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M. Jeffrey Whitt
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July 10, 2017

Beverly Sharpe, Esq.
Board of Professional Responsibility
Consumer Assistance Program
10 Cadillac Dr.
Brentwood, TN 37027

RE: Complainant: Roy Cook
Complaint No.: 48894c-2

Dear Ms. Sharpe:

I hope this letter finds you well. I write at your request in relation to your letter of July 7, 2017. As requested, I have forwarded a copy of this letter to Mr. Cook. In your letter you ask for a brief written statement concerning this complaint. The letter I received included a number of copies of various documents, and I will endeavor to address each of the issues raised within these documents. In the event that I miss an issue, please let me know and I will update my response.

It is helpful, I believe, to begin with a summary of my representation of Mr. Cook. I was appointed to represent Mr. Cook in Roane County Criminal Court on a charge of extortion. The facts of the case are somewhat convoluted, but the heart of the matter is that Mr. Cook was accused, along with his brother, of attempting to extort money from a second brother (the alleged victim). The alleged victim owed a debt to the brother that was charged with extortion along with Mr. Cook. This debt was evidenced by a judgment against the alleged victim in favor of this brother. It was apparent to me that the appropriate strategy for this case was to assert the affirmative defense that Mr. Cook and his brother were attempting to enforce a valid debt, and therefore could not have extorted anyone.

As the representation wore on, it became apparent to me that Mr. Cook had less interest in litigating his case than in finding ways to inconvenience and embarrass the prosecution and the alleged victim. Though I was perfectly happy to defend the charge against Mr. Cook, I had no interest in assisting him in harassing these individuals, nor did I have any interest in serving as his investigator in his attempts to have the alleged victim indicted.

Turning to your letter, in the interest of organization, I will attempt to address each of the enclosed documents in turn, in the order I received them. The first of these documents is an email from Mr. Cook dated June 26, 2017. It relates three complaints. The first I believe deals with the issue regarding the subpoena to Vonage.

I originally agreed to obtain a subpoena for the alleged victim's Vonage records. I did change my mind about the necessity of that subpoena. I do not recall when I changed my mind about the necessity of that subpoena. As you may imagine, I think about my cases in a somewhat irregular fashion, and many of my decisions are made while turning matters over in my head as I go about my day, such as while eating lunch or driving in the car. In any event, I recall that I had become convinced that this subpoena was an effort to obtain information that was not useful to the case, but rather that was merely for the purpose of allowing Mr. Cook to harass or annoy his brother.

As a result, and being mindful of the trial strategy of an affirmative defense of enforcing a valid debt, I determined that these records were not necessary. Mr. Cook was of the belief that he controlled the strategic decisions, and I was never during my time as his attorney able to disabuse him of that belief. Mr. Cook asserts in this email that I wanted to go to trial without all the evidence needed. I suppose we will never know if the evidence I intended to present would be sufficient to reach a verdict of not guilty, but it is my professional opinion that it was. On this point I image that we will have to remain at a disagreement.

Mr. Cook next claims that I violated attorney-client privilege twice. I deny that in the most vehement fashion. I take my obligations to my client very seriously, and have never disclosed confidential client information. From the documents provided, it appears that this claim arises from Mr. Cook's insistence that I told the prosecutor that Mr. Cook believed the name redacted from the Vittetoe emails was that of an FBI agent (I am unable to locate in these documents the second allegation of violation of attorney-client privilege).

As an initial matter, Mr. Cook cannot claim that his belief that the redacted name was that of an FBI agent was privileged, given his discussion of this belief with the news media. I enclose with this letter a copy of a new article which quotes Mr. Cook as saying, "[Hedrick] withdrew because I refused to go to trial without the FBI agents' records...I can't seem to get an answer from him...as to why they won't help me obtain the FBI's records".

Additionally, and more importantly, the basic sequence of events regarding this email are as follows. Mr. Cook brought the redacted email to my attention, and I asked the prosecutor to provide a non-redacted copy. The prosecutor, Robert Edwards, Esq., responded that he did not have a redacted copy. I have known Mr. Edwards my entire career, and know him to be a scrupulously honest man. His answer was sufficient for me to believe that the files of the prosecution did not contain an unredacted copy. I then approached Mr. Vittetoe (the recipient of the email), and asked him about it. He had no memory of the email at all, and I attempted to prompt his memory by asking if he remembered if it was a civilian or law enforcement, or perhaps someone from another agency. When this proved fruitless, I questioned directly whether this person was an FBI agent. The entirety of these discussions were meant to further Mr. Cook's case by attempting to identify a potential witness, and any disclosures were intended to further that

goal. There was at no time any disclosure of any information that I believed was intended to remain secret or that could harm Mr. Cook. Any disclosure that was made was made in order to carry out the goals of this representation (that is, the identification of potential defense witnesses) and was impliedly authorized as a necessary part of carrying out that representation.

The second document is a paragraph numbered "5", which appears to be part of a larger document. This document repeats the complaint that I do not recall when I made the decision regarding the value of the Vonage subpoenas, addressed *supra*, and complains that I believed the prosecution was refusing to dismiss the case because of Mr. Cook's criticism of the prosecution in the media but did not bring this to the attention of Mr. Edwards' superiors. I did tell Mr. Cook that his statements in the media have made the District Attorney unwilling to dismiss the case, but I meant the *elected* District Attorney Russell Johnson, not Mr. Edwards. I suppose I did not draw a clear enough distinction between the District Attorney and the Assistant District Attorneys. In any event, I did not complain to Mr. Edwards' superiors because the resistance to the dismissal originated above Mr. Edwards.

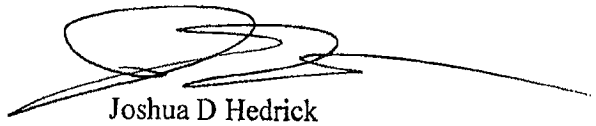
The third document is an undated letter from Mr. Cook to the Board of Professional Responsibility. This document complains that I told Mr. Cook that his computers were never searched or analyzed by law enforcement (he uses the term "hacked"). As in every case, I obtained discovery in Mr. Cook's case. The discovery did not include any information relative to forensic analysis of Mr. Cook's computers. As I have discussed before, I had, and do have, every confidence in Mr. Edwards' honesty and thoroughness, and relied upon that in my conclusion that the lack of evidence from a forensic examination of the computer in discovery meant that no examination had been done.

The fourth document is a letter to Jedidiah McKeehan, Esq., from Mr. Edwards. This letter was sent after my representation of Mr. Cook was concluded, and appears to stand for the proposition that Mr. Edwards was told by law enforcement "until recently" (which I imagine was after my representation of Mr. Cook had ended) that there was no review of the computers done or alternatively, nothing found. This is as I would expect, given that it was represented to me that there was no review done. I cannot be faulted for not having information that the prosecutor himself did not have at the time of my representation, particularly since there was (apparently) never any information there at all. The next several documents appear to be related to the forensic evaluation of the computer, but I do not find any indication that either exculpatory or inculpatory information was found.

The final document is a portion of what appears to be a letter from Mr. Cook. In it he relates his conversations with agent Clay Anderson of the FBI, whom I think he believes is the individual whose name is redacted from the emails. As you know, the agent's belief that no crime was committed is not admissible in Mr. Cook's trial. Even if we assume that it is, it is extremely unlikely that the Department of Justice would permit the agent to be subpoenaed for the trial. Ultimately, the appropriate defense for Mr. Cook was not that some other agency did not have an interest in investigating the case, but that his actions were not criminal. I dispute that there was any violation of the rules of professional conduct in the strategic decision to not pursue this particular angle.

In sum, I believe that I represented Mr. Cook to the best of my professional ability, and that, had we gone to trial, we would have been successful. I am glad to see that Mr. Cook's case is finally dismissed, as I hold no ill will toward him. I hope that this letter has adequately addressed the concerns you may have. In the event that you require any further information from me, please do not hesitate to contact me. Wishing you all the best, I am and shall remain, as ever,

At your service,



Joshua D Hedrick

CC: Roy Cook

Office *of the* District Attorney General
Ninth Judicial District
Serving Loudon, Meigs, Morgan and Roane Counties
Russell Johnson, District Attorney General

July 11, 2017

Beverly P. Sharp
Director of Consumer Assistance
Board of Professional Responsibility
10 Cadillac Drive, Suite 220
Brentwood, TN 37027

Re: Complaint # 48892c-2
Complainant: Roy Cook

Dear Ms. Sharpe:

I am in receipt of the complaint filed in the above referenced matter as of July 10, 2017. I have reviewed the contents and would submit this response.

Roy Cook was indicted by this office for the offense of extortion alleged to have occurred January 16, 2013. The indictment was returned in 2013. It is important to note that the Grand Jury found probable cause after receiving testimony from the alleged victim, Andrew Cook. The case was not presented to the Grand Jury by this office. However, once it was indicted this office had the responsibility of prosecuting the case. Initially the case was handled by Assistant District Attorney Bill Reedy and later handled by Assistant District Attorney Terry Stephens. I assumed responsibility for the case in mid to late 2015. By that time there had already been a lot of activity in the case including the production of discovery for the defense. I reviewed the file. Mr. Cook had persistently demanded additional discovery over the entire period of time the case was pending and has always insisted that he was not being provided everything that the State had by way of discovery. As a result I had been focused on making certain that discovery was complete the entire time I have been responsible for the file. I worked with a succession of attorneys as Mr. Cook had difficulties with each of the attorneys appointed to help him. There were many accusations made by Mr. Cook each time the case was set in court about information not being provided to him and discovery not being furnished. Each time this occurred I would communicate with the officers involved or directly with the victim in the case. The victim is Roy Cook's brother Andrew Cook.

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Some of these communications resulted in additional copies of recordings and documents being furnished to me and on each such occasion I sent additional copies to Mr. Cook's attorney, whoever it may have been at the time. During these events I was not aware of the filings that Mr. Cook had made with your office although at some point I was advised by the victim, Andrew Cook, that an obscure internet based Blog operating in Connecticut had published a document that appeared to be a complaint filed against me by Roy Cook. I downloaded a copy and placed it in my file but at the time believed that it had not actually been filed with the BPR. It turns out that this is actually the filing that your letter identifies and his correspondence with your office dated August 22, 2017. Over the course of all these events it is my belief that our office adhered to our "open file" discovery policy and that the entire contents of our file had always been available to attorneys representing Roy Cook. At no time was any evidence concealed from him. However, I was also became aware that there were investigative steps that either had not been undertaken or if undertaken not performed to my satisfaction. On the other hand there was ample evidence in the file in the form of recorded telephone conversations to support the charge of extortion.

Ultimately, Mr. Cook asked the Court to relieve the last attorney appointed to represent him and instead of appointing new counsel the Court designated Stephen McGrath to serve as "elbow" counsel. Mr. Cook filed or had already filed a Motion seeking the dismissal of the charges because of what he alleged to be prosecutorial misconduct. This motion repeated many of the accusations made in all three of the filings made with your office to which I am responding. The Motion to Dismiss for Prosecutorial Misconduct was heard on March 31, 2017 and the motion was denied. It was important to me the motion was fully heard and disposed of in light of the serious accusations that were made against me and the prosecutors that had handled the case before me. At that hearing Andrew Cook testified as did the defendant. Other witnesses were called. The Court found no basis to believe that any prosecutorial misconduct occurred. One of the issues involved in the hearing had to do with whether or not there had been a forensic assessment of computers that had been seized from Roy Cook and his brother Thomas Cook. The information that had been consistently relayed to our office over the entire time that I had been involved in the case was that Det. Dan Schneider and Det.

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Shane Harrold had possession of the computers and that either no evaluation had been done or if one was done no material evidence had been found. I had been very unhappy with those statements as I believed that was very sloppy police work. I believed that either an evaluation should have been done or that if one had been done that a report should have been prepared and submitted to the district attorney's office whether anything was found or not.

After the hearing Roy Cook contacted me and complained that Andrew Cook had testified falsely at the hearing that that perjury had been committed. I agreed to meet with Roy Cook, his "elbow" counsel and his investigator. We met and had a cordial discussion about these issues and other matters pertinent to the case. Among the other matters was the fact that Roy Cook had a telephone conversation with Investigator Jeff Vittatoe in late March of this year and had recorded the conversation and had transcribed the recording. I listened to Roy Cook's argument that Andrew Cook had committed perjury and heard his comments about the content of the transcribed conversation with Vittatoe. The meeting ended with a promise from me to review the material and get back to Roy Cook.

In reviewing the transcript and other material Roy Cook had left I came to the belief that there it would be impossible to prosecute Andrew Cook successfully for perjury. It appeared to me that Andrew Cook had made a series of mistakes in creating some logs of telephone calls that were pertinent to the case. These inaccuracies may have been intentional but could just as well have been the result of sloppy work on the part of Andrew Cook. In either event proving perjury beyond a reasonable doubt did not seem possible. In reviewing the transcript of the conversation Roy Cook had with Vittatoe I saw several points at which Vittatoe commented that the work he had done on the case was sloppy. Even more disturbing was the fact that Vittatoe stated to Roy Cook that there had in fact been a forensic review of the computers and that he had been told that there were a couple of incriminating emails found that were supposed to have been sent by Roy Cook to Andrew Cook. This was entirely inconsistent with what I had been told by Detectives Schneider and Harrold. It was inconsistent with the position that the State

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had taken at the hearing that had just taken place. By this time I had come to the conclusion that the work done by the officers as well as by victim Andrew Cook was so unreliable as to make it impossible to present the case successfully. Roy Cook maintained that Andrew Cook had falsified the recordings that I believed were the strongest evidence of guilt in the file. I have never been able to convince myself that the recordings were falsified but the overall picture had become so blurry that I was also not able to discount the possibility. I realized that this meant that reasonable doubt existed as to the guild of Roy Cook. That is not to say that it did not appear to me that there had been activity that may have amounted to extortion. It was clear to me that despite the proof that we did have there was so much disagreement between the officers as to what had been done in the investigation that coherent testimony at trial was unlikely. I belief that the case was in this state due to a combination of sloppy work on the part of the investigators as well as the fading of memories over the passage of time. On top of this Roy Cook's claim that evidence had been falsified could not be ignored. The confusion in the testimony of the victim at the hearing on the Motion to Dismiss left room for doubt as pointed out by Roy Cook.
I next met with District Attorney Russell Johnson and reviewed this material with him and gave him my impression. The decision was made to attempt to resolve the case by misdemeanor plea and if not possible to terminate the prosecution. The case was later dismissed on June 26, 2017.

I have recently received an email that was sent to others who then forwarded it to me. In this email Roy Cook has commented about each of the lawyers and the judge in the case. In all respects his comments are negative but in addressing his feelings about me it is evident that he had changed his mind and now views me in a very favorable light. I have enclosed a copy of this email for your review as it states that Mr. Cook now believes that I acted ethically and appropriately. Perhaps this will be useful in determining whether or not this complaint needs to move forward. Mr. Cook did make the negative comments about all of the other lawyers in the case. I would submit that the problems that he had with the lawyers that were appointed to represent him is largely the reason the case has move so slowly through the system. I cannot agree with many of the things that Mr. Cook said about the attorneys who represented him. I believe that they mainly were trying to do the right thing while dealing with a client who was already at the end of his rope with regard to the situation he was in with his brother

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Andrew Cook. I do not know what may have happened in the past between the brothers but I think it has made any contact between the two of them become an unmanageable ongoing lifelong feud and that the feud overshadowed the issues that were present in the criminal case while it was pending. I think Mr. Cook should be and is in fact glad the case is over. Frankly, so am I.

Sincerely,

Robert C. Edwards
Asst. District Attorney General
9th Judicial District of Tennessee
Enc: Email
CC: Roy Cook
141 Twin Oaks Drive
Rockwood, TN 37854

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November 30, 2017

Steven Christopher, Esq.
Board of Professional Responsibility
10 Cadillac Drive, Suite 220
Brentwood, TN 37027

Re: Joshua Daniel Hedrick
File No. 48894c-2-SC

DO NOT FORWARD TO COMPLAINANT

Dear Steven:

Thank you for allowing me extra time to respond on behalf of Josh Hedrick to the complaint of Roy Cook, and thank you for agreeing not to forward this response to Mr. Cook. As you know, Mr. Cook has a history of making complaints against virtually any attorney that represents him or is opposed to him, and of publishing the resulting communications online and in local press.

I have reviewed the material submitted by Mr. Cook, and have conducted my own investigation. Although Mr. Cook's complaints are not terribly specific, I have identified three rules that may be implicated by Mr. Cook's allegations, and will address them below. In broad strokes, Mr. Cook is a conspiracy theorist who is on a crusade to bolster his various conspiracy theories. This should be plain when you survey the complaints Mr. Cook has made against nearly every attorney in any way connected with the criminal charges against him – both prosecutors and several of the five defense counsel that represented him – and his propensity to publish the correspondence online along with extensive commentary.

Mr. Cook's use of the media to influence the prosecutor's office, and now the Board, is well documented. For example, there is a recording of a June 5, 2016, conversation between Mr.

EXHIBIT
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Cook and prosecutors, in which he attempted to coerce the prosecutors to arrest his brother and set a high bail, with the expectation that his brother would leave the country, thereby forfeiting the bail:[1] "You tie that money up and you cut him the deal . . . recoup some of the money you guys have spent. You come out smelling like a hero, *I'll make sure the lady at the Post & Email knows* that, hey, they did the right thing, they recouped state money. . . ." Later in the conversation, he used the same leverage to try and obtain dismissal of the charges against himself: "If you find your way to dismiss that [criminal charge], *I will go and do an interview* and make you guys out to be heroes."

Mr. Cook's criminal matter arose out of feuding among the three Cook brothers. Andrew Cook made a criminal complaint in 2013, and a grand jury indicted Mr. Cook and his brother, Tom Cook, as a result. Over the course of the four years before the indictment was dismissed, Mr. Cook was represented and advised by five different attorneys. Rather than blame his brother, who filed the unfounded criminal complaint initially, Mr. Cook is seeking vengeance against anyone remotely associated with the proceedings. From his published statements, it is apparent that Mr. Cook has filed Board complaints against most, if not all, of the five attorneys that attempted to represent him, as well as other attorneys working for the government. He has published correspondence to and from the Board, in these proceedings that are supposed to be confidential. *See* Tenn. Sup. Ct. R. 9, § 32.7 ("All participants in any matter, investigation, or proceeding shall conduct themselves so as to maintain confidentiality.").

In my review of Mr. Cook's correspondence, I have identified only three subjects worthy of comment.

1. Disclosure of Confidential Information

Mr. Cook's most strenuous complaint is the supposition that Mr. Hedrick disclosed to a government attorney that Mr. Cook suspected that a name redacted from a document may be the name of an FBI agent. The context was an email, produced to Mr. Cook's counsel by the government with an apparent redaction. Mr. Cook and Mr. Hedrick were trying to get an unredacted copy, or at least find out what name had been redacted. Mr. Cook thought it may be an FBI agent. From a review of Mr. Cook's materials, it is clear that this is pure supposition.[2]

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[1] The complete recording is about an hour and forty minutes long. I have listened to it several times. A small portion of the same recording was emailed to you along with this letter. I am happy to send you the entire recording, if it would be helpful.

[2] In the recording that I am sending with this letter, you will hear Mr. Cook say that he thinks it is not an FBI agent.

I have sent to you by separate email a short portion of a long recording of a conversation between Mr. Cook, a representative of the prosecutor's office, and one of Mr. Cook's attorneys. There are a few things in that recording that I would like to bring to your attention. First, Mr. Cook does not think that the redacted name was an FBI agent. Second, that he does not know whether Mr. Hedrick told someone that Mr. Cook thought it was an FBI agent. Rather, Mr. Cook thinks it "must have been," but then admits that it could have been Andrew Cook. Third, the prosecutor does not remember where he heard the reference to an FBI agent. Fourth, both the prosecutor and Mr. Cook's counsel vouch for Mr. Hedrick.

Setting aside the question of whether Mr. Hedrick said something about an FBI agent, I note that Mr. Hedrick had discretion as Mr. Cook's counsel to ask about the redacted name and inquire whether it could have been the name of an FBI agent. RPC 1.6(a)(2) allows disclosure of information when "the disclosure is impliedly authorized in order to carry out the representation." One of Mr. Hedrick's objectives was to find out the redacted name. Listing an FBI agent as one of the possibilities was impliedly authorized even if by doing so, the government attorney or investigator might infer that Mr. Cook believed that was who it was. Mr. Hedrick did not, and would not have, disclosed Mr. Cook's thoughts on who the redacted name may be. However, he was having discussions with the government attorney and investigator about who the redacted name might have been. In that context, it was in his discretion, and impliedly authorized, to suggest an FBI agent as one of the possible categories of names. Mr. Hedrick did not violate RPC 1.6 in that discussion.

2. Diligence.

Mr. Cook complains that Mr. Hedrick delayed in seeking certain discovery, and disagreed with Mr. Cook on whether some discovery was worthwhile. As you know, attorneys are given wide latitude to make strategic decisions in how best to represent a client. Unlike the role of "elbow counsel," such as Mr. Cook enjoyed with his fifth attorney, Mr. Hedrick had the job of exercising his judgment in the best way to defend Mr. Cook. At the same time, Mr. Hedrick had discretion not to help Mr. Hedrick punish the prosecutor's office for the grand jury indictment. I hope that by this point in your review of Mr. Cook's complaints, you are aware that Mr. Cook is prone to vendettas, a fact that was apparent to Mr. Hedrick during his representation of Mr. Cook. Indeed, there was speculation that the reason that the District Attorney General was less prone to dismiss charges against Mr. Cook was because of Mr. Cook's public excoriation of the prosecutors.

Mr. Hedrick believed that Mr. Cook's desire to seek certain discovery was driven less by his defense, and more by his vendetta against the prosecutors' office and his brother, Andrew. "A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities." RPC

1.2(b). Stated differently, while he was appointed to defend Mr. Cook, Mr. Hedrick had no obligation to pursue Mr. Cook's demonstrated objective of punishing anyone connected with his prosecution. Further, to the extent that Mr. Cook's public vendetta against the prosecutor's office was making it *more* difficult to get the charges against Mr. Cook dismissed, Mr. Hedrick had discretion not to pursue activities that would make the objective of his representation – dismissal of the charges – more difficult. More than one of the other attorneys that represented Mr. Cook felt likewise, as Mr. Hedrick was Mr. Cook's third counsel and none of the prior attorneys had sought to obtain those records.

The prosecutor's office ultimately dismissed the charges against Mr. Cook, two defense attorneys and a year later. Whether the fact that Mr. Cook ultimately obtained the material he wanted was a factor in the prosecution's dismissal of the charges is open to speculation. From the recordings I have listened to, of conversations with the prosecutor, it is apparent that the death of one Cook brother was a factor, as well as the investigator's move to another state. Mr. Hedrick was well within his discretion and exercise of honest judgment in determining not to pursue some lines of discovery that Mr. Cook advocated, and his diligence simply is not at issue.

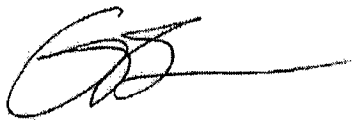
3. Failure to report other attorneys to the Board.

Mr. Cook accuses Mr. Hedrick of ethical misconduct in failing to report other attorneys to the Board. Mr. Cook's understanding of attorneys' obligations in that regard is misguided. As you know, RPC 8.3 requires that an attorney report misconduct of another attorney only when it is perceived that the attorney violated a Rule of Professional Conduct and the violation "raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects...." The mere perception of a rule violation is not enough. Rather, there is a subjective component as to whether the perceived misconduct "raises a substantial question" regarding the attorney's honesty, trustworthiness, or fitness otherwise. Given Mr. Hedrick's knowledge of the attorneys involved in Mr. Cook's situation, and his experience with them, Mr. Cook is in no position to second guess the absence of a "substantial question" in Mr. Hedrick's mind. Mr. Hedrick, the prosecutors – even Mr. Cook's later counsel – all have experience and knowledge of the ethical character of the attorneys involved. Even if there had been a rule violation – which I do not believe to be true – I submit that the subjective component of Rule 8.3 can rarely be second-guessed when an attorney chooses not to report another attorney.

* * * * *

I do not see any other substantial issues raised by Mr. Cook's submissions, but please let me know if you do have any particular questions that I can address. Mr. Cook is looking for revenge against anyone and everyone involved with his indictment, but there are no rule violations that I can see, by Mr. Hedrick or any of the other attorneys involved.

Very truly yours,



Gregory Brown

GB: