June 20, 2021

Office of Disciplinary Counsel
4000 Sherwood Office Blvd., Suite 607
Baton Rouge, LA 70816

Re: Robert Clausen Vines – Bar Roll Number 21932
Ethical Misconduct Complaint

To whom it may concern:

This is an ethical misconduct complaint regarding Rob Vines for violations of Louisiana Rules of Professional Conduct Rules 3.1, 3.4, 3.8 and 8.4, including but not limited to improperly concealing *Brady* materials, conflicts of interest for accepting and renegotiating private contract work with the victim during the pendency of the investigation and prosecution, and conduct prejudicial to the administration of justice.

BACKGROUND

I was elected to the office of Chitimacha Tribal Chairman on June 13, 2015. I took the Oath of Office on July 1, 2015. Following my election, the Tribal Council and I began taking steps to replace the Tribal Court Judge and the Tribal Prosecutor. Before the positions were posted or advertised, Vice-Chairman April Wyatt and I received an email from the former Gaming Commission Chairman Robert Carroll and his law partner, Guy S. Mitchell, who was Legal Counsel for the Gaming Commission, Tribal Council and Cypress Bayou Casino and Hotel. The context of the email was a recommendation by Chief Hal Hutchenson of the Chitimacha Tribal Police Department for 16th Judicial District assistant district

attorney Rob Vines to fill the open Tribal Prosecutor position. After advertising the open position and conducting candidate interviews, Mr. Vines was hired for the position. He was sworn into office at a formal Tribal Council meeting on January 7, 2016.

A week later, an investigation by the Louisiana State Police was initiated by way of a complaint from the Chitimacha Gaming Commission on January 13, 2016. At the conclusion of the investigation, and on February 17, 2016, Anthony Patrone, Cypress Bayou Casino and Hotel General Manager, and Montie Spivey, Cypress Bayou Casino and Hotel Chief Financial Officer, were both arrested by the Louisiana State Police on the charges of Theft (14:67), Computer Fraud (14:73.5) and Obstruction of Justice (14:130.1).

The Louisiana State Police could not effectuate a warrant for my arrest because, as a Tribal Member, the Tribal/State Compact requires a case against me be sent to the United States Attorney's Office for review. In the intermediate time, Mr. Vines solicited an April 1, 2016 opinion from Leslie Schiff regarding his participation as the tribal prosecutor in this matter.

Following a four month review of the case, the United States Attorney's Office declined to prosecute the case. The Tribal Council then had the authority to implement one of three options: (1) refer the case to Tribal Court, (2) refer it to the State of Louisiana (16th Judicial District Attorney), or (3) to do what was it considered the best interest of justice. By resolution, the Tribal Council decided to refer the case to the 16th Judicial District Attorney.

Although he was the tribal prosecutor, Mr. Vines took on the case in St. Mary Parish in his capacity as assistant district attorney. At least since 1998, and perhaps even since he began his employment as an assistant district attorney with the 16th Judicial District Attorney's office, Mr. Vines has maintained his assistant district attorney employment in Iberia parish. His office is in Iberia parish and his normal daily assignments are in Iberia parish, not St. Mary parish where the case was prosecuted. At the time of the charges, assistant district attorney Anthony Saleme was the supervising attorney and lead felony prosecutor in St. Mary parish.

Following my June 20, 2016 arrest, and before my arraignment, Mr. Vines conducted his own "thorough" investigation of the case by re-interviewing most of the witnesses. He took notes of the interviews that he conducted, without anyone else being present, before making the decision to formally charge me and add the charge of computer fraud. Mr. Vines re-interviewed Anthony Patrone, Montie Spivey, the Tribal Council, as well as casino and tribal employees. In addition, Mr. Vines was provided with a package of emails labeled "Original Emails" by Mr. Spivey during his interview. Mr. Spivey had previously provided these emails to the LSP during their initial investigation.

Prior to my October 7, 2016 arraignment, my attorney, Kevin Stockstill, was given notice by Mr. Vines on September 21, 2016 that I was the "target" of a Grand Jury hearing scheduled for October 5th and 6th. Mr. Vines also presented Mr. Stockstill an offer to resolve this matter before the October 7, 2016 arraignment. The offer by Mr. Vines was for me to resign my position as Chairman and, in

exchange, he would dismiss all charges against me. I declined. Thereafter, Mr. Vines, individually, made the decision to formally charge me by filing a bill of information on October 7, 2016 (and not follow through with the Grand Jury proceedings).[1]

Of course, the Office of Disciplinary Counsel is aware the Louisiana Supreme Court has made it clear that where lawyers are public officials, they are held to a higher ethical standard.[2] In *In re Bankston,* the Supreme Court stated, "This court has held an attorney occupying a position of public trust is held to even a higher standard of conduct than an ordinary attorney."[3] Prosecutors in particular have been identified as occupying an extraordinary role in our system of justice.[4] The Office of Disciplinary Counsel, therefore, must analyze the conduct of Mr. Vines against this heightened standard of conduct.

The following complaints detail the several ethical violations by Mr. Vines from the inception of the case through its conclusion.

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[1] A timeline, audio interviews, transcripts and information about the court proceedings is available at https://oneildardenjr2017.com.

[2] *See In re Bankston,* 2001-2780 (La. 03/08/2002) 810 So.2d 1113.

[3] *Id*; *In re Naccari,* 97-1546 (La.12/19/97), 705 So.2d 734; *In re Huckaby,* 96-2643 (La.S/20/97), 694 So.2d 906.

[4] *See In re Jordan,* 2004-2397 (La. 06/29/2005) 913 So.2d 775 ("A prosecutor stands as the representative of the people of the State of Louisiana. He is entrusted with upholding the integrity of the criminal justice system by ensuring that justice is served for both the victims of crimes and the accused.")

COMPLAINT NO. 1.

Violation of Rule 3.4 and 3.8 – Rob Vines intentionally, knowingly and deliberately concealed exculpatory *Brady* materials and documents with evidentiary value.

The Louisiana Code of Criminal Procedure imposes a statutory duty on a prosecutor to disclose exculpatory evidence to the defendant.[5] Louisiana Rules of Professional Conduct Rule 3.8(d) imposes a corresponding duty on a prosecutor to make a "timely disclosure" of all evidence or information that either tends to negate guilt or mitigates the offense. Rule 3.4 sets forth a parallel duty that a lawyer shall not unlawfully conceal a document or other material having potential evidentiary value; or fail to make a reasonably diligent effort to comply with a legally proper discovery request.

Rule 3.8(d) is not ambiguous. It clearly provides a prosecutor "shall ... make timely disclosure to the defense of all evidence or information know to the prosecutor that the prosecutor knows, or reasonably should know, either tends to negate the guilt of the accused or mitigates the offense." Application of Rule 3.8 is not limited to intentional violations. Furthermore, the drafters of Rule 3.8 knew to include a specific *mens rea* if one was intended. As such Rule 3.8(d) creates an affirmative duty upon a prosecutor to disclose all known exculpatory materials, and the plain language of the rule does not create an exception for unintentional violations. Rule 3.4 is likewise not ambiguous, does not require any *mens rea*, and its affirmative duty is clear. A lawyer shall not conceal documents and material

[5] *See* La.C.Cr.P. arts. 718, 719(A) and 722; *State v. Edwards*, 99-0911 (La. 9/24/99), 746 So.2d 1267.

having potential evidentiary value by to making reasonably diligent effort to comply with proper discovery requests, *e.g.* discovery seeking *Brady* materials.

Unlike other litigating lawyers, prosecutors are not merely advocates; they are also administrators of justice who have a duty to "seek justice, [and] not merely convict."[6]

The Supreme Court has held that a prosecutor's failure to disclose *Brady* evidence to the defense violates Rule 3.8(d) of the Louisiana Rules of Professional Conduct.[7] As noted by Justice Johnson in *In re Phillips*, the Supreme Court has "a duty to use our lawyer disciplinary system to ensure fundamental fairness for defendants and prevent repeated constitutional violations by prosecutors. If we have trepidation about disciplining prosecutors whose deliberate misconduct sends people to jail, we have abdicated our responsibility."[8]

In this investigation and prosecution, Mr. Vines intentionally, knowingly and deliberately withheld several items of *Brady* material. Mr. Vines had first-hand knowledge of the existence of significant written statements that were "material" under the standard established in *Brady*, and he had actual possession of this

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[6] *See* ABA Stds. Relating to the Admin. Of Crim. Justice—The Prosec. Function std. 3-1.2 (3d ed. 1992); Clare Rubion, *Prosecutor's Brady Violation Draws Proposed Six Month Suspension*, Louisiana Legal Ethics (January 31, 2021).

[7] *In re Jordan*, 2004-2397 (La. 6/29/05), 913 So.2d 775. *See also In re Riek*, No. 2011AP1049-D (Wisc. July 23, 2013) (noting that Louisiana in *In re Jordan* construed Rule 3.8(d) in a manner "consistent with the requirements of *Brady* and it progeny"); Steven Koppell, *An Argument Against Increasing Prosecutors Disclosure Requirements Beyond Brady*, 27 Geo. J. Legal Ethics, 643 (2014) (noting that Louisiana in *In re Jordan* "align[ed] Rule 3.8(d) with the disclosure required by *Brady*").

[8] *In re Phillips*, 2019-1779 (La. 2/18/20), 289 So.3d 1023.

evidence.[9] But Mr. Vines *never* disclosed this information and instead chose to hide the evidence as more particularly detailed as follows.

1. Written statements and affidavits sought by Rob Vines from Anthony Patrone.

In the matter entitled *State of New Jersey, Casino Control Commission, Docket No. 17-0023-CK* regarding the application of Anthony Patrone to obtain a casino employee license, Mr. Patrone testified on December 13, 2017 as follows:

> When I went to the DA and he asked me to explain to him the use of the payroll system, which I was charged with obstruction of justice. And in Google forever will be charged with obstruction of justice for using the payroll system. And I explained it to the DA. *He said, do me a favor. Can you get me a couple affidavits so that – you know, it made sense to him. And he said that the state troopers didn't understand it. Be he said, do me a favor. Get me a couple affidavits that describe that that is not an uncommon practice. And that's what I did.* Both from Miss Beinart and from Mr. Van Hettinger.[10]

Mr. Patrone complied with the request of Mr. Vines and obtained a letter from Gary Van Hettigna dated August 10, 2016, as well as an affidavit from Mr.

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[9] *In re Seastrunk*, 236 So.3d 509 (La. 2017) (a prosecutor's alleged failure to disclose a witness's inconsistent statements during police interviews and hearsay statements concerning possession of a gun did not violated Rule 3.8(d), requiring timely disclosure of evidence that could negate the guilt of the accused or mitigate the offense, absent proof that the statements were material under the coextensive standard established in *Brady*). However, the *Seastrunk* reported decision does not indicate a consideration of the United States Supreme Court's observation that ethical rules requiring prosecutorial disclosure may impose obligations broader than those imposed under *Brady* (*see Cone v. Bell*, 556 U.S. 449, 129 S.Ct. 1769, 173 L.Ed.2d 701 (2009) ("Although the Due Process Clause of the Fourteenth Amendment, as interpreted by *Brady*, only mandates the disclose of material evidence, the obligation to disclose evidence favorable to the defense may arise more broadly under a prosecutor's ethical or statutory obligations"); *Kyle v Whitley*, 5014 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995) (*Brady* "requires less of the prosecution than" ethical standards).

[10] *See* New Jersey Casino Control Commission decision, Docket No. 17-0023-CK (Feb. 16, 2018) (emphasis added).

Van Hettigna dated August 18, 2016.[11] In addition, a letter dated August 14, 2016 and an affidavit dated August (illegible), 2016 was obtained from Ann L. Beinert.[12] These letters and affidavits undoubtedly contain exculpatory information, that is, the bonus payments at issue in these proceedings were "not an uncommon practice." Mr. Vines had these documents in August of 2016 but he *never* produced them at any time.[13]

It was not until over four years after these letters and affidavits were solicited by Mr. Vines that I learned about them whereupon I was able to obtain a copy pursuant to a September 22, 2020 public records request to the New Jersey Casino Control Commission. The letters and affidavits were received by me on September 23, 2020, including a 47-page decision by the New Jersey Casino Control Commission.[14]

The February 16, 2018 decision by the New Jersey Casino Control Commission makes findings that support said letters and affidavits are "material", would negate guilt, or mitigate the offense, more particularly:

> *The evidence reveals that the payment of a prorated bonus to Chairman Darden was not illegal. There was never any motive or proffered intent provided by the LSP as to why Applicant would engage in the type of*

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[11] *See* September 23, 2020 letter from New Jersey Casino Control Commission (public records request response).

[12] *See* September 23, 2020 letter from New Jersey Casino Control Commission (public records request response).

[13] *See* ABA Formal Opinion 09-454 (2009) (the Model Rule's requirement of "timely disclosure" means that a prosecutor must disclose information "as soon as reasonably practical"); *see also In re Larsen*, No. 20140535, 2016 WL 3369545 (Utah 6/16/18) (holding that timely disclosure under Rule 3.8 requires prosecutors disclose information "as soon as reasonably practical").

[14] *See* New Jersey Casino Control Commission decision, Docket No. 17-0023-CK (Feb. 16, 2018).

felonious activity they initially alleged. What is plausible is that there was a significant breakdown in communications, especially with respect to Ms. Wyatt's apparent concerns with the proposal of the prorated bonus. It is curious that her interview testimony before the LSP was not proffered as evidence, despite her testimony being repeatedly referred to by the LSP in the interview for which both transcripts were provided. According to the LSP's own report, it was Ms. Wyatt's belief that something illegal was happening on December 18, 2015 (the date of the email vote) that prompted the referral to the Tribe's General Counsel.[15] If the criminal activity allegedly engaged by the Applicant (Anthony Patrone) was in "rehiring" Chairman Darden so that he could be reinstated in the payroll system as an employee of Cypress, what illegal actions could possibly have occurred on December 18, 2015, when the process for paying Chairman Darden the bonus had not been finalized, the "rehiring" paperwork had not been processed, and the information provided to that point made it transparently clear that the bonus was not paid? There is no evidence to demonstrate that on December 18, 2015, Chairman Darden was expected to be an employee. In fact, the attachment to the December 18, 2015 email poll clearly list Chairman Darden as "termed" (as in terminated) effective June 29, 2015, which would have been his last day of employment with Cypress prior to assuming his role as Chairman. Furthermore, it indicated that his bonus eligibility was "Special – Prorated." How could anyone find this to be anything but transparent is puzzling.[16]

Moreover, the decision discusses Mr. Van Hettinga's testimony before the commission:

> He made it very clear through his in-person testimony that his view of the incident in Louisiana was "...the most ridiculous thing [he'd] ever heard in [his] life. He further testified that, as Senior VP of Finance and CFO at Mohegan Sun, where he interacted with Applicant (Anthony Patrone) on a regular and intimate basis, *he would have recommended handling the bonus payment to Chairman Darden precisely as applicant did...*[17]

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[15] Rob Vines was hired by complainant, as Chairman of the Tribe, upon the email recommendation of the Tribe's General Counsel.

[16] *See* New Jersey Casino Control Commission decision, Docket No. 17-0023-CK (Feb. 16, 2018) at p. 18-19 (emphasis added).

[17] *See* New Jersey Casino Control Commission decision, Docket No. 17-0023-CK (Feb. 16, 2018) at p. 24. (Emphasis added). The New Jersey Casino Control Commission also considered a letter

The outset question is whether Mr. Vines withheld this evidence, *e.g.* the letters and affidavits of Mr. Van Hettinga and Ms. Beinert that he solicited. The answer is undeniably "yes." Mr. Vines *never* turned this information over and there are no records to suggest he ever turned over these favorable and material documents to my attorney, Mr. Stockstill, directly or indirectly.[18] Both Mr. Stockstill and I can unequivocally confirm this under oath if necessary.

It is not within the discretion of Mr. Vines to determine if documents obtained by Mr. Patrone (a co-defendant), at the request of Mr. Vines, from "industry veterans"/"experts" are not exculpatory.[19] That the letters and affidavits are in fact favorable is confirmed by the written decision of the State of New Jersey Casino Control Commission, a quasi-judicial panel that relied on these documents

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submitted from Ann Beinert that indicates she "would have handled the payment of the bonus as Mr. Van Hettinga said he would..."

[18] A prosecutor may not suppress evidence which is favorable to the defendant and material of the issue of defendant's guilt or innocence. *Brady v. Maryland,* 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). Favorable evidence includes both exculpatory evidence and impeachment evidence. *United States v. Bagley,* 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). The evidence is material if there is a reasonable probability, sufficient to undermine confidence in the outcome, that the evidence, if disclosed to the defense, would have changed the outcome of the proceeding or created a reasonable doubt that did not otherwise exist. *Id.* A prosecutor's duty also includes turning over exculpatory information to the defense even in absence of such a request if such information is clearly supportive of a claim of innocence. *United States v. Agurs,* 427 U.S. 97 (1976).

[19] *See Giglio v. United States*, 405 U.S. 150 (1972) ("When the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence effecting credibility falls within this general rule (3.8).")(quoting *Napue v. Illinois*, 360 U.S. 264 (1959)); *Zanders v. United States*, 999 A.2d 149 (D.C. 2010)("It is not for the prosecutor to decide not to disclose information that is on its face exculpatory based on an assessment of how that evidence might be explained away or discredited at trial, or ultimately rejected by the fact finder.")

to conclude there was no illegal conduct nor intent to engage in illegal conduct. The materiality of these documents is remarkable.[20]

How can letters and affidavits in the possession of Mr. Vines from industry veterans/experts that conclude all matters giving rise to the criminal charges were handled properly and that the factual scenario did not give rise to criminal conduct not be considered anything but "favorable" and "material" as required by *Brady*? How can administrative findings in possession of Mr. Vines that are adverse to underlying facts of this prosecution not be considered anything but "favorable" and "material" as required by *Brady*?

Astonishingly, Mr. Vines was in possession of these written statements and affidavits since August of 2016—two years prior to the New Jersey Casino Control Commission decision. This is confirmed by emails between Mr. Vines and Mr. Patrone's attorney, Donald Washington. By email dated August 15, 2016, Mr. Washington writes:

> Following up on last week's meeting with you, I have attached the opinions of two experts with extensive, highly relevant expertise in accounting and human resources issues and policies. If you deem it necessary at this stage, I can provide to you in the form of affidavits upon you request.
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> Both of these experts have very extensive, decades long, relevant expertise in casino, hotel/hospitality and game resort businesses.
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[20] Courts have held that a prosecutor's ethical obligation to disclose extends to immaterial evidence. *See In re Kline*, DCCA 13-BG-851 (April 9, 2015); *In re Disciplinary Action Against Feland*, 820 N.W.2d 672 (N.D. 2012); *Schultz v. Comm'n for Lawyer Discipline of the State Bar of Tx.*, SBOT Case No. D0121247202 (Dec. 17, 2015).

> Mr. Hettinga's and Ms. Beinart's expertise (accounting/audit and human resources, respectively) cover the issues surrounding "how" the bonus was paid to O'Neil Darden. Both experts conclude that the proper way to pay an earned bonus to a separated employee is through the human resources/payroll system.
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> * * *
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> Once cannot reasonably conclude that Mr. Darden was "rehired" for any purpose other than as stated in the file materials. *How in the world can any reasonable investigator (or tribal gaming commission/employee) conclude that this factual scenario amount to "theft," "computer fraud," or "obstruction of justice?"*
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> * * *
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> *The whole scenario involving the bonus payment to O'Neil Darden should have been (and should still be) handled internally by the Tribe rather than by law enforcement officers, who have essentially "shoehorned" the factual scenario into criminal charges.*[21]

On August 16, 2016, Mr. Vines replied:

> I am in receipt of the information as to "how" the bonus was paid to OD. Thank you. I would certainly like to have those two opinions from the industry veterans in affidavit form.[22]

And, by email dated August 18, 2016, Mr. Vines followed up stating he received the supplemental information (affidavits) from Mr. Washington that day.[23]

This email exchange between Mr. Washington and Mr. Vines was provided to me by Mr. Patrone on March 3, 2021—approximately five years after Mr. Vines was in possession of letters and affidavits. That Mr. Vines had these letters and

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[21] *See* Email by Donald Washington to Rob Vines (Aug. 15, 2016) (emphasis added).

[22] *See* Email by Rob Vines to Donald Washington (Aug. 16, 2016).

[23] *See* Email by Rob Vines to Donald Washington (Aug. 18, 2016).

affidavits in 2016 but did not disclose them at that time, that he continued in his refusal to disclose them after the 2018 decision by the New Jersey Casino Control Commission[24], and that he has *never* disclosed them, demonstrates a dishonest motive to win at all costs on behalf of his client and the alleged victim, the Tribe. Mr. Vines's failure to produce this *Brady* evidence is a violation of Rule 3.4 and 3.8.

2. The written notes of the interview with Montie Spivey.

Louisiana Code of Criminal Procedure art. 716 provides that a defendant is entitled to inspect and copy any relevant written or recorded statement of any nature of any co-defendant or witness. On February 4, 2021, Mr. Vines emailed Montie Spivey (co-defendant) his handwritten notes from the pre-trial interviews he had with Mr. Spivey on July 18, 2016, and October 19, 2016.[25] That same day, Mr. Spivey forwarded the email from Mr. Vines to me. Once again, Mr. Vines had possession of this *Brady*-type material for nearly five years. At no time did Mr. Vines notify me or Mr. Stockstill of the existence of these pre-trial statements of a Mr. Spivey, nor did he provide a copy the statements.

Even assuming Mr. Vines was acting in good faith and with integrity, the fact is he reviewed his file from an advocate's point of view. Good faith and integrity do

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[24] Mr. Vines was undoubtedly aware that the 2016 affidavits were used in the New Jersey Casino Control Commission hearing. The February 16, 2018 decision of the commission notes that "the District Attorney who was responsible for overseeing the case against Applicant in Louisiana submitted a letter in support of Applicant..." Ex. at p. 44.

[25] *See United States v. Sudikoff*, 36 F.Supp.2d 1196 (C.D. Cal. 1999) (all government notes and summaries of statements made by cooperating witnesses during pre-trial interviews must be disclosed to the defense under *Brady* and *Giglio*).

not and cannot guarantee an objective review of the file by Mr. Vines.[26] Since Mr. Vines intentionally failed to produce the letters and affidavits he solicited from Mr. Patrone, a conclusion that Mr. Vines was acting in bad faith is reasonable as to why he did not produce his notes of the pre-trial statements for Mr. Spivey. Therefore, Mr. Vines has committed additional violations of Rule 3.4 and 3.8.

COMPLAINT NO. 2.

Violation of Rule 3.1 and 3.8 – Rob Vines intentionally, knowingly and deliberately filed charges he knows was not supported by probable cause, and without any basis in fact.

Rule 3.8(a) states, "[t]he prosecutor in a criminal case shall: refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause."[27] The National District Attorneys Association standards establish a higher charging standard. According to NDAA Standard 43.3, "[t]he prosecutor should file only those charges which he reasonably believes can be substantiated by admissible evidence at trial."[28]

Before filing a bill of information, Mr. Vines had letters and affidavits from industry veterans/experts in his possession concluding there did not exist any facts

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[26] *See United States v. Bagley*, 473 U.S. 667 (1985) ("for purposes of *Brady*, the prosecutor must abandon his role as an advocate and pore through his files, as objectively as possible, to identify the material that could undermine his case. Given this obviously unharmonious role, it is not surprising that these advocates oftentimes overlook or downplay potentially favorable evidence, often in cases in which there is no doubt that the failure to disclose was a result of absolute good faith").

[27] *See also* LRPC Rule 3.1. "A lawyer shall not bring a proceeding, or assert an issue therein, unless there is a basis in law and fact for doing so."

[28] National Prosecution Standards 43.3 (Nat'l Dist. Att'ys Ass'n, 2d ed. 1991).

that amounted to "theft," "computer fraud," or "obstruction of justice."[29] He was provided these documents by Mr. Washington on August 15 and 18, 2016. Despite having these letters and affidavits that fully informed Mr. Vines about the facts, he nonetheless decided to charge, or overcharge, when he filed the bill of information on October 7, 2016.[30]

Again, in emails between Mr. Vines and Mr. Patrone's attorney, Donald Washington, on August 15, 2016, Mr. Washington writes, in pertinent part, "...How in the world can any reasonable investigator (or tribal gaming commission /employee) conclude that this factual scenario amount to "theft," "computer fraud," or "obstruction of justice?...The whole scenario involving the bonus payment to O'Neil Darden should have been (and should still be) handled internally by the Tribe rather than by law enforcement officers, who have essentially "shoehorned" the factual scenario into criminal charges."

Mr. Washington served as the United States Attorney for the Western District of Louisiana[31] from 2001 until 2010, and he is presently the Director of the

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[29] Interestingly, Mr. Spivey was never charged by bill of information (or indictment by grand jury) with the three felony charges for which he was arrested. Mr. Vines provided Mr. Spivey a letter after four years stating he was declining to prosecute the case against him.

[30] Before filing a bill of information, Mr. Vines offered to dismiss all charges in exchange for me resigning my position as Chairman of the Tribe. When I declined, Mr. Vines sought to "overcharge"—a practice used to gain an advantage during the plea bargaining process. That the charges were reduced from a felony to a misdemeanor after five years and immediately before the 2021 trial illustrates the overcharging by Mr. Vines despite being in possession of written statements by industry veterans/experts and evidences that he could not prove the crimes initially charged.

[31] The United States Attorney for the Western District of Louisiana declined to prosecute these charges after a four-month review of the facts and evidence. Despite knowing that the U.S. Attorney declined to prosecute after evaluation of the case, Mr. Vines nonetheless choose to prosecute the case.

United States Marshals Service. He is obviously qualified when it comes to evaluating facts and evidence to determine probable cause and in making charging decisions.

The opinion of Mr. Washington is confirmed by the February 16, 2018 decision by the New Jersey Casino Control Commission stating:

> The evidence reveals that the payment of a prorated bonus to Chairman Darden was not illegal. There was never any motive or proffered intent provided by the LSP as to why Applicant would engage in the type of felonious activity they initially alleged. ...[32]

Despite having the industry veteran/expert statements and the opinion of Mr. Washington prior to filing a bill of information, Mr. Vines nonetheless proceeded to file an overcharging bill of information that was not supported by the facts. Thereafter, despite having the decision of the New Jersey Casino Control Commission, Mr. Vines *never* sought to reduce the charges from a felony to a misdemeanor for over three years. On the day of trial, February 8, 2021, he orally amended the felony theft to misdemeanor theft and dismissed the computer fraud charge. Mr. Vines knowingly and deliberately sat on these letters and affidavits for almost five years in an attempt to leverage these felony charges.[33]

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[32] *See* New Jersey Casino Control Commission decision, Docket No. 17-0023-CK (Feb. 16, 2018) at p. 18.

[33] The improper use of prosecutorial discretion is just as possible in plea bargaining as it is in the initial charging decision. *See* Charles W. Wolfram, *Modern Legal Ethics* § 13.10.3, at 762 (practitioner's ed. 1986); *See also Iowa Supreme Court Attorney Disciplinary Board v. Howe* 706 N.W.2d 360 (2005) ("Filing charges that are blatantly bogus does not promote integrity of the judicial process").

More importantly, Mr. Washington's opinion and the New Jersey Casino Control Commission's decision that no crime had been committed was also confirmed by the Honorable Anthony Thibodeaux, 16th Judicial District Judge, Division A in his ruling:

> But the evidence fails to show any crime occurred. I find no crime occurred. And although it's not before the court, I find no crime of computer fraud or theft...So I find not guilty on unauthorized use of a movable and not guilty of misdemeanor theft.

The opinion of former United States Attorney Donald Washington, the findings of the State of New Jersey Casino Control Commission and the ruling by Judge Anthony Thibodeaux, when taken as a whole, clearly demonstrates that the charges brought by Mr. Vines were baseless and without merit. Indeed, it is obvious that the charges were "shoehorned" by the alleged victim and private client of Mr. Vines, the Tribe, as was noted by Mr. Washington in his August 15, 2016 email. But Mr. Vines intentionally and deliberately proceeded with filing the charges in violation of Rule 3.1 and 3.8.

COMPLAINT NO. 3

Violations of Rules 1.7 and 1.11– Conflicts of Interest by Rob Vines.

As stated by Rule 1.11, "A lawyer currently serving as a public officer or employee shall not: negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially." According to the ABA Comments to Model Rule 1.11, a lawyer (Mr. Vines) who pursues a claim on behalf of a private client (the Tribe) may not pursue a claim on behalf of the government (16th Judicial

District Attorney), except as authorized by Rule 1.11(d). Rule 1.11(d) states Rule 1.7 applies to lawyers currently serving as public officers or employees. Additionally, Rule 1.13(b) states

In this case, Mr. Vines violated the ethical rules concerning conflicts of interest by "serving two masters."[34] He was continuously engaged in private employment contract with the alleged victim before, during and after the initiation of this prosecution. At a minimum, Mr. Vines should have been prohibited from continuing his representation of the Tribe after it referred the criminal complaint to the 16th Judicial District Attorney.[35] More appropriately, Mr. Vines should have declined prosecuting the case with his client, the Tribe, being the alleged victim.

Under the circumstances, the Tribe unquestionably had the ability to exert considerable leverage in the prosecution. By having the victim's contract employee, Mr. Vines, prosecute the case, the Tribe could significantly influence the prosecution and Mr. Vines's critical discretionary decisions.

For example, since Mr. Vines's ethical allegiance is to his client (the Tribe), the alleged victim, it is questionable and unlikely he would readily disclose exculpatory evidence to the defense.[36] That the Tribe influenced Mr. Vines's

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[34] *See In re Toups*, 2000-0634 (La. 11/28/00), 773 So.2d 709, 715 ("Dual representations by an attorney who is first and foremost a district attorney present potential and actual conflicts of interest which have troubled courts for many years."); *See also Colorado v. Attorney Respondent*, 162 Colo. 174, 427 P.2d 330 (1967) (disciplining an assistant district attorney for using the power and prestige of his office in filing a criminal complaint for the purpose of assisting his client).

[35] *See In re Toups*, 773 So.2d at 717.

[36] *See* Complaint No. 1 hereinabove detailing that Mr. Vines failed to disclose exculpatory statements and affidavits. *See also Brady v. Maryland*, 373 U.S. 83 (1963); LRPC Rule 3.8; Model Rules of Prof'l

exercise of official discretion is evidenced by his continuing private contract affiliation and renegotiation of his contract during the pendency of these proceedings. The affidavit of Johnny Burgess confirms this.

According to Mr. Burgess, a councilman at-large on the Tribal Council, he observed the interactions of Chairman Melissa Darden[37] and Mr. Vines at the trial on February 8 and 9, 2021. On the first day of trial, Chairman Melissa Darden and Mr. Vines would meet in a small room outside the courtroom when the court would recess. On the second day of trial, when Chairman Melissa Darden and Mr. Vines were observed doing the same thing, Mr. Burgess inquired with Chairman Melissa Darden and asked why they were meeting. Chairman Melissa Darden responded, "I'm advising Mr. Vines regarding the case" and "I've advised him it is time to rest his case."[38] Mr. Vines followed Chairman Melissa Darden's instructions. She was acting without Tribal Council knowledge or consent.

Such conduct of Mr. Vines is unethical under Rules 1.7 and 1.11, as well as under *In re Toups*. Mr. Vines knows this because such conflicts of interest within the 16th Judicial District Attorney's office were addressed extensively through disciplinary proceedings in the matter of *In re J. Phil Haney*, No. 11-DB-082 wherein former district attorney Phil Haney became the first district attorney in

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Conduct R. 3.8(d) (2004); Model Code of Prof'l Responsibility EC7-13(3); ABA Standards for Criminal Justice Standard 3-3.11(a) (1993).

[37] Chairman Melissa Darden defeated me in a runoff election in 2017.

[38] *See* Affidavit of Johnny Burgess (June 17, 2021).

Louisiana to be formally charged by the Office of Disciplinary Counsel.[39] Mr. Vines worked as an assistant district attorney for Mr. Haney during that time and the case garnered statewide media attention.[40]

At issue in the Haney proceedings were alleged violations of Rule 1.7 and Rule 1.11 (a lawyer currently serving as a public officer or employee shall not "negotiate for private employment with any person who is involved as a party or as a lawyer for a party in the matter in which the lawyer is participating personally and substantially.").[41] The alleged violation of Haney was for ignoring his public duties as district attorney to represent a victim of a crime assigned to his office for prosecution. Haney recused his office from prosecution the criminal charges and he continued to represent the victim against the criminal defendant. He received a $20,000 fee for his representation of the victim. After the disciplinary proceedings, Haney resigned upon completion of his remaining term.

In the Haney proceeding, the Board first determined that the victim was not a "party" to the criminal action; rather she was a victim of the defendant's actions and a witness at the criminal trial. The parties to the criminal action were the defendant and the State of Louisiana. Secondly, Haney did not participate in the

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[39] Brown, Jason, "Office files charges against 16th Judicial District Attorney," *The Advocate*, 5 Oct. 2011 ("Plattsmier said this may be the first time that an elected district attorney has become the subject of formal charges by the Office of Disciplinary Counsel.").

[40] "DA Phil Haney Ethical Misconduct," YouTube (Nov. 14, 2011) –

[41] *See* Ruling of the Louisiana Attorney Disciplinary Board, Docket No. 11-DB-082 (Jan. 7, 2013).

criminal matter personally and substantially because he recused his office upon learning of the conflict.

Here, there is no doubt Mr. Vines learned of the criminal matter during his representation of the Tribe, and he participated in the prosecution while continuously representing the alleged victim, the Tribe.[42] Equally important, Mr. Vines was renegotiating his employment with the Tribe while the criminal matter was pending. At the first scheduled trial date of January 12, 2017, Mr. Vines filed a motion continued and re-fix the matter to May 2, 2017. Then, on April 4, 2017, the Tribal Council met with Mr. Vines to "discuss his contract" even though he had been employed only sixteen months and was not halfway through his 36-month contract.[43]

Unlike Mr. Haney who recused himself from the prosecution during his representation of the victim, Mr. Vines participated in the prosecution of the criminal matter personally and substantially. Mr. Vines refused to avoid even the mere appearance of impropriety by choosing to be the prosecutor of a case in a

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[42] *See* Bennet L. Gershman, *Prosecutorial Ethics and Victims' Rights: The Prosecutor's Duty of Neutrality*, 9 Lewis & Clark L. Rev. 559 (2005)("A prosecutor does not serve justice, however, when she undertakes her official functions for personal or political reasons, has an 'ax to grind' against the defendant, or has special motivation to favor the victim or satisfy a victim's private agenda if that agenda is inconsistent with the prosecutor's public duty to serve all people neutrally, i.e., equally and fairly.").

[43] *See* April 3, 2017 email from Jill Louviere to tribal council members. *See People v. Zimmer*, 414 N.E.2d 705 (N.Y. 1980) (district attorney who prosecuted charges against defendant was simultaneously representing corporation against whom defendant alleged to have committed crimes had a conflict of interest and should have recused himself).

parish where he ordinarily does not exercise such duties—all while continuing to accept and renegotiating his private contract with the alleged victim, the Tribe.

Assuming this conflict of Mr. Vines did not impute to the entire District Attorney's office, there are currently seventeen other prosecutor's in that office who could have handled the case. But Mr. Vines chose to handle the prosecution solely instead. The matter could have also been referred to the Louisiana Attorney General to handle or for the appointment of special counsel, which that office has historically done in other conflict cases.

Conflict of interests under Rule 1.7 and *In re Toups* and *In re Caillouet* (both assistant district attorneys) were also evaluated in the Haney disciplinary proceedings. The Board in the Haney case determined that arguably there was a significant risk Haney's representation of the district attorney's office was materially limited by his representation of the victim and/or his own personal interest. Unlike Mr. Vines, prior to learning of the criminal matter, Haney had already accepted the representation of the victim, thus he could not have participated in the prosecution of the defendant even if he so desired because he already represented the victim in the criminal matter for which the defendant was being prosecuted. Furthermore, Haney was not aware of any conflict at the time he accepted the representation of the victim.

It is indisputable that there was a significant risk Mr. Vines's representation of the district attorney's office was materially limited by his representation of the Tribe (the victim) and/or his own personal interest (his contract for employment

with the Tribe).[44] In contrast to the Haney case, Mr. Vines learned of the criminal matter while representing the Tribe (the alleged victim) whereas Haney argued he did not know about the criminal matter until after he began representation of the victim. As proof that Mr. Vines had such knowledge is his April 6, 2016[45] letter to Mr. Stockstill on Tribe letterhead.[46] Further, Mr. Vines continued to participate in the prosecution while being employed by the Tribe and while renegotiating his private contract with the alleged victim (the Tribe) in the criminal matter.

At a minimum, Mr. Vines was aware of a potential conflict when he chose to handle the prosecution instead of having another assistant district attorney or the Attorney General handling the criminal matter. Otherwise, he would not have solicited an opinion letter from Mr. Schiff.

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[44] *See* National District Attorneys Association, National Prosecution Standards (Third Edition)

> 1-3.2 Conflicts with Private Practice
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> In jurisdictions that do not prohibit private practice by a prosecutor:
> a. The prosecutor in his private practice should not represent clients in any criminal or quasi-criminal related matters, regardless of the jurisdiction where the case is pending;
>
> 1-3.3 Specific Conflicts
>
> In all jurisdictions, including those prohibiting private practice by prosecutors:
> d. The prosecutor should excuse himself or herself from any investigation, prosecution, or other matter where personal interests of the prosecutor would cause a fair-minded, objective observer to conclude that the prosecutor's neutrality, judgment, or ability to administer the law in an objective manner may be compromised.

[45] Curiously, Mr. Vines states in this letter that he was "in the process" of "seeking a legal opinion" regarding his ethical obligations, but he received the legal opinion six days prior, on April 1, 2016.

[46] *See* April 6, 2016 letter by Rob Vines. This letter states Mr. Vines is also subject to the Chitimacha Rules of Professional Conduct; *See also* http://www.chitimacha.gov/sites/default/files/CCCJ%20Title%20I%20-%20Courts.pdf

The Louisiana Supreme Court's holding in *In re Toups* provides a reasonable expectation of what was required of Mr. Vines:

> After considering the important policy reasons behind avoiding conflicts of interest between a district attorney's prosecutorial role on behalf of the state and his duty to protect the interests of his civil clients, we find that , *in order to comply with the Rules of Professional Conduct, a district attorney must immediately withdraw from the civil representation of a client when there is substantial reason to believe that the criminal conduct have been or will be filed by or against the civil client.* When criminal charges have been filed against a civil client, this rule applies even if the criminal charges are unrelated to the civil representation.[47]

Mr. Vines did exactly the oppositive of what *In re Toups* directs. He did not withdraw from his private contract with the Tribe after the Tribe referred the matter to the 16th Judicial District Attorney. Instead, Mr. Vines sought to prosecute the case and took action in the criminal matter that was beneficial to his client, the Tribe.

If the facts of the Haney case conclude no ethical misconduct, how could there not be a violation when Mr. Vines failed to follow Haney' lead? It is not as if Mr. Vines learned of the criminal matter prior to his private contract with the Tribe. It is not as if Mr. Vines did not participate in the prosecution. It is not as if Mr. Vines sought to avoid the conflict or appearance of impropriety by recusing himself. If the actions of Haney served to absolve him of misconduct then the failure of Mr. Vines to act similarly warrants a finding of ethical misconduct.

Admittedly, on April 20, 2016, there was initially no objection to Mr. Vines handling the case. At that time, I agreed to Mr. Vines as a prosecutor only because

[47] *In re Toups*, 773 So.2d at 716 (emphasis added).

of the fact that I had just recently hired and sworn him into office under my own administration. Moreover, in the opinion solicited by Mr. Vines, it was originally posited that he would be acting as tribal prosecutor only (not assistant district attorney). This was misleading. The opinion further indicated Mr. Vines would work within the parameters of Rule 3.8 and he would not have any personal issues that divided his loyalty. That did not hold true.

And, the renegotiation of his contract with the Tribe during the pendency of these proceedings made his loyalty to the Tribe (the alleged victim and his client) more prevalent. In any event, Mr. Vines clearly was unable to separate his primary position as assistant district attorney and his secondary position as Tribal Prosecutor, because he cross utilized both positions in an attempt to effectuate a positive outcome for his secondary employer, the Tribe.

In addition to the ethical obligations imposed under Rule 1.7, Louisiana Code of Criminal of Procedure Article 680 provides the ground for recusation of a district attorney. "A district attorney shall be recused when he: (1) Has a personal interest in the cause or grand jury proceeding which is in conflict with fair and impartial administration of justice." It is obvious that Mr. Vines's private contract as Chitimacha Tribal Prosecutor with a $45,000 annual payment is a "personal interest". The actions of Mr. Vines as detailed hereinabove evidence a violation of Rules 1.7 and 1.11.

COMPLAINT NO. 4

Violation of Rule 8.4 – Conduct prejudicial to the administration of justice Rob Vines.

Rule 8.4 states, "[i]t is professional misconduct for a lawyer to: engage in conduct involving dishonesty, fraud, deceit or misrepresentation; engage in conduct that is prejudicial to the administration of justice." Rule 8.4 also does not include a specific mental state. In this case, the acts of Mr. Vines and the circumstances show his conduct was purposeful and intentional.

1. The *Brady* violations by Mr. Vines is conduct prejudicial to the administration of justice.

In these proceedings, Mr. Vines engaged in conduct prejudicial to the administration of justice. A prosecutor's failure to disclose exculpatory information has been determined to constitute conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d).[48]

Written statements from industry veterans/experts (solicited by Mr. Vines) about the proper way to handle the issues made the subject of this investigation and resulting charges undoubtedly undermined the credibility of the state's witnesses and was favorable to the defense. This information was certainly material, but Mr. Vines suppressed this evidence by his own volition. Mr. Vines had actual knowledge and possession of the existence of this *Brady*-type material and, as a career prosecutor, he was aware of his *Brady* obligations. He chose to conceal these documents for years including after being relied upon by quasi-judicial public body,

[48] *See Matter of Rain*, 162 A.D.3d 1458, 79 N.Y.S.3d 387 (2018) (*Brady* vindicates "our system of the administration of justice."); *People v. Rosario*, 173 N.E.2d 881 (Ct. App. N.Y. 1961) ("notions of fundamental fairness or ... 'a right sense of justice'").

which put him on direct notice of the existence of evidence or information favorable to the defense.

The conduct of Mr. Vines was a deliberate pattern of avoidance, or willful blindness, in his handling of these letters and affidavits. Mr. Vines understood that there was a high probability of the existence of *Brady*-type materials and he took deliberate, volitional, and extraordinary action to attempt to avoid disclosure. He consciously abrogated his duties under *Brady* because it was beneficial to his client, the alleged victim.

The conduct of Mr. Vines is seriously inconsistent with his responsibility as an officer of the court. His acts demonstrate that he abdicated his duty as a public officer and allowed his private contract with the alleged victim to eclipse and supplant his role as assistant district attorney.[49]

2. The conflicts of interest by Mr. Vines is also conduct prejudicial to the administration of justice.

Mr. Vines has engaged in dual representation of public and private interests.[50] On the one hand, he had a contract for private employment with the Tribe as tribal prosecutor. The $45,000 annual payment to be tribal prosecutor was

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[49] *See Matter of Kurtzrock*, 192 A.D.3d 197, 138 N.Y.S.3d 649 (2020) (prosecutor suspended 2 years for failure to disclose certain material to the defense which violated rule of professional conduct prohibiting conduct prejudicial to the administration of justice); *Matter of Rain, supra* (prosecutor suspended for 2 years for committing misconduct prejudicial to the administration of justice by disregarding obligation to disclose exculpatory evidence to defense counsel).

[50] *See Iowa Supreme Court Attorney Disciplinary Bd. V. Zenor*, 707 N.W.2d 175 (Iowa 2005) suspending county attorney indefinitely for dual representation (In attorney disciplinary proceedings, engaging in conflicts of interest by simultaneously representing public and private interests has been determined to be "prejudicial to the administration of justice").

paid to him directly by the Tribe throughout these proceedings. On the other hand, Mr. Vines, as assistant district attorney for the 16th Judicial District Attorney, prosecuted this case with the Tribe being the alleged victim—all the while he was renegotiating his contract with the Tribe.[51]

Confidence in government depends to a large extent on confidence in the honesty and integrity of its public officers and employees. There are adequate facts for a reasonable and informed citizen to conclude that there would be a high risk of impropriety if Mr. Vines represented and was in contract renegotiations the Tribe while simultaneously prosecuting a case in which the Tribe was an alleged victim. He maintained constant contact with the Tribe chairman, who was responsible in part for his private contract, and he was directed by the chairman how to conduct this prosecution. At the same time, the tribal chairman assisted in gathering information that served as the basis for this prosecution. The average citizen, seeing the paychecks Mr. Vines received from the Tribe while prosecuting a case with the Tribe identified as the alleged victim, could not perceive any distinctions or appreciate the bureaucratic structing of responsibility.

There is no dispute that Mr. Vines intentionally undertook the prosecution of this case as an assistant district attorney while continuing to pursue financial gain from the alleged victim.[52]

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[51] *See In Matter of Petition for Review of Opinion 552*, 507 A.2d 233 (1986) (When representation of government is involved, it has been recognized that "the appearance of impropriety assumes an added dimension" because government attorneys are invested with the public trust and because they are more visible to the public, their conduct must be even more circumspect than private attorneys).

[52] *See Matter of Burton*, 139 N.E.3d 211 (Ind. 2020) suspending prosecutor for violation of Rule 1.7 and 8.4 ("[u]se of prosecutorial authority becomes improper when the sole and overriding motivation

CONCLUSION

The *Brady* violations by Mr. Vines and his conflicts of interest are obvious. For five years, Mr. Vines delayed these proceeding because he knew the charges were not in good faith. When I declined his offer, before arraignment, to dismiss the charges in exchange for my resignation as Chairman, he repeatedly continued the case through my term in order for me to have felony charges hanging over my head during the next election. Only after did Mr. Vines reduce the charges to a misdemeanor for which I was found not guilty and absolved from his fabricated charges. It is undeniable that Mr. Vines's hands are not clean. He took on a matter in a jurisdiction where he does not usually and customarily prosecute cases; then he participated in renegotiating his contract with the Tribe during the pendency of the charges; and he failed to disclose material and exculpatory written statements.

Respectfully,

O'Neil Darden, Jr.

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for exercising it is the prosecutor's personal benefit or gain, and not to further the public interest of effective law and application of enforcement") (citing *Matter of Christoff and Holmes*, 690 N.E.2d 1135 (Ind. 1997); *See also In re Barstow*, 817 So.2d 1123 (La. 2002)(an appointed IDB lawyer who failed to disclose to the court that he accepted a private fee for representing a purportedly indigent defendant committed prejudicial conduct).