LAW OFFICES OF DAVID L. MOFFITT & ASSOCIATES

ATTORNEYS AND COUNSELORS AT LAW

THE BINGHAM CENTER
30600 TELEGRAPH ROAD, SUITE 2185
BINGHAM FARMS, MICHIGAN 48025
TELEPHONE 248. 644.0880
FACSIMILE 248. 644.3541
DLMOFFITTASSOC@AMERITECH.NET

April 8, 2008

Attorney Grievance Commission
243 West Congress, Ste 256
Detroit, MI 48226

Re: Request For Investigation Of Wayne County Prosecutor Kym Worthy

Gentlemen:

The following comprises the request of Alexander Aceval for an investigation ("RFI") regarding Wayne County Prosecutor Kym L.Worthy (P 38875), in connection with Wayne County Circuit Court ["WCCC"] Case no. 05-003228, Court of Appeals ["COA"] Case no. 279017, Michigan Supreme Court ["MSC"] Case no. 135149, and Attorney Discipline Board Case no. 08-35-GA.

This document has been prepared at his request by his legal counsel in the cases aforesaid, the Law Offices of David L. Moffitt& Associates, by David L. Moffitt (P30716), and his signature authorizing same appears below.

The Honorable Kim L.Worthy ["Prosecutor Worthy"] was at all times pertinent hereto licensed to practice law in the state of Michigan, maintains an office for the practice of law in the County Of Wayne, State of Michigan, and by virtue of said license is a member of the State Bar of Michigan subject to the jurisdiction of the Michigan Supreme Court and the Attorney Discipline Board in matters of discipline for professional misconduct.

Petitioner adopts and incorporates by reference the formal complaint filed by the Grievance Administrator against Assistant Prosecuting Attorney ["APA"]Karen Plants, P 43616, in Attorney Discipline Board Case no. 08-35- GA, attached hereto, as if same were set forth fully herein.

It is believed by Petitioner, upon the advice of Petitioner's legal counsel David L. Moffitt, subject to pending investigation, that APA Plants committed a number of ethical violations, that may also be state and criminal law violations, and that Prosecutor Worthy, indirectly and derivatively, as her supervisor, and directly, by her own actions, inactions, acts of commission and acts of omission, has similarly committed a number of ethical violations, that

may also be state and criminal law violations.

This conduct obstructs the justice process, subjects the criminal justice and law enforcement system to otherwise undeserved ridicule, and diminishes the continuing struggle of the dedicated men and women of the Wayne County Prosecutor's Department that earnestly seek, as public servants, the protection of our society. While undeniably brought to advance the legal interest of Petitioner in the related legal actions, this RFI is also brought, at the insistence of his legal counsel, to preserve the integrity of their honorable endeavors, and isolate from those efforts the offenses complained of, so that they are not painted with the same deserving brush of iniquity as are APA Plants and Prosecutor Worthy.

I.

A. Prosecutor Worthy's MRPC 3.3, 3.4, 3.5, and 3.8 Continuing Concealment And Refusal To Fully Disclose , to Date, Including Concealing Court-Sought Content of Internal Communications in Furtherance and Aid of the Scheme, Has Obstructed Discovery Of Additional Facts Pertinent To Establishing Her Personal Professional Disciplinary, Prosecutorial, And Criminal Liability For These Events. It must be understood that no complete account of the trail linking Ms. Worthy to the scheme can be made because the WCPO has refused, to the present date, to make a complete disclosure of the entire handling of this matter within its office.

Specifically, the WCPO has failed to disclose every person involved in this scheme, failed to disclose every person aware of the scheme, failed to disclose every person giving orders or making suggestions regarding this scheme, failed to disclose every document generated internally relating to this scheme, and failed to identify every person that had a statutory-prosecutorial-related duty, professional disciplinary duty, or criminal investigative duty, to monitor, investigate, and/or take action regarding this scheme, and to chronicle their response to that duty.

MRPC, 3.8 Special Responsibilities of a Prosecutor, provides in pertinent part:

> "The prosecutor in a criminal case shall:
>
> **(a)** refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause; * * ***(d)** make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the degree of the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

Defendant actually formally sought this precise disclosure by filing a "Motion for Supplemental Disclosure And Evidentiary Hearing" before Judge Vara Massy Jones, who [as will likely be the subject of a different request for investigation in another forum] chose to unconstitutionally dismiss undersigned counsel from the defense of that cause, instead of substantively hearing the motion or otherwise complying with her judicial duties to order a complete disclosure of the criminal scheme. Defendant would not have had to file this Motion if the WCPO had complied with applicable law. .

Argument that some "disclosure" was actually made, perhaps subsequently to Mr. Aceval's other attorney, Warren Harris, underscores the duty of disclosure, but any token disclosures arguably made never included the complete outline of the internal contact of the entire office with the scheme's actors.

B. MRPC 3.3 Violated By Continuing To Fail To Disclose, Where Disclosure Needed To "Avoid Assisting a Criminal or Fraudulent Act, Particularly Where MSC 3-19-08 Order Makes *Extent* of Prosecutorial Misconduct Key Remaining Issue In Criminal Case. "

MRPC 3.3 Candor Toward the Tribunal, provides in pertinent part that:

> "MRPC 3.3 Candor Toward the Tribunal
> **(a)** A lawyer shall not knowingly:
> (1) make a false statement of material fact or law to a tribunal;*(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;*(3) fail to disclose to a tribunal controlling legal authority in the jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.**(b)** The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6."[Emphasis added].

The MSC Order of 3-19-08 remands the matter to the COA "for consideration of whether the prosecution's acquiescence in the presentation of perjured testimony amounts to misconduct that deprived the defendant of due process such that retrial should be barred." The extent of the Prosecutor's Office's "acquiescence" and/or actual, active participation in its suppression and concealment, not only up to Mr. Aceval's plea 6-7-08, *but also up to the present date*, is now fully part of the potential "misconduct" that the COA is to evaluate to determine if re-trial is barred. In other words, the MSC has now made the issue of the "extent of the misconduct" the *central issue* in the case.

Where the defendant must now litigate that issue, per the MSC's Order, of the "extent" of "misconduct,"*the disclosure is now more than ever needed for defendant*

to discern the entire scope of the misconduct, i.e. the actors, documents, etc., that will bear on the question of the misconduct's barring re-trial; therefore the disclosure "is still necessary to avoid assisting a criminal or fraudulent act"*Id*. 3.3(a)(2).

The Prosecutor still owes this duty of disclosure to the present tribunal, *i.e.* the Court of Appeals, MRPC 3.3(a)(4), where this very issue is central to whether re-trial will take place. Failure of the WCPO to do so, that is, to continue to obstruct defendant's access, MRPC 3.4(a), and fail to remedy, MRPC 3.(a)(4), failure to disclose, MRPC 3.3(a)(2)and MRPC 3.8(d), will aid and abet the criminal act and facilitate, as an accessory, its continuation.

C. **MRPC 3.4 Fairness to Opposing Party and Counsel**. MRPC 3.4 provides in pertinent part as follows:

> "MRPC 3.4 Fairness to Opposing Party and Counsel
> A lawyer shall not:
> **(a)** unlawfully *obstruct* another party's access to evidence; unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value; or counsel or assist another person to do any such act;**(b)** falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law." [Emphasis added].

The MSC Order of 3-19-08 remands the matter to the COA "for consideration of whether the prosecution's acquiescence in the presentation of perjured testimony amounts to misconduct that deprived the defendant of due process such that retrial should be barred. Again, the "extent" of the Prosecutor's Office's "acquiescence" and/or actual, active participation in its suppression and concealment *up to the present date*, is part of the potential "misconduct" that the COA is to evaluate to determine if re-trial is barred. The concealment to date has aided, and continues to aid, wrongfully and unlawfully, the prosecution of this matter, because the "misconduct" is still continuing.

D. **MRPC 3.5 Violation "Not Seek to Influence . . . .By Means Prohibited By Law.** The foregoing may also be a violation of MRPC 3.5, which provides:

> MRPC 3.5 Impartiality and Decorum of the Tribunal
>
> "A lawyer shall not:
> **(a)** seek to influence a judge, juror, prospective juror, or other official by means prohibited by law."

Here, the failure to make a disclosure required by law in MRPC 3.8(d) unlawfully influenced, by withholding important information from them, the tribunal, court, juror, or judge. Defendant was forced to emergency appeals to the COA and the MSC to attempt to stop a second trial, and to file a lengthy Motion To Dismiss, both of which, if the prosecutor had admitted the full circumstances to the involved courts, lending the prestige of its office to those imprecations for relief, instead of them appearing to be just the "usual defensive claims," the appeals or that motion may have been resolved differently, and no second trial may have sought.

E. Obstruction Of Justice And Aiding And Abetting/Accessory After The Fact Liability Attach To Continuing Refusal To Disclose . This continuing concealment itself is a breach of legal, ethical, and prosecutorial duties by Prosecutor Worthy herself, and may additionally comprise, directly, and/or as a conspiracy to, and/or accessory after the fact liability for, the felonious scheme itself. It further comprises a *deliberate obstruction of justice distinct from any actions of APA Plants*. It is directly chargeable to Ms. Worthy, who has the ultimate responsibility to disclose it, let alone act upon it.

I I.

A. Prosecutor Worthy Knew, Has Known, And Is Responsible For All Events Since At Least September 8, 2005. It is anticipated that Prosecutor will allege unawareness of certain of the events giving rise to her apparent prosecutorial, professional disciplinary, and criminal liability. Discussion of certain events prior to the discovery of the actual scheme in March, 2006, establish her awareness for all necessary purposes.

MRPC 5.1 states in pertinent part:

> "MRPC 5.1 Responsibilities of a Partner or Supervisory Lawyer
> **(a)** A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.**(b)** A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.**©)** A lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if:
>
> (1) the lawyer orders or, with knowledge of the relevant facts and the specific conduct, ratifies the conduct involved; or(2) the lawyer is a partner in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."

In addition to those transgressions that Prosecutor Worthy committed directly, and continues to commit, Prosecutor Worthy would be directly responsible, personally, as if each of

the transgressions of APA Plants were here own, where she knew, within the meaning of MRPC 5.1(C)(2), "of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action." The instances are numerous.

B. "Making Secret Record" Resulted From Top Managerial Knowledge Of Scheme. Paragraph 52 of the Formal Complaint references the secret, *ex-parte* meeting of September 8, 2005 between APA Plants and Judge Waterstone. Plants had disclosed the continuing perjury scheme and/or trial perjury to a senior *named* member of the WCPO, who advised her to make a record of the perjured testimony to the court. See transcript 3-28-06, p 9, L25 to p 10, L 3. The senior member of the WCPO knew or should have known of his duty to report the matter to Prosecutor Worthy or his immediate superiors, if any, who would have had a corresponding duty to report the unlawful continuing scheme to their immediate supervisor, Prosecutor Worthy.

While the failure of each of these senior members to have reported the continuing criminal scheme would have been individual breaches of their professional disciplinary responsibility duties and duties as prosecutors/law enforcement officials/officers of the court, it is respectfully alleged that in fact those individuals *most likely did their duty, at least as it related to reporting to their respective superiors*, and that therefore *Prosecutor Worthy was aware of the continuing criminal scheme, but took no action of that kind are required by law*.

C. Prosecutor Worthy Failed To Maintain an MRPC 5.1(a) "MRPC Conformity System."Even loyal top prosecutorial managers claiming that they did *not* tell Prosecutor Worthy of the continuing criminal scheme being played out under the office's auspices will not relieve her of personal disciplinary responsibility. In any case, Prosecutor Worthy had a direct duty to ensure under MRPC 5.1 (a) that "the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct." Plainly, this was not done, as even the actual printing of damning evidence from the APA Plants and Judge Waterstone's mouths themselves, in area newspapers, did not ostensibly get through to Prosecutor Worthy.

Any senior member of the WCPO that was aware of the foregoing would also have been under a continuing duty to continually monitor the criminal circumstances all of this scheme's operation., to continually require compliance with the law by APA plants, to report the matter to the AGC, and to continue to have a duty to report to respective superiors. Failure of Prosecutor Worthy to take action based upon ostensible knowledge of the scheme prior to September 8, 2005 comprises obstruction of justice, and/or subornation of perjury, and violation of the aforesaid duties to disclose under MRPC 3.3(a)(2) and 3.4.

Continuing events gave rise to new, independent requirements of monitoring and reporting, and taking appropriate ethical, prosecutorial, and criminal action, as demonstrated by the subsequent September 19, 2005 meeting.

These same legal, ethical, prosecutorial duty and criminal liability considerations apply to the September 19, 2005 second sealed ex parte record with Judge Waterstone, similar in

format to the September 8, 2005 sealed *ex parte* record with Judge Waterstone, undoubtedly made pursuant to the same advice that the September 8, 2005 ex part to a record was made. However, whom ever offered this advice to APA Plants could have only intended two possible ways that it be carried out: (1) that it be done secretly and without disclosure to the defense; or (2) that it be done in public. Plainly, if (1) were intended, the advice was in furtherance of the conspiracy, and the foregoing ethical and criminal liabilities apply.

If it were intended to be public, possibility (2), it should have been subsequently obvious that where no furor resulted, no proceedings were initiated to correct the testimony on the record, or no mistrial was declared, that APA Plants had not undertaken to execute the advice in a lawful manner, *i.e*., public disclosure, and this fact would have been required to have been communicated up the line under the aforesaid duties, independently of the earlier reports, if any, required to have been made of this scheme.

Referencing paragraph 86, Formal Complaint, for the same reasons, those with a continuing duty to monitor the scheme and/or to supervise Plants knew or should have known that if a mistrial was not declared, and that a hung jury had in instead been declared, that it was most likely that APA Plants had not executed the advice in a legal fashion, or that a further instance of a further criminal event had occurred, specifically, that Plants and Waterstone had decided not to require the necessary correction of testimony to the jury, and unlawfully used her powers and used her powers as judge to declare a too defectively declare a mistrial[i.e. not based on the legitimate belief that the jury was deadlocked or unable to reach a verdict, but that a criminally misinform the jury had been unable to reach a verdict.] [*See*, *e.g*., the extensive reliance double jeopardy analysis places in the attachment, or not, of jeopardy to hung-jury proceedings, and to the integrity of the trial judge. *Richardson v US, 468 U.S. 327(1984); P v Aceval, MSC No. 135149, Defendant's Brief In Support Of Application For Leave To Appeal, at p 32-36.*

Again, the declaration of a hung jury instead of a mistrial, under these circumstances, would have signaled to the higher-ups that counseled the on-record disclosures that a reportable event involving ethical, prosecutorial and criminal consequences had occurred. Ms. Worthy would undoubtedly have been informed of such an event, under the foregoing analyses, and shares all responsibility with APA Plants for such events. Of course, if Prosecutor Worthy fails to take responsibility, alleging that her top managers knew but didn't tell her, the top managers would have to take the full, vast brunt of responsibility, ethical and criminal, for all the events, at least up to 5-3-06, when there is no doubt of Prosecutor Worthy's knowledge. [*see infra*].

D. 3-30-06 Free Press Article Repetition Of Allegations And Remarks Of Plants Should Have Put Prosecutor Worthy Herself On Notice. On March 30, 2006, the Detroit Free Press published an article entitled, " Wayne County Judge Steps Aside As Controversy Swirls In Drug Case, regarding a 3-29-06 hearing in the case. The article contains the following statements that should have put Prosecutor Worthy and her highest managers on notice that there was a highly questionable and likely criminal scheme being conducted through their offices in the course of a continuing case:

1. ”Waterstone was informed of the confidential informant’s identity, Chad Polish, 35, of Inkster-during a closed hearing with police and prosecutors.”

2. “Wayne County assistant prosecutor Karen Plants said at the [March 17] hearing: “If they don’t want any perjured testimony to come out, then they shouldn’t ask those questions.”

3. “Plants said during the hearing Tuesday that the police lied ‘to protect the identity of the confidential informant.’

4 Waterstone said during the hearing: “I don’t think I took any, I had any complicity, because I had no idea what people are going to testify to on cross examination.”

5. “Jack Fennessy, a spokesman for the prosecutor’s office, said Feinberg ignored an order not to ask about Povish’s identity during the first trial.”

Any one of such statements should have put professional prosecutors on notice that apparently perjured testimony may have been offered and that their Narcotics Unit Chief AP{A Plants had been forced to make apparently absurd and nonsensical-sounding statements in support of the officers’ perjured testimony. Statement 3 however, is a clear admission of a police witness false testimony at APA Plants’ trial. It is indefensible that no further investigation, reporting, or referral to an outside agency for evaluation for criminal liability was made.

The fact that a spokesman for the prosecutor’s office was engaged to comment alone shows highest managerial level involvement in management of the situation. Further, the spokesman was plainly directed to offer a misleading and incomplete impression of the cause of the perjury.

The WCPO should have taken immediate steps at this point to protect the dignity of the profession but instead permitted it to be subject to the humiliation of Plant’s lame excuses and Waterstone’s disqualification. It also permitted Waterstone to quit the case in a false light, as if she was avoiding the appearance of impropriety and bias, when she was actually falsely claiming in open court to have no knowledge of or complicity in the scheme. She was not reported to the JTC by those senior managerial prosecutors with actual knowledge of her criminal complicity, a reporting violation which must be attributed to Prosecutor Worthy, nor was she ever prosecuted herself, similarly, a decision that could only have come from the highest level, Prosecutor Worthy herself.

It is suspected that a deal of no prosecution and unspoken agreement not to ever take professional disciplinary reporting action, was made with her to secure her subsequent testimony in the second trial. No disclosure of the internal workings of this matter has ever been made, as noted above, and this point remain open to investigation. Why would Waterstone so openly join the prosecution trial witnesses for the second trial, after having attempted to conceal the

matter so many times over so many months, except but for lack of fear of any consequences? Non-disclosure of these circumstances but still offering her testimony at trial would be a violation of the WCPO's *People v Wiese* [425 Mich 448 (1986)] duties, and of the MRPC 3.3 (a)(2), 3.4, and 3.8.

With Waterstone's publicized recusal and the revelation of the perjury scheme now public, the transcripts of all proceedings were transcribed, and unexpectedly, the September 8 and September 19 transcripts came to light. They were immediately incorporated in a Motion for Rehearing filed before the MSC, and accordingly would have unavoidably come to the attention of the appellate/research department headed by one of the office's top managers. Professional disciplinary, prosecutorial and criminal liability may attach similarly as discussed above.

E. 5-3-06 MetroTimes Article Repetition Of Allegations And Remarks Of Plants Should Have Put Worthy Herself On Notice Of Need For Outside Prosecutor. On May 3, 2006, a *MetroTimes* article appeared, "Taint Right," attached, noting that:

> "It's outrageous, says Bridget McCormack, , a criminal law professor at the University of Michigan Law School. Based upon the details of the case outlined for her by the Metro Times, she thinks the matter warranted an investigation by a special prosecutor."

The foregoing remarks should have put Prosecutor on notice that an independent prosecutor was needed to further investigate the case. Surely no one could *realistically* be so utterly *certain* of the overwhelming *legality* of what was transpiring that a special prosecutor or outside investigator wouldn't even need to be *considered*. When prominent scholars at the state's law schools call for an independent prosecutor, shouldn't Prosecutor Worthy have sought referral to one, particularly where she was sufficiently informed and concerned to have supposedly t*ransferred* APA as of 5-3-06 [*see discussion , infra*]. This was conduct prejudicial to the administration of justice within the meaning of MRPC 8.4©).

Despite the distribution of the *MetroTimes* 5-3-06 issue article in the very lobby of the building in which the WCPO is located, the WCPO never referred this matter to a special prosecutor, or even gave any public impression that such a course was ever considered. This is consistent with a continuing intent to suppress and cover-up the scheme. There was still time to fully disclose under MRPC 3.8,
etc., and to refer for prosecution the judge and witnesses. Instead, the WCPO called Waterstone as a witness in its case in chief. In not prosecuting Waterstone until at least after she had testified, the WCPO sought to put her testimony in a false light, and elevate the false claim of Plants and Waterstone of danger to the confidential informant witness to a new credibility, in violation of MRPC 3.5(a).

As this is being written, it is reported in the *News* and *Free Press* 4-3-08 that a referral to a special prosecutor from the Prosecutors Coordinating Council is now supposedly being sought. This evidently occurred only after a media frenzy, and undersigned counsel calling upon Worthy to "do the right thing" on television [Fox 2 News, 4-2-08].]

Even so, the "special prosecutor" is only being requested for investigation of Karen Plants, alone. *See News* and *Free Press* stories of 4-3-08. *No mention was made of plans to request a special prosecutor for the police, Povish, or Waterstone, or even to consider warrants against them themself.* If referral to a special prosecutor is appropriate now, wasn't it just as obviously appropriate, even upon the most casual reading of the evidence, which is essentially unchanged then, back then? Prosecutor Worthy is *still* covering up, *still engaging in selective prosecution*, and *still* obstructing justice regarding these other actors.

Claiming prosecutorial discretion in not charging them would be placing the matter in a false light, in violation of MRPC 4.1, *infra,* and, in this case, would be misfeasance in office, that is, failing to prosecute them for fear that their disclosures would expose the WCPO to collateral criminal liability.

I I I .

A. Prosecutor Worthy's Office Lied To Media 5-3-06 In Violation of MRPC 4.1

About Previous APA Plants Re-Assignment As 4-2-08 *Free Press* Article Shows When Worthy Claimed Plants Re-Assigned 4-1-08 In Response To AGC Formal Complaint.

MRPC 4.1 provides in pertinent part that:

> "MRPC 4.1 Truthfulness in Statements to Others
>
> In the course of representing a client, a lawyer shall not knowingly make a false
> statement of material fact or law to a third person."

The 5-3-*06 MetroTimes* article cited above further noted that:

> "Except for saying that Plants had been "reassigned," the office of Wayne County Prosecutor Kym Worthy wouldn't answer questions from *Metro Times* regarding the allegations.
>
> > 'Because the case is still in progress, I cannot comment on it,' says Maria Miller, spokes man for the prosecutor.' "'There will be an appropriate time to comment when the case is concluded.' "

This exposes a specific and obvious lie that the WCPO has told to the press. Here, in a May 3, 2006 article, it is claimed that Plants was "reassigned." Yet in a April 2, 2008 *Detroit Free Press* article, the prosecutor's office *[again*] claimed that Plants had been "reassigned*" in response to the Free Press inquiry of April 1, 2008:*

> "Wayne County assistant Prosecutor Karen Plants, 45, was reassigned from her supervisory position Tuesday, a move announced *after* the Free Press called

prosecutor Kym Worthy's office to seek comment on the misconduct charges. *Filed Monday*, the charges could lead to the suspension or revocation. . . ."

Detroit Free Press, "Narcotics Prosecutor Allowed Lies at Trial", 4-2-08, p 13A, [Emphasis added].

While not offered under oath, Prosecutor Worthy's obvious attempted deception of the press and the public on whether APA Plants was transferred out of the positions she so clearly abused, is violative of MRPC 4.1. *It matters*, because Plants may have continued to commit criminal acts in her position from 5-3-06 to 4-3-08, and because it misleads others into thinking some actual response had been made by the WCPO the police, Povish, Plants and Waterstone perjury scheme. None had, of course, and the trial proceeded.

B. Prosecutor Worthy's 5-3-06 Personal Awareness of Sufficient Seriousness Of Circumstances To Justify "Transfer" Established Personal Violations Of MRPC 3.8 (a) and (d), 3.3 (a)(2), and 3.4(a)

Note that the deception over the "transfer" demonstrates awareness 5-3-06 by Prosecutor Worthy that events sufficient to cause the necessity of Plant's [supposed] re-assignment had occurred, showing her continuing personal knowledge of events since 5-3-06 [*i.e.* before the second trial], and thus, her responsibility for all the misfeasance, failure to investigate, failure to refer APA Plants to special prosecutor, or prosecute through the WCPO itself the police officers and Judge Waterstone, as well as personal responsibility for her non-disclosure of all internal WCPO actors and documents, in violation of MRPC 3.3, 3.4,3.5 and 3.8, *supra*. Allowing the second trial to take place with such knowledge and without such full disclosure of circumstances is alone a violation of MRPC 3.8 (a) and (d), 3.3 (a)(2), and 3.4(a). *It matters*, because, plainly, if Worthy had timely referred the police and Waterstone for prosecution, they would have made decidedly less attractive prosecution witnesses at the second trial.

C. MRPC 4.1 Truthfulness in Statements to Others Violated By False "Media Advisory."

On June 12, 2006, a "Media Advisory" offered in writing by the WCPO stated:

> "The case gained attention when Karen Plants, the original Assistant Prosecutor assigned to the case, was accused of presenting perjured testimony. Every witness that testified in all the proceedings indicated that Ms. Plants instructed them to tell the truth at all times. Prosecutor Kym Worthy said, "The way that this case has been reported is disturbing. The actions of the defense--not this office or any of our witnesses---lead the press to question the character of one of my Principal Attorneys, Karen Plants. She is known throughout the criminal justice system as a lawyer of high integrity and competence. When questioned about this matter, I asked that some members of the press wait until the whole truth could be told as the prosecution would not and could not join in the further exploitation of the facts of the case before its resolution. Not only was Ms. Plants vindicated, it was shown that it was Mr. Aceval was the one engaging in,

supporting and encouraging perjury in a grand scheme. He was caught and pled guilty to these charges. Even though this matter got ugly at times, the truth is prevailed, as I knew it would, and once again, justice has been served. Justice can sometimes be slow, but we are patient and confident that it won out."

The falsehoods directly said to have come from Prosecutor Worthy in this Media Advisory are patent. It falsely claims that very witness that testified was told by Ms. Plants to tell the truth–cynically concealing that, if true, this was a shameless tactic to better cover their intended lies. It falsely claimed that Karen Plants "was"vindicated.;" It falsely claimed that the only crimes of perjury that were committed in the course of the matter were by Aceval, not by her prosecutors or their witnesses. It admits engaging in a "cover-up" by asking the press to "withhold" publication, where resort to the press was the only avenue a defendant could pursue helpless in the face of corrupt police, corrupt prosecutors, and a corrupt judge.

It further portrays APA Plants as a victim of perjury, rather than as its author. It portrays Aceval, and by implication, Pena, as authors of the perjury, not Plants, the police, and Judge Waterstone. It suggests that the hideous episode was "justice" that "won out.'' It covers up, and offers a false explanation for, the selective non-prosecution of the police, Povish, APA Plants, and Judge Waterstone.

Most damningly perhaps, it portrays the Prosecutor's Office as having done nothing whatever-- "not this office or any of the witnesses"-- to "question the character" of Ms. Plants. As Prosecutor Worthy said March 24, 2008, in announcing charges of perjury, obstruction, and misconduct in office against the Mayor of the City of Detroit and others, "Honesty and integrity in the justice system is everything." That, ironically, is precisely why this RFI has to now be brought against Prosecutor Worthy.

D. Cover-Up Continues To Two Years Later Even In Face Of More Newspaper And Media Disclosures. On April 1, 2008, Prosecutor Worthy, despite the increasingly overwhelming evidence of a clear criminal conspiracy that took place in her office, on her watch, reported in the front pages of newspapers, and plainly demonstrated in transcripts the conspirators caught sought to keep secret, still defended APA Plants

Only the baldest mendacity or monumentally unforgivable ignorance of the actual state of affairs could generate the statements in the Media Advisory and on 4-1-08 in the face of the masterfully concise AGC Formal Complaint.. At best, it represents gross dereliction of duty, and at worst, plain criminal obstruction, deliberate deception and cover-up. As to that dichotomy, it strains credulity that anyone could remain *that ignorant*, or if in fact informed, *that derelict,* through two and one half years. Either have irreparably obstructed the justice process, as discussed below.

I V.

A. MRPC 3.8(a) Violated By Continuing To Date Criminal Prosecution

That Has Been Known For Over Two Years To Have Been Without Probable Cause Since The Date of Arrest. Where the warrant swear-to was unlawful, as discussed in Petitioner's previous appellate briefs as having been based upon perjured testimony, and the preliminary exam was based upon perjured testimony, on all material points, there is, and has been, no probable cause for the prosecutions. MRPC 3.8(a), *supra*, is accordingly violated by the continuing prosecution. Prosecutor Worthy is directly, personally responsible for the continuation of the prosecution at this point.

V.

A. Conflict Of Interest And Dilatory Partial Compliance With MCL 49.160. A an elected prosecuting attorney, Prosecutor Worthy is subject to MCL 49.153, *et seq*., statutes regarding a prosecutor's duties, as well as to the Michigan Rules of Professional Conduct [MRPC], and applicable federal and state law. Duties that may have been violated under MCL 49.153, et seq., are submitted as a separate basis for professional disciplinary liability.

Prosecutor Worthy should have recognized long ago that there was a conflict of interest when her own "Principal Attorney" [see 6-12-06 Media Advisory], various prosecution witnesses and a Wayne County Circuit Judge were committing crimes through the auspices of her office in her jurisdiction. No disclosure of the conflict was made, no consent sought, to the derogation of the public, in violation, generally, of MRPC 1.7, *et seq*.., and 1.16 (b)(6).That provision, the public interest, and the following provision, read together, required expeditious [*see* MRPC 3.2] compliance with both:

> **"49.160 Special prosecuting attorney; appointment; powers and duties; assistant prosecuting attorney.**
> Sec. 60.
> (1) If the prosecuting attorney of a county determines himself or herself to be disqualified by reason of conflict of interest or is otherwise unable to attend to the duties of the office, he or she shall file with the attorney general a petition stating the conflict or the reason he or she is unable to serve and requesting the appointment of a special prosecuting attorney to perform the duties of the prosecuting attorney in any matter in which the prosecuting attorney is disqualified or until the prosecuting attorney is able to serve.
> (2) If the attorney general determines that a prosecuting attorney is disqualified or otherwise unable to serve, the attorney general may elect to proceed in the matter or may appoint a prosecuting attorney or assistant prosecuting attorney who consents to the appointment to act as a special prosecuting attorney to perform the duties of the prosecuting attorney in any matter in which the prosecuting attorney is disqualified or until the prosecuting attorney is able to serve.
> (3) A special prosecuting attorney appointed under this section is vested with all of the powers of the prosecuting attorney for the purpose of the

> appointment and during the period of appointment, including the power to investigate and initiate charges. The cost of prosecution, other than personnel costs, in any matter handled by a special prosecuting attorney shall be borne by the office of the prosecuting attorney who has been determined to be disqualified or otherwise unable to serve."

In the instant case , media accounts published 4-3-08 advise that the WCPO requested the Prosecutor's Coordinating Council to appoint a special prosecutor to prosecute APA Plants. The above statute requires that where a prosecuting attorney, here Prosecutor Worthy, determines that she is disqualified from proceeding because of a conflict of interest, the reason for the conflict should be set forth in a petition.

Although not presently available to Petitioner for review, to the extent it fails to accurately allege same, omits material provisions of the pertinent premises hereof, falsely or misleadingly relates any significant circumstance hereof, such as those relating to the toleration of the conflict of interest for more than two and one half years, the potential responsibility of Prosecutor Worthy for the acts for which a special prosecutor is sought, or that others are potentially subject to investigation by a special prosecutor under the general events of the matter, Petitioner alleges same is violative of MRPC 3.3(a)(1) and (2), 3.5(a), 4.1, and 8.4.

V I.

A. Prosecutor' Worthy's Actions In Nearly All the Foregoing Particulars Constitute Violation Of MRPC 8.4, Misconduct Prejudicial to the Administration of Justice. MRPC 8.4 provides in pertinent part:

> "MRPC 8.4 Misconduct Prejudicial to the Administration of Justice
>
> It is professional misconduct for a lawyer to:
> **(a)** violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;**(b)** engage in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer;**©)** engage in conduct that is prejudicial to the administration of justice."

That the conduct of Prosecutor Worthy in the entire conduct of this matter, and in each
instance examined at length herein, was prejudicial to the administration of justice, seems too patent for extensive discussion.

Petitioner requests that *each* past individual alleged transgression of this Rule

be reviewed for personal attribution to Prosecutor Worthy and evaluated for having been [and continuing to be, for each day they remain unremedied] as "prejudicial to the administration of justice,." particularly: (1) The non-disclosure of details of the involvement of all members of the prosecutor's department from the obvious awareness leading to the make-the secret-transcript advice in September, 2005; (2) The same non-disclosure as *continuing to date*, where the "extent" of prosecution "misconduct" is [under a 3-19-08 MSC Order saying so] the key issue as in the present COA remand; (3) The failure to file a confession of error to date in this matter where same was filed in the co-defendant *Pena* matter [around May, 2006]; (4) The failure to seek an outside prosecutor for Plants until goaded by media and AGC pressure in the past week or so; (5) The failure to timely prosecute Povish, the officers, and Waterstone, *before* the second trial, with the effect of buttressing their credibility at the second trial; (6) The failure to offer an explanation about not having prosecuted them *after* the second trial, and the likely existence of a secret deal not to prosecute them at all if they testified again; (7) The failure to have prosecuted or referred them for prosecution *after* the second trial, to the present; (8) The repeated and continued instances of false and misleading statements directly attributed to the Prosecutor herself regarding these events.

.

V I I.

A. MSC Order Leaves No Doubt That Perjury Occurred, Crimes Committed. It should be noted that the Michigan Supreme Court, in a 3-19-08 Order, attached hereto, is very carefully phrased: "the prosecution's acquiescence in the presentation of perjury." It is no longer a matter of dispute whether the prosecution in these causes committed clear professional disciplinary and criminal violations, so far as the MSC is concerned. The MSC does not use the unqualified word "perjury" lightly; it did not say "alleged perjury" or "possible perjury." Moreover, the MSC did not say "prosecutor," meaning potentially that the Order may be read to potentially say that the entire department, that is, its elected superior Prosecutor Worthy, is primarily the one who ultimately engaged in the subject "acquiescence."

B. Believed Criminal Liability of Karen Plants. APA Karen Plants, as demonstrated by the foregoing factual statement and the facts alleged in the AGC Formal Complaint above referenced, has, on information and belief, subject to continuing investigation, committed crimes, including one and/or more of the following: Conspiracy to Commit Obstruction of justice, MCL 750 .157-A, a five-year felony, Obstruction of Justice, MCL 750.505, a 5 year felony, Misconduct in Office, MCL 750.505-C, a 5 year felony; Subordination of Perjury, MCL 750.424, a five-year felony; Incitement or procuring one to commit perjury, MCL 750.425; a five-year felony; Accessory after the fact in concealment of the crime of perjury, MCL 750.505; a common-law catchall provision felony; Conspiracy to deprive rights of another under color of state law, 18 USC section 241, a 10 year felony; Depriving another of rights under the United States Constitution, 18 USC section 242, a 10 year felony; and Obstruction of justice, 18 USC section 162.

C. Believed Criminal Liability of Wayne County Prosecutor Kim Worthy. Prosecutor Kym Worthy, ultimate supervisor of APA Plants, and additionally, the law enforcement authority for the jurisdiction in which the crimes APA Plants is believed to have committed took place, is believed to have committed one and/or more of the crimes set forth above relating to APA Plants, some by furtherance of them by action and/or inaction, and others directly, by her own actions, and/or attributably, by actions of her highest managerial operatives, through whom, in her confidence and by through her derivative authority, she customarily acts.

These crimes include federal and state law Obstruction of Justice and Conspiracy to Commit Obstruction of Justice, state law Subornation of Perjury and Misconduct in Office, and acting as an accessory after the fact in the aforesaid crimes of APA Karen Plants. See citations above.

The actions believed to comprise crimes include:

(1) Her complete failure to investigate to date and prosecute the false testimony offered in numerous proceedings by police officers Rechtizegel and Adams, and witness Povich, in WCCC Case no. 05-003228;

(2) Her complete failure to refer [until 4-3-08] matters of crimes being committed in her jurisdiction, by a member of her own department, to an outside investigator and/or prosecutor, or to petition appropriate authorities for same;

(3) Her complete failure to prosecute to date [former] Judge Mary Waterstone for actively participating in, allowing, and actively protecting discovery of, the perjury scheme of APA Plants, the police witnesses and Povich, despite Waterstone actually testifying under oath to such conduct in open court in the second trial;

(4) For issuing false and misleading statements of her own, directly, and authorizing the same through spokespersons, to the public and the press regarding Ms. Plants "vindication," regarding the alleged lack of any crimes committed by anyone else in the entire matter except defendant Aceval, regarding claiming that the foregoing was the actual truth of the matter; as well as having claimed falsely that APA Plants was transferred to other duties [from Drug Unit Chief] back in 2006, when the allegations surfaced, then having claimed to actually having done so in response to the AGC Formal Complaint of 4-1-08; by generally through the foregoing promulgating a lying "spin" to protect her office from the fallout of having concealed, not reported, and not acted upon the criminal conspiracy it was aware of for many, many months;

(5) Failing to file any confession of error in Mr. Aceval's cases at any time to the present, despite having sufficient knowledge, and obligation legal and moral, to do so;

(6) Only filing a confession of error in co-defendant Pena's case, not coincidentally,

when forced to do so by the glare of publicity defense counsel Moffitt brought to the matter;

(6) Failing to disclose promptly, fully and completely the complete extent of the conduct of the perjury scheme as operated through her office under the advice and consent of senior managerial prosecutors, and ostensibly, herself, to this date, despite efforts to compel this disclosure through actual court motion, and despite the example of the [Detroit] U.S.Attorney's Office that was undergoing a similar debacle at the same time throughly discussed and praised at length by Federal District Judge Gerald Rosen in *U.S.* v *Karim Koubriti*, 336 *F Supp. 2d* 676, 679 at n.3 (2004) (Hon.Gerald Rosen) (government brought information to attention of defense; outside special prosecutor appointed; full internal review conducted and full disclosure made).

(7).Use of federal, state, and county funds, and personnel supported by said funds, to support, continue, conceal and defend the aforesaid unlawful activities, even after having sufficient knowledge of their illegality.

Given the studied, deliberate indifference of the Attorney General to this matter for almost 2 years, little optimism is expressed that a prosecutor will be found to investigate Prosecutor Worthy for possible criminal violations. A special prosecutor should be appointed if only to potentially *clear her* of these allegations.

V I I I .

Conclusion. The affect upon defendant Aceval of Ms. Worthy's and Ms. Plants' transgressions has been enormous. He has been incarcerated for over three years, has been forced to incur enormous legal fees that has included two trials and five appellate proceedings, in addition to the instant proceedings. In a related forfeiture action entirely premised upon the same falsehoods, WCCC Case no. 05-520876-CF, he has suffered police seizure of his home, a business he was apparently in the process of purchasing, and numerous possessions, as well as the ultimate loss of his home by foreclosure to the bank because of his inability to re-finance or sell when the home was subject to the prosecutor's forfeiture lien.

The actions of APA Plants have been throughly substantively absorbed, admirably catalogued, and concisely stated by the AGC, and appropriate action appears ultimately forthcoming. But the job is not yet done.

Prosecutor Worthy is quoted by the *Detroit News,* June 12, 2007 ["Two Police Execs Charged" 6-12-07] , as saying, in connection with the prosecution of a Detroit Police Commander Autry,

> "The day we knowingly allow a police official to tamper with evidence is the day we have compromised the integrity of the entire criminal justice system."

She's right. Prosecutor Worthy *has* compromised the integrity of the entire criminal justice system. If the actions of Prosecutor Worthy pass without comment, censure, or sanction, as, to date, the actions of Judge Waterstone, Povish, and the officers have, that compromise of integrity will be complete, and there will indeed be those in our society who, tragically and frighteningly, are truly "above the law."

Sincerely,

[See attached signature page]
_____

[See attached signature page]
Dated:_____

Alexander Aceval, Petitioner

Prepared by:
THE LAW OFFICES OF DAVID L. MOFFITT
& ASSOCIATES

_____ Dated:_____

By: David L, Moffitt (P30716)
Attorney For Petitioner