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By email to Charles R. Spies <CSpies@dickinson-wright.com>

Re: Open FCPS Coalition v. Elaine Tholen (CL-2021 10386)

Dear Mr. Spies:

Your conduct at the hearing in Fairfax Circuit Court last Friday was unprofessional. I would hope you are familiar with the Principles of Professionalism for Virginia Lawyers promulgated by The Virginia Bar Association (https://www.vba.org/page/principles_professionalism). In endorsing the widest possible dissemination of these principles, the Supreme Court of Virginia noted that the principles "articulate standards of civility to which all Virginia lawyers should aspire."

I would like to draw your attention to guidance from the VBA Principles of Professionalism:

"In my conduct toward opposing counsel, I should:

Treat both opposing counsel and their staff with respect and courtesy [and] avoid *ad hominem* attacks, recognizing that in nearly every situation opposing lawyers are simply serving their clients as I am trying to serve my clients."

Similarly, the commentary to the Virginia Rules of Professional Conduct (Rule 3.4. Fairness To Opposing Party And Counsel) offers this guidance:

"A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system (Comment [8])."

At the hearing I explained to the Court that I had undertaken an independent review to determine whether there was sufficient evidence to justify proceeding to trial on the Open FCPS

Coalition claim that Elaine Tholen was guilty of misconduct and should be removed from public office. After giving a detailed analysis of the evidence and explaining the reasons why I concluded it was improper to maintain the removal action, I stated to the Court that I was ethically obligated under Rule 3.8 (additional responsibilities of a prosecutor) to move to dismiss the petition.

When it was your turn to respond, you had an opportunity to argue against the motion and to give your reasons why my analysis was wrong. That's what the moment required, but you didn't state a lawyerly objection. You chose instead to mount an *ad hominem* attack. You asserted, in effect, that my representation of the Commonwealth was corrupt. By your account my decision on the motion to dismiss was ordained by my ideological alignment with the respondent, not by any conscientious effort on my part to do what was right. You further contended that the fix was in from the beginning, because I was "self-appointed" to undertake this mission. That was a falsehood, because Judge Gardiner appointed me as special prosecutor.

Now don't misunderstand me. I have practiced law in Virginia for over 45 years. In this time I have earned an excellent reputation for honesty, integrity, and ethical practice, and I am unconcerned that anything you say will impeach my reputation. It was obvious to everyone in the courtroom—except your own followers of course—that you were the one twisting the law to pursue a political agenda. The problem, as I see it, is that unprofessional conduct like yours, if it goes unremarked and uncorrected, has a tendency over time to become the norm. The erosion of civility in law practice is something about which I *am* greatly concerned, and your conduct on Friday moves us in the wrong direction where it comes to civility.

My hunch is that unprofessional behavior like this is your stock in trade. Stoking the rage of your followers in an attempt to gain political advantage is what I suspect you are paid to do. Nor would I be surprised if you intended your unprofessional attack on my integrity to have had a part in sparking dozens of social media posts vilifying me as a corrupt, biased, crooked, child-hating prosecutor who cowardly refused to do his job. Blame the opposing lawyer when things don't go your way. You can't give any credit, it seems, to the merits of your adversary's argument. If I've got this wrong, I would be glad to know it. I welcome your thoughts.

Thanks for your consideration.

Sincerely,



James Hingeley