

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**IN RE: STATE POLICE INVESTIGATION OF ALLEGATIONS AGAINST
KANAWHA COUNTY PROSECUTING ATTORNEY MARK PLANTS, ESQ.**

MISCELLANEOUS CRIMINAL ACTION NO. _____

ORDER INSTITUTING THE ABOVE-STYLED ACTION

WHEREAS, the Chief Justice of the West Virginia Supreme Court of Appeals has appointed the undersigned to serve in the 13th Judicial Circuit for the purpose of presiding over any current and future proceedings relating to the State Police investigation of allegations against Kanawha County Prosecuting Attorney Mark Plants, Esq.,

WHEREAS, the undersigned finds it necessary for the Kanawha County Circuit Clerk to file this matter as a miscellaneous criminal action for administrative purposes and to assign it an appropriate number for all future filings,

THEREFORE, it is **ORDERED, ADJUDGED** and **DECREED**:

The Kanawha County Circuit Clerk shall forthwith open a miscellaneous criminal action for the prompt administration for this matter. The Clerk is Ordered to file the attached Order of Disqualification, Request for Appointment of Special Prosecutor, and Information Sheet in such action.

It is further **ORDERED** that the Clerk of the Circuit Court of Kanawha County shall forward a certified copy of this Order to the Executive Director of the West Virginia Prosecuting Attorneys' Institute, at its address of 90 MacCorkle Avenue, SW, Ste. 202, South Charleston, West Virginia 25303; to the Kanawha County Commission at its address of P.O. Box 3227, Charleston, West Virginia, 25336; to Colonel C. R. "Jay" Smithers, Superintendent of the West

Virginia State Police, at his address of 725 Jefferson Road, South Charleston, West Virginia, 25309-1698; and to Mark Plants, Esq., Prosecuting Attorney of Kanawha County, West Virginia at his address of 301 Virginia Street East, Charleston, West Virginia, 25301.

Dated this 6th day of March, 2014.

ENTER:

A handwritten signature in cursive script, reading "Derek C. Swope", written over a horizontal line.

DEREK C. SWOPE, SPECIAL JUDGE

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA.

**IN RE: STATE POLICE INVESTIGATION OF ALLEGATIONS AGAINST
KANAWHA COUNTY PROSECUTING ATTORNEY MARK PLANTS, ESQ.**

MISCELLANEOUS CRIMINAL ACTION NO. _____

ORDER OF DISQUALIFICATION

WHEREAS, the Superintendent of the West Virginia State Police has previously advised the Honorable Charles E. King, Chief Judge of the 13th Judicial Circuit, that the West Virginia State Police have initiated an investigation into allegations of child abuse by Mark Plants, Esq., Prosecuting Attorney of Kanawha County, West Virginia; and

WHEREAS, each of the judges of the 13th Judicial Circuit has voluntarily recused themselves from hearing any current or future matters relating to such investigation; and

WHEREAS, the Chief Justice of the West Virginia Supreme Court of Appeals has appointed the undersigned Judge to serve in the 13th Judicial Circuit for the purpose of considering any requests to disqualify the Prosecutor or his office in a particular criminal case, juvenile matter or child abuse/neglect case, where the disqualification request is based upon the State Police investigation of such allegations, and to appoint a special Prosecuting Attorney in those instances where the prosecutor is disqualified; and

WHEREAS, the Court believes the actions of Superintendent Smithers and the Honorable Charles King serve as a request that the Prosecuting Attorney of Kanawha County, West Virginia, be disqualified from handling this proceeding; and

WHEREAS, this Court has reviewed West Virginia Code §7-4-6 relating to the West Virginia Prosecuting Attorney's Institute, and finds that the duties of such Institute include the

provision of Special Prosecuting Attorneys when elected Prosecuting Attorneys are disqualified from service in a proceeding, specifically:

(1) The provision for special prosecuting attorneys to pursue a criminal matter, a juvenile delinquency matter or a matter involving child abuse neglect pursuant to chapter forty-nine of this code, or in any matter wherein a special prosecutor previously appointed has failed to take any action thereon within such time as the Executive Director deems unreasonable, not to exceed three terms of court from the date on which the special prosecutor was appointed. Provided, That such replacement or original appointment may be any attorney with a license in good standing in this state in any county upon the request of a Circuit Court judge of that county and upon the approval of the Executive Council; and

WHEREAS, such code section further states that:

The circuit judge of any county of this state, who disqualifies the prosecutor or his or her office from participating in a particular criminal case, a juvenile delinquency matter or a county, shall seek the appointment by the institute of a special prosecuting attorney to substitute for the disqualified prosecutor. The executive director of the institute shall, upon written request to the institute by a circuit judge as a result of disqualification of the prosecutor or for other good cause shown, and upon approval of the executive council, appoint a prosecuting attorney to serve as a special prosecuting attorney.

THEREFORE, it is **ORDERED, ADJUDGED** and **DECREED** as follows:

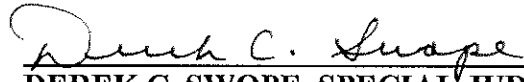
(1) Based upon the request of the Superintendent of the West Virginia State Police, and because of an inherent conflict of interest involving the elected Prosecuting Attorney of Kanawha County, due to his status as the subject of such investigation, and in consideration of L.E.I. 92-01, the Prosecuting Attorney of Kanawha County, West Virginia, and his entire staff are disqualified from the investigation and potential prosecution of any matters arising from such investigation of his alleged conduct; and

(2) This matter is referred to the West Virginia Prosecuting Attorney's Institute for the assignment of a Special Prosecuting Attorney to handle such proceedings.

It is the further **ORDER** and **DECREE** of this Court that the Clerk of the Circuit Court of Kanawha County send a certified copy of this Order together with the Request for Appointment of Special Prosecutor and attached Information Sheet to the Executive Director of the West Virginia Prosecuting Attorneys Institute, at his address of 90 MacCorkle Avenue, SW, Ste. 202, South Charleston, West Virginia 25303; to the Kanawha County Commission at its address of P.O. Box 3227, Charleston, West Virginia, 25336; to Colonel C. R. "Jay" Smithers, Superintendent of the West Virginia State Police, at his address of 725 Jefferson Road, South Charleston, West Virginia, 25309-1698; and to Mark Plants, Esq., Prosecuting Attorney of Kanawha County, West Virginia, at his address of 301 Virginia Street East, Charleston, West Virginia, 25301.

Dated this 6th day of March, 2014.

ENTER:


DEREK C. SWOPE, SPECIAL JUDGE

REQUEST FOR APPOINTMENT OF SPECIAL PROSECUTOR

TO: WEST VIRGINIA PROSECUTING ATTORNEYS INSTITUTE
90 MacCORKLE AVENUE, SW, SUITE 202
SOUTH CHARLESTON, WEST VIRGINIA 25303

FROM: THE HONORABLE DEREK C. SWOPE
SPECIAL CIRCUIT JUDGE OF THE THIRTEENTH JUDICIAL CIRCUIT
KANAWHA COUNTY, WEST VIRGINIA

IN RE: STATE POLICE INVESTIGATION OF ALLEGATIONS AGAINST
KANAWHA COUNTY PROSECUTING ATTORNEY MARK PLANTS, ESQ.

INITIAL REQUEST FOR PROSECUTING ATTORNEY DISQUALIFICATION WAS MADE BY:

☐ Prosecuting Attorney moved Court to be disqualified*
☐ Defendant/Defendants' Attorneys
☐ Court disqualified Prosecuting Attorney *Sua Sponte*
☒ Other: Request of West Virginia State Police for appointment of a Prosecuting Attorney to review this investigation

REASON FOR REQUEST:


The Kanawha County Prosecuting Attorney's Office has been disqualified because Mark Plants, Esq., the Prosecuting Attorney of Kanawha County, West Virginia, is the subject of the State Police investigation.

BRIEF SUMMARY AND STATUS OF CASE:

Investigation Complete.

ESTIMATION OF TIME REQUIRED: Unknown

Dated this the 6th day of March, 2014.


DEREK C. SWOPE, SPECIAL 13TH CIRCUIT JUDGE
KANAWHA COUNTY, WEST VIRGINIA

REQUEST TO REMAIN CONFIDENTIAL: ☐ Yes ☒ No

REQUEST FOR APPOINTMENT OF SPECIAL PROSECUTOR

INFORMATION SHEET

INFORMATION PROVIDED BY:

 Prosecuting Attorney
 X Circuit Court Judge

CRIMINAL CASE STYLE AND NO.:

IN RE: **STATE POLICE INVESTIGATION OF ALLEGATIONS AGAINST
KANAWHA COUNTY PROSECUTING ATTORNEY MARK PLANTS, ESQ.**

COUNTY: **KANAWHA**

State the facts that form the basis for Prosecuting Attorney disqualification:

The Kanawha County Prosecuting Attorney's Office has been disqualified due to the fact that the matter in question involves the investigation of alleged criminal activity by the Prosecuting Attorney of Kanawha County, West Virginia.

Specify the Rule of Professional Conduct, ethics opinion, West Virginia Supreme Court case cite, statute, or other authority that forms the legal basis for disqualification of the Prosecuting Attorney:

Rule 1.9(b) and Rule 1.6 of the Rules of Professional Conduct. In L.E.I. 92-01, the West Virginia Committee on Legal Ethics found that when an assistant prosecutor has a conflict [in any matter], he/she may be screened from participation in that matter, and other prosecutors may represent the State. However, when the prosecuting attorney is disqualified, the disqualification is imputed to the entire office.

Summarize the facts of the underlying offense for which a special Prosecuting Attorney is requested:

The West Virginia State Police have initiated an investigation into allegations of child abuse by Kanawha County Prosecuting Attorney, Mark Plants, Esq.

State the crime(s) involved:

Alleged child abuse.

Status of charges: (i.e., investigative stage, magistrate court warrant, grand jury, trial set, etc.)

The West Virginia State Police have completed their investigation, and request that it be reviewed by a Prosecuting Attorney.


State the date, place, type of any hearing(s) set:

None

State the name and phone number of investigating officer for underlying criminal action:

Sgt. M.S. Adams of the State Police Crimes Against Children Unit, Wheeling, West Virginia.

Prepared by:


DEREK C. SWOPE, SPECIAL JUDGE
13TH JUDICIAL CIRCUIT COURT
KANAWHA COUNTY, WEST VIRGINIA