract, conflict form, and nepotism form.

Thus, rather than disclose his own involvement and admit the truth, Attorney Little drafted and filed the complaint in order to pursue a false narrative and hide his own negligence and misconduct, while simultaneously violating his duties to his clients, Sheriff and Mrs. Kelly. Clearly, Attorney Little either disclosed his involvement to the County, and the County has wrongfully ignored the facts in favor of false allegations, or Attorney Little deceived everyone involved in an effort of self-preservation.

#### **D. The Clinton County Commissioners Pass an Ordinance Purportedly Banning the Sale of E-Cigarettes through the Jail Commissary, and Additional Litigation Ensues.**

Just prior to the County's lawsuit, on March 16, 2021, the Clinton County Commissioners enacted Ordinance No. 2021-05, which further restricted and prohibited the use of any tobacco products or any "synthetic equivalent", including e-cigarettes in any County buildings. The Commissioners and Attorney Little insisted that the ordinance applies to the County Jail and the sale of e-cigarettes from the commissary. Clearly, the ordinance was intended as a direct response to the SBOA investigation and an unauthorized affirmative attempt to take control of the Commissary Fund in addition to the lawsuit filed by Attorney Little.

However, the sale of e-cigarettes resulted in considerable tangible benefits within the jail, including a decrease in violence. Moreover, the increase in sales from the Commissary resulted in significant savings and benefits to the County. Nevertheless, the County Commissioners, through Attorney Little, continued to press for control over the Jail Commissary and Commissary Fund.

As a result, on March 19, 2022, in order to maintain the benefits to the County and Jail, the Sheriff's office filed an action for Declaratory Judgment asserting that the County Commissioners did not have the authority to regulate or control the Commissary Fund in this manner. The case was filed in Montgomery County, but ultimately removed to Parke County, as *Clinton County Sheriff's Office, Rich Kelly v. Jordan Brewer, Mark Timmons, Josh Uitts*, 54D01-2103-PL-000257. Accordingly, both the Tippecanoe and Parke County case involved the legal question of who could exercise authority over sales from the Jail Commissary and the Commissary Fund.

#### **E. Journalist Brett Todd Writes a Story Correcting Statements Made by Clinton County Commissioner Josh Uitts.**

Throughout the course of the SBOA investigation and the pending litigation, multiple news sources published articles regarding the same. On October 7, 2021, journalist Brett Todd published an article regarding the matter through "*RadioMom 91.1/91.5*". (Exhibit D – Article by Brett Todd). The article explained the dispute and included a quote from County Commissioner Josh Uitts stating that Mrs. Kelly was paid \$1,500 per week to manage the Commissary and "So, we don't feel that is appropriate amount of money for that type of work. You do the math – that is \$1,500 a week for 52 weeks. That's more money that any county employee makes. This is a contractor – an appointed person by the sheriff, so we don't feel it's appropriate."

However, Mr. Todd's article fact-checked Commissioner Uitts and explained that a public records search revealed six (6) Clinton County employees who made in excess of \$1,500 per week in 2020. Otherwise, the article did not take a particular stance on the matter apart from reporting the facts. Nevertheless, Prosecutor Sommer discovered that Sheriff Kelly had posted the article on his Reelection Page on Facebook, which prompted Prosecutor Sommer to take urgent action.

#### **F. Prosecutor Sommer Demands a Meeting with Mr. Todd in an Apparent Attempt to Influence Public Sentiment.**

At 9:38p.m., on October 7, 2021 (the same day the news article was published), Mr. Todd received a phone call from Randy Lawson, Owner of Community Radio Partners and Radio Mom. Mr. Lawson stated that Prosecutor Sommer had read the article Mr. Todd wrote, and he had "requested" a phone call from Mr. Todd.

Apparently, Prosecutor Sommer continued to fervently scramble to contact Mr. Lawson in an attempt to reach Mr. Todd. At 1:21p.m., on October 8, 2021, Mr. Lawson called once again and sent a text message stating that Prosecutor Sommer was getting frustrated and wants to talk to Mr. Todd. At 3:21p.m., Mr. Todd spoke with Prosecutor Sommer, and during the call, Prosecutor Sommer took issue with the fact that Mr. Todd quoted Commissioner Uitts verbatim, and he claimed that Mr. Todd should have added Mrs. Kelly's matron salary to the \$1,500 per week that was cited, even though Commissioner Uitts mentioned no such thing. Prosecutor Sommer accused Mr. Todd of citing the information in a false or misleading way. (Exhibit E – Sommer Phone Call Audio).

By adding Mrs. Kelly's matron salary, Prosecutor Sommer was attempting to create the public perception that Mrs. Kelly was paid too much. Clearly, Prosecutor Sommer was attempting to use his position to influence the narrative and news stories that were available to residents of Clinton County. Even so, Mr. Todd agreed to meet with him in 20 minutes, since a reasonable person would not refuse such a request from the Prosecutor in Clinton County.

#### **G. Prosecutor Sommer Attempts to Alter Public Sentiment and Curtail News Reporting Favorable to Sheriff and Mrs. Kelly.**

On October 8, 2021, Mr. Todd met with Prosecutor Sommer. Prosecutor Sommer claimed that he wanted to correct the record and provide additional information in order to keep things balanced. Moreover, he explained that Mr. Todd's story makes it seem like Mrs. Kelly's pay was reasonable, so he did not want incomplete information "muddying the waters". (Exhibit F – Sommer Meeting Audio Recording, 0:35-0:44). Clearly, by "muddying the waters", Prosecutor Sommer meant that he wanted to dispel any inference or fact that favored Sheriff and Mrs. Kelly, since he provided a perspective that was solely negative and hostile toward them, as the audio recording of the conversation demonstrates.

Therefore, Prosecutor Sommer was actively attempting to alter a news story in order to influence opinions regarding Sheriff and Mrs. Kelly and damage their reputation in relation to

active civil litigation and an SBOA investigation that may reach his office. In fact, Prosecutor Sommer reiterated that the “purpose of the call” was to prevent the public dissemination of information “for public consumption” that may “mislead” in favor of Sheriff and Mrs. Kelly. Indeed, Prosecutor Sommer was particularly concerned that Sheriff Kelly had posted the article on his Reelect Sheriff Kelly Facebook Page. (Exhibit F, 14:13-14:18).

At the time, Prosecutor Sommer further created the perception that he had no involvement in the litigation or any type of investigation, so he did not want to comment on the status of any investigation. (Exhibit F, 0:19-0:26). However, this was false. He further stated that he did not “have any reports”, so he was in “no better position” than Mr. Todd. (Exhibit F, 12:43-12:48). However, this is untrue, since his office had issued several investigatory subpoenas, and were, indeed, involved. Nevertheless, in order to give the false appearance of impartiality, Prosecutor Sommer referenced the SBOA investigation in order to claim that his office was independent and separate from any investigation, (Exhibit F, 13:07-13:13; 20:10-20:31) (explaining that his office will get involved if there is an SBOA referral), even though he was working with Attorney Little and actively investigating. (Exhibit F, 13:07-13:13; 20:10-20:31). Prosecutor Sommer further explained that even if a prosecutor does get involved, “it won’t be me”. (Exhibit F, 26:36 - 26:44).

Prosecutor Sommer insisted that Mr. Todd did not fully report the facts, even though he reported the entirety of Commissioner Uitts’ statement. Prosecutor Sommer was adamant that Mr. Todd should revise his article in order to explain that, even though his prior reporting was accurate, Mrs. Kelly also received a salary for her service as Matron; however, he did not specify that Mr. Todd should explain from where the additional income originated. He further explained information about the entity used by Sheriff and Mrs. Kelly, Leonne, LLC, which he stated was “not explained in any public record.” (Exhibit F, 3:55-4:05). Additionally, he inserted himself into the pending civil litigation by stating that the current conflict between Commissioners and Sheriff Kelly results from the fact that no contracts exist. (Exhibit F, 18: 12- 18:30), which is still a disputed fact that is the subject of pending litigation. Prosecutor Sommer then insisted that Mr. Todd revise his article in order to include additional income received from Mrs. Kelly’s employment unrelated to the Commissary, which was likely intended to create a false impression of greed or misappropriation. (Exhibit F, 24:39-24:51).

Lastly, Prosecutor Sommer informed Mr. Todd that he did not want to be recorded or quoted in any story. (Exhibit F, 16:05-16:21). This is understandable, since citizens of Clinton County would likely feel uncomfortable and lose faith in the administration of criminal justice if they discovered that their County Prosecutor was attempting to control the media narrative and pull strings from behind the scenes.

#### **H. Prosecutor Sommer Provides False Information and a Fake Document to Journalist Brett Todd.**

After accusing Mr. Todd of writing a misleading story, Prosecutor Sommer handed him a document that he claimed several times was the Commissary Report submitted by Sheriff and Mrs. Kelly. (Exhibit F, 7:14-7:25). Prosecutor Sommer confirmed that “[t]his is the Sheriff’s Department report”, and he confirmed again when Mr. Todd replied “so they own this report?”

(Exhibit F, 12:21-12:35). Multiple times, Prosecutor Sommer represented and Mr. Todd confirmed that the report was created and provided by the Sheriff's office, Sheriff Kelly, and Mrs. Kelly, and he intended Mr. Todd to report about the same.

This was an outright lie.

The Report was no such thing. In fact, the report contained numerous accounting and mathematical errors and appears to show transfers and disappearances of millions of dollars. (Exhibit G – Fake Report). Obviously, a news report claiming that the fake document was a report from Sheriff and Mrs. Kelly would have a detrimental effect and would rightfully lead the citizens of Clinton County to believe that something nefarious was afoot. However, the report is fake, and Prosecutor Sommer either knew it was fake, or someone else (likely Attorney Little) provided the report to him and represented that it was authentic.

Either way, Prosecutor Sommer never corrected his misrepresentation to Mr. Todd, nor has he explained how he received the fake document.

**I. The Parke County Court Declares that the Clinton County Sheriff's Office has the Authority to Sell E-Cigarettes through the Commissary, and the County Commissioners May Not Regulate the Sheriff's Good Faith Operation of the Jail Commissary.**

On October 12, 2021, the Parke County Court issued its Order Declaring that the County Commissioners have “no role over commissary operations”. Instead, only the County Council has a role in the Commissary Fund, which is to “review the propriety of Fund's expenditures and disbursements.” Otherwise, the Sheriff has complete control and authority over the fund. Therefore, the ordinance banning the sale of e-cigarettes from the Commissary was an unauthorized action by the Commissioners to take control of the Commissary Fund.

Despite representing to Brett Todd only four (4) days earlier that he was not involved in an investigation, following the order from the Parke County Court, Prosecutor Sommer took action to issue a subpoena to Clinton County Jail Commander Lieutenant Natasha Douglass. (Exhibit H – Natasha Douglass Subpoena).

**J. The Fake Report from Prosecutor Anthony Sommer Appears as Exhibit A in the Litigation Filed by Attorney Little.**

On October 25, 2021, Attorney Little filed a Motion to Dismiss on behalf of the County Commissioners in the Tippecanoe County Case. Attorney Little attached the fake report from Prosecutor Sommer as Exhibit A. Attorney Little further represented to the Court that “[Sheriff and Mrs. Kelly] submitted a detailed report of the Clinton County Sheriff's Commissary Fund with listed activity for the first six (6) months of 2021 to the Clinton County Council on July, attached hereto as ‘EXHIBIT A’” (Cause No. 12C01-2110-MC-1143, Motion to Dismiss, p. 2; ¶ 8).

Little's representation is absolutely false. Exhibit A is not the report submitted by Sheriff and Mrs. Kelly; instead, it is the same report provided by Prosecutor Sommer. Neither Little nor Sommer have explained how this report was exchanged between them, or why they both misrepresented its authenticity. (Exhibit I, Fake Report Filed as Exhibit A). In any event, it is clear that Prosecutor Sommer is influencing, and likely assisting, the civil litigation.

**K. Prosecutor Sommer and Indiana State Police Investigators Improperly Question Employee Natasha Douglass Under Subpoena and Deprive Her of Her Right to an Attorney.**

Seemingly in response to the Order by the Parke County Court, and despite the fact that the Court clarified the Sheriff's authority over the Commissary Fund, Prosecutor Sommer issued subpoenas to multiple individuals in a matter entitled *In the Matter of the Unauthorized Control Over Public Funds of the Clinton County Sheriff's Office*, Cause No. 12C01-2110-MC-1143. One of those individuals was Clinton County Jail Commander Lieutenant Natasha Douglass.

As explained below, Prosecutor Sommer's actions focused on the sale of e-cigarettes and the management of the Commissary Fund, which had already been determined by the Parke County Court and would further be settled by the Tippecanoe County Court. Nevertheless, Prosecutor Sommer persisted in what appears to be an attempt to assist with Attorney Little's civil litigation.

A prosecutor's authority to issue Investigatory Subpoenas derives from Ind. Code § 33-39-1-4, which specifies that "[t]he prosecuting attorney shall examine a person subpoenaed **before the court** that issued the process concerning the offense." (emphasis added). Moreover, Indiana Courts have clarified that a prosecutor's authority to issue such subpoenas is a means of compelling the examination of "unwilling witnesses". See, e.g., *Rita v. State*, 663 N.E.2d 1201, 1208 (Ind. Ct. App.), *transfer granted, opinion vacated* (Oct. 24, 1996), *aff'd in part and vacated in part*, 674 N.E.2d 968 (Ind. 1996). However, what happened to Lt. Douglass does not appear to comply with the Statute and should cause significant concern.

On November 4, 2021, Lt. Natasha Douglass appeared at the Clinton County Courthouse pursuant to the subpoena issued by Prosecutor Sommer following the Parke County Court ruling in favor of the Sheriff's Office. Rather than question her "before the court" as provided by I.C. § 33-39-1-4, Prosecutor Sommer and two Indiana State Police Investigators led Lt. Douglass to a side room outside of the courtroom and proceeded to question her in private.<sup>4</sup>

Most egregiously, prior to questioning Lt. Douglass, Prosecutor Sommer directly informed her that she did **not** have the right or ability to have an attorney present during questioning. Of note, this was not an internal investigation; instead, by its very nature, this was a potential criminal investigation, and Prosecutor Sommer made clear that Lt. Douglass may be criminally liable.

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<sup>4</sup> Of note, the subpoena was different from what Lt. Douglass was accustomed to receiving. Normally, the subpoena would direct her to call the Prosecutor's office upon receipt; however, this sentence is conspicuously absent from the subpoena at issue here.

There does not appear to be any justification for a prosecutor to advise a subpoenaed witness does not have the right to an Attorney.

While independently improper and outrageous, Prosecutor Sommer's statements were not mere offhand comments; instead, they seem to be a calculated plan orchestrated in conjunction with Attorney Little. Upon receiving the subpoenas, Counsel for the Sheriff's office contacted Attorney Little regarding whether Clinton County would provide counsel for the subpoenaed employees. Attorney Little originally agreed with Sheriff's Counsel that the employees were entitled to County-paid defense counsel but then, without notice or explanation, changed his mind. It appears by the timing of it all that Prosecutor Sommer influenced Mr. Little's change of heart.

After improperly advising Lt. Douglass that she did not have the right to an attorney, Prosecutor Sommer questioned her, at length, regarding the Commissary Fund operations, including e-cigarettes, expenditures for expenses, compensation, etc. Each of these matters are either resolved or will be resolved in Parke and/or Tippecanoe County. At certain points, Prosecutor Sommer even implied that Lt. Douglass could be criminally liable for perjury after he questioned her about her affidavit submitted in the Parke County Case.

After the incident, Lt. Douglass left the room sobbing and in tears – fearing for her career and freedom. Prosecutor Sommer then approached her and told her that he is not investigating her; instead, he is pursuing Ashley Kelly. He also advised her that “Ashley is using you.”

**L. Brett Todd Directly Informs Attorney Little that Exhibit A is Fake, but Attorney Little Does Nothing to Correct the Misrepresentation to the Court.**

On November 15, 2021, Mr. Todd interviewed Attorney Little and questioned him regarding Exhibit A – the Fake Report. Mr. Todd directly informed him that Exhibit A is *not* the report filed as the official public record by Sheriff and Ashley Kelly. Astonishingly, Attorney Little admitted that he had full knowledge that Exhibit A is not what it claims to be. Instead, he explained that County Council Member Alan Dunn created Exhibit A, so the report would be more “readable”. (Exhibit J – Little Audio Recording).

Mr. Todd informed Attorney Little that Exhibit A contains several accounting and mathematical errors, in addition to the representation to the Court that it is the authentic report submitted by Sheriff and Mrs. Kelly. Attorney Little directed him to question the Sheriff's Office about the errors, which implies that the errors were created by them. Most importantly, Mr. Todd revealed that Prosecutor Sommer gave him the document on October 8, 2021 – two weeks before it was filed as Exhibit A. Attorney Little Responded, “Yup”. (Exhibit J).

Later, on December 27, 2021, Mr. Todd questioned Alan Dunn about the fake report. Councilor Dunn came clean in an email, which also acknowledged that the errors in the report were his fault, not Sheriff or Mrs. Kelly. Councilor Dunn copied Attorney Little on this email, and he advised Attorney Little that (1) he never knew that Little would file his report, and (2) given the mistakes and misrepresentation as to authenticity, Little should correct the filing:

As I told Brett, I was not aware at the time that my work would be submitted to the Court as an official County document, so now knowing that it has been I think we need to submit this corrected version as soon as possible. If you could do so, I would really appreciate it.

(Exhibit K – Email from Alan Dunn). However, *to this date*, Exhibit A remains publicly filed with the Tippecanoe County Court, and Attorney Little has done nothing to correct his express and known misrepresentation of fact to the Court.

**M. Attorney Little Withholds Information from the SBOA and Acts Against the Interests of Sheriff and Mrs. Kelly.**

On November 23, 2021, the SBOA completed its investigation by concluding that absolutely no funds had been stolen or otherwise unaccounted for. Both Sheriff and Mrs. Kelly were in no way surprised by this result, since they both had been wholly transparent by submitting the required tax records and information to the County documenting each and every dollar since January of 2019. Nevertheless, the SBOA concluded that Sheriff and Mrs. Kelly had violated the law by failing to file a conflict-of-interest form, violating the Clinton County Nepotism Policy, and failing to obtain a written contract for the Commissary Manager position – *the exact items Attorney Little agreed to manage and complete in December of 2018*. (Exhibit L – SBOA Report).

Again, Attorney Little could have disclosed his involvement and responsibility to the SBOA – he did not. Instead, on November 10, 2021, he drafted a letter on behalf of the County thanking the SBOA for its investigation and explaining that:

“Going forward, Clinton County will have procedures for monitoring compliance with the [nepotism and conflicts of interest] policies [adopted effective January 1, 2019]”

Obviously, this explanation skillfully avoids the full truth of what actually occurred. It was not Sheriff and Mrs. Kelly who failed to comply with any particular conflict-of-interest and/or nepotism policies. Instead, Attorney Little advised them that the historical Jail Matron and Commissary Manager arrangement was appropriate, and he affirmatively represented that he would file any necessary conflict-of-interest and/or nepotism forms. Again, this was not a failure to monitor compliance; it was Attorney Little’s outright representation that Sheriff and Mrs. Kelly were in compliance. Therefore, Attorney Little engaged in a blatant conflict of interest and later used his own negligence as a weapon against Sheriff and Mrs. Kelly.

**N. Prosecutor Sommer Uses His Position to Prevent any News Report About his Dissemination of the Fake Report, and Taunts Mrs. Kelly About the Fake Report Via Text Message.**

Upon information and belief, as of January of 2022, Prosecutor Sommer became aware that Mr. Todd intended to write and publish a story about the fake report, Sommer's improper conduct, and the likely collusion between his office and Attorney Little. On January 26, 2022, without any prompting whatsoever, Prosecutor Sommer sent a text message to Ashley Kelly stating:

The document that I gave Brett Todd was the spreadsheet that Alan Dunn prepared from your commissary report last year. Use it in March if you want.

(Exhibit M – Text Message from Sommer).

First, Prosecutor Sommer had no reason to text Ashley Kelly. Second, based upon the caption of the subpoena he issued to Lt. Douglass and his questioning, Prosecutor Sommer was actively investigating Ashley Kelly. Third, the Fake Report (summary or otherwise) is directly related to the pending civil litigation and Prosecutor Sommer's investigation. Fourth, and most importantly, Prosecutor Sommer knew that Ashley Kelly was represented at this time by attorneys in the civil matters and the criminal investigation initiated by Prosecutor Sommer's Office. Therefore, Prosecutor Sommer knowingly communicated with a represented person regarding the subject matter of the representation.

Moreover, Prosecutor Sommer's text message was not a mundane communication. The statement "Use it in March if you want" was a direct reference to the hearings scheduled in the Tippecanoe County case. Thus, his statement clearly was intended to taunt Mrs. Kelly, since he was actively playing damage control to cover up his misrepresentations to Mr. Todd.<sup>5</sup>

On January 29, 2022, Mr. Todd again received a voicemail from Randy Lawson explaining that the Prosecutor contacted him for a meeting. Mr. Lawson explained that Prosecutor Sommer provided another copy of the fake report. On February 4, 2022, Mr. Lawson explained that he does not want the story regarding Prosecutor Sommer published. He further explained that any future stories should focus on Sheriff and Mrs. Kelly – as Prosecutor Sommer likely intended.<sup>6</sup>

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<sup>5</sup> In addition, after texting Mrs. Kelly, Prosecutor Sommer made a phone call to her counsel the following morning and made statements regarding Mrs. Kelly's "mental health". Again, there was no reason for him to insert himself or make such statements.

<sup>6</sup> Upon information and belief, Prosecutor Sommer delivered a yard sign for Sheriff Kelly's political opponent to Mr. Lawson.

**O. Attorney Little Requests Leave to Amend His Briefs in Tippecanoe County if Criminal “filings occur before the time of oral arguments scheduled for March 31, 2022” – Unsurprisingly, Prosecutor Sommer Files Criminal Charges Right on Time.**

On February 28, 2022, Attorney Little filed the County Commissioners’ brief in support of summary judgment in the Tippecanoe County Case. Expecting criminal charges to be filed by Prosecutor Sommer in a manner that could be beneficial to the civil litigation, Attorney Little requested leave to amend should the charges be filed prior to the March 31<sup>st</sup> hearing. (Little Brief in Support of Summary Judgment, p. 20).

Not surprisingly, Prosecutor Sommer filed charges shortly thereafter, and included a lengthy Probable Cause Affidavit with misleading and out of context, yet quotable statements.<sup>7</sup> As expected, Attorney Little used the same in an amended brief, as was likely the plan between the two.<sup>8</sup> However, Attorney Little still did not bother to correct the Court or clarify the fake report he filed.

**P. Attorney Little Admits to Brett Todd that He Began Work on the Tippecanoe County Case Prior to Being Authorized by the County, while Working with Prosecutor Sommer.**

In a follow up interview, Attorney Little admitted to Journalist Brett Todd that he began working on the Tippecanoe County case prior to the County authorizing his work in early March of 2021, and he further admitted that he was communicating with Prosecutor Sommer in February of 2021. The admitted reason for his early involvement was his direct involvement with Prosecutor Sommer, who had been exchanging information and working with Attorney Little all along. (Exhibit N – Little Audio Recording #2).

Of note, Counsel for the Sheriff’s Office issued discovery requests seeking the email correspondence between Attorney Little and Prosecutor Sommer, as well as the emails between the Commissioners and Prosecutor Sommer, which by its nature would not be privileged, but

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<sup>7</sup> For example, the probable cause affidavit states “Hurdles were placed by RK and AK in our investigation . . . on March 5, 2021, RK advised the SBOA that none of his employees would be interviewed until these requests first went through his attorneys.” However, what actually occurred is very much different. Instead, the administrative assistant for the Clinton County Commissioners called the Sheriff’s Office and stated that the SBOA requested to interview several employees that very afternoon. Sheriff Kelly indicated that he would have to consult with his counsel and determine whether his employees were entitled to counsel. Nevertheless, in several places, the probable cause affidavit portrays Sheriff and Mrs. Kelly’s reliance on counsel and respect for the rights of employees as interfering with the investigation. However, the real issue is Prosecutor Sommer’s lack of concern regarding the same.

<sup>8</sup> While a Special Prosecutor was appointed, Prosecutor Sommer remains named on criminal filings.

instead, likely public record. Attorney Little refused and filed a Motion to Quash. (Exhibit O).<sup>9</sup> Most importantly, counsel for the Sheriff's Office clarified that "defendants are not seeking communications between you and plaintiffs"; therefore, none of the emails would be privileged. Nevertheless, Attorney Little explained: "the Clinton County Prosecutor is requesting that none of his communication be released as there is an ongoing criminal investigation, so that is coming from him." (Exhibit O). Once again, there is no reason why Prosecutor Sommer should direct or have any involvement in the civil litigation. Moreover, the correspondence is discoverable. These emails would likely be particularly revealing.

Moreover, Attorney Little admitted that he attached as an exhibit to the Tippecanoe County Case a demand letter from Sheriff and Mrs. Kelly alleging malpractice against him in relation to the conflict of interest form. Attorney Little admitted that, even though the demand letter had no relation or relevance to the legal issues involved in the case, he attached it as an exhibit in an attempt to smear and harm the reputation of Sheriff and Mrs. Kelly. (Exhibit N, 10:50). Even though his attempt was unsuccessful and unintentionally revealed his own culpability, his intention was nonetheless improper.

### **CONCLUSION**

All of the above information is stated upon information and belief, based upon the documented evidence and statements from the witnesses identified. The circumstances surrounding the conduct of both Attorney Little and Prosecutor Sommer warrant thorough investigation, which will likely uncover additional evidence and email exchanges.<sup>10</sup> From the outset, at the very least, it appears that Attorney Little and Prosecutor Sommer violated the following Rules of Professional Conduct:

#### **Thomas Little**

Rule 1.7 Conflict of Interest/Rule 1.9 Duties to Former Clients – Attorney Little actively represented the County against Sheriff Kelly and misrepresented the facts to the SBOA regarding the same matter that he agreed to handle for him (commissary contract, conflict of interest, and nepotism forms). Most importantly, Attorney Little actively worked against Sheriff and Mrs. Kelly with full knowledge that he agreed to perform the very tasks that they had been accused of failing to perform.

Rule 2.1. Advisor/ Rule 1.4 Communication / Rule 3.3 Candor Toward the Tribunal / Rule 4.1 Truthfulness in Statements to Others / – Attorney Little failed to complete the tasks he undertook and hid the same from Sheriff and Mrs. Kelly. Moreover, he concealed his involvement from the SBOA and Tippecanoe County Court.

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<sup>9</sup> The Sheriff's Office and the County ultimately resolved the discovery dispute without resolution by the Court.

<sup>10</sup> On March 29, 2022, the two Sheriff candidates participated in a public forum. The legal maelstrom created by Prosecutor Sommer and Attorney Little was, as likely intended, front and center.

Rule 3.3 Candor Toward the Tribunal – Attorney Little filed a fake report with the Tippecanoe County Court and later admitted that he knew it was not the authentic document. Even after Alan Dunn admitted that the fake report contained material and egregious errors, Attorney Little did not correct his public filing with the Court, which remains uncorrected on the docket today.

Rule 8.4 Misconduct – Attorney Little engaged in dishonesty in his dealings with the Court, SBOA, and Sheriff and Mrs. Kelly. His collusion with Prosecutor Sommer was prejudicial to the administration of justice.

### **Anthony Sommer**

Rule 3.6 Trial Publicity / Rule 3.8 Special Responsibilities of a Prosecutor / Rule 4.1 Truthfulness in Statements to Others – Prosecutor Sommer falsely represented to Brett Todd that the Fake Report was authentic, and he never corrected his representation to Mr. Todd. Moreover, he represented that he was not actively investigating Sheriff and Mrs. Kelly, which was also false. He altered the media narrative in order harm and prejudice Sheriff and Mrs. Kelly by providing false and nonpublic information.

Rule 4.2 Communication with Person Represented by Counsel – By texting and taunting Mrs. Kelly, Prosecutor Sommer materially communicated with a represented party about the subject of the representation.

Rule 8.4 Misconduct – Prosecutor Sommer actively sought to harm Sheriff and Mrs. Kelly through false statements. He further sought to use his position and influence as a prosecutor to assist and bolster Attorney Little’s civil litigation and the political campaign for his favored candidate for sheriff. All of which was dishonest and prejudicial to the administration of justice. *See, e.g., In the Matter of Miller*, 677 N.E.2d 505, (Ind. 1997) (furthering civil litigation); *In the Matter of Brizzi*, 962 N.E.2d 1240 (Ind. 2012) (releasing press statements and released information prejudicial to proceeding). Moreover, his interactions with Lt. Natasha Douglass were deceitful, improper, and likely violated Lt. Douglass’s civil rights. Nothing about Prosecutor Sommer’s actions should make any Indiana Attorney or everyday Hoosier feel comfortable.

Ind. Code § 35-44.1-2-2 Obstruction of justice – It is likely that Prosecutor Sommer’s deceitful and secretive actions constitute criminal behavior. Therefore, his actions must be investigated and reported to the proper authorities should prosecution be warranted.

Finally, Sheriff and Mrs. Kelly would like to thank the Disciplinary Commission for considering this complaint. Regardless of the outcome, it is certainly necessary to maintain and ensure the proper practice of law and administration of justice in the State of Indiana and Clinton County through a thorough investigation. As stated at the outset, this firm represents both individuals in their personal capacities, and I have attached the relevant documentation and audio recordings. There is a considerable amount of additional audio recordings and documents, and I will provide the same at your convenience. Additionally, should you desire to interview any witnesses, I would be more than willing to assist you in establishing contact.

Adrienne Meiring  
April 1, 2022  
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Thank you, and I look forward to assisting in any way you deem appropriate.

Very truly yours,



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Brian R. DeHem

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