

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

RECEIVED
2007 SEP 28 PM 1:13

IN RE:
WILLIAM CHARNOCK

COMPLAINT NO.: CIC 2005-01
AND VCRB 2005-1ba

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and William Charnock freely and voluntarily enter into the following Conciliation Agreement pursuant to West Virginia Code § 6B-2-4(s) to resolve all potential charges arising from the above-referenced Complaint.

FINDINGS OF FACT

(1) That William Charnock was the Executive Director of the West Virginia Prosecuting Attorneys Institute at all times relevant herein. Mr. Charnock's annual salary was \$60,000.00

(2) While Executive Director of the West Virginia Prosecuting Attorneys Institute, Mr. Charnock ran for the elected position of Kanawha County Prosecuting Attorney.

(3) The Executive Council of the Prosecuting Attorney's Institute was informed in advance of Mr. Charnock's intentions to run for Kanawha County Prosecutor, and approved for him to do so while remaining Executive Director of the Institute. According to the Council's minutes from the January 29, 2004 meeting, the Director advised the Council that he was filing for the office. According to the minutes, which were written and signed by Mr. Charnock:

The council established guidelines to include a prohibition of

electioneering at the office and to prohibit campaigning by Institute staff .

(4) The general election of 2004 was held on November 2.

(5) The West Virginia Legislative Auditor undertook an investigation into questionable practices at the Prosecuting Attorneys Institute. As part of the investigation, the laptop computer issued to Mr. Charnock by the Prosecuting Attorneys Institute was seized by the Legislative Auditor of West Virginia, analyzed and found to contain some e-mails to and from Mr. Charnock and campaign related information and material for his 2004 campaign for Kanawha County Prosecutor, his brother's campaign in 2003 for City of Charleston Treasurer and his sister's campaign in 2002 for Kanawha County Family Court Judge. The Legislative Auditor published a report dated November 13, 2005.

(6) Mr. Charnock has not disputed the findings of the aforementioned report of the Legislative Auditor; nor has he accepted them.

(7) Two ethics complaints against Mr. Charnock were filed. The first was filed by Nick Casey on November 16. The second, by the Executive Director of the Ethics Commission, bears the date stamp of 12:19 a.m. (sic) on November 16, 2005.

(8) The Legislative Auditor's report, incorporated herein by reference, also contends that Mr. Charnock used office staff to work on a web site for all of the campaigns, to prepare political ads, and to obtain software to be used for ads. It also concludes that he asked an assistant to contact the Marriott Hotel to set up a fund raising event, and that he used office equipment for copies to support the various campaigns. Moreover, staff at the Institute indicated that Mr. Charnock was rarely in the office during September and October, 2004.

(9) It is the Respondent's position that the only events in the Legislative Auditor's report which occurred within one year of the Complaints are an exchange of e-mails and a thank-you letter dated November 19 (see p.28 of Auditor's report).

(10) It is the Commission's position that all of Mr. Charnock's campaign-related actions are related and therefore constitute actions, which are continuing in nature and relate back to campaign actions using work time and equipment, which may have taken place prior to the expiration of the one-year statute of limitations.

(11) The applicable period of limitations is one year. The present two-year statute only applies to events occurring after July 1, 2005. W.Va. Code § 6B-2-4(3).

(12) Prior to the November 2005 issuance of the final Legislative Auditor's report, Mr. Charnock acknowledged that he had used State resources for his campaign and reimbursed his office \$13.35 for paper used during his brothers' campaign. He also reimbursed the office \$933.73 the amount the Legislative Auditor determined to be his personal use of his cell phone, although this use was unrelated to campaign issues. Mr. Charnock has already agreed with the Kanawha County Special Prosecutor to make any additional restitution required.

(13) The principal factual issue before the Commission is whether Mr. Charnock's use of office equipment, staff and other resources of the Prosecuting Attorneys Institute constituted more than a *de minimus* use of state resources for his family or his family's personal gain. Mr. Charnock believes it was not; the Complainants believe that this use was knowing and intentional and considerably more than a *de minimus* use of State resources.

ALLEGED VIOLATION

WVa. Code § 6B-2-5(b) reads:

- (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her private gain or that of another person.

CONCILIATION OF VIOLATION

I, William Charnock, Former Executive Director of the West Virginia Prosecuting Attorneys Institute, freely and voluntarily acknowledge that I should not have used the resources of my public office for personal gain.

In order to resolve this matter and to avoid further proceedings, I am signing this agreement. By signing this agreement, I agree to the imposition of sanctions by the West Virginia Ethics Commission. I further agree to participate in ethics training to be conducted by the Ethics Commission in the event that I return to the State of West Virginia to live and work for any state, county or municipal entity.

For this Conciliation Agreement to be finalized, the Commission must approve the Agreement and must further make a determination concerning which sanctions to impose. The Commission may impose one or more of the following sanctions:

- (1) Public Reprimand;
 - (2) Cease and desist orders;
 - (3) Restitution (as determined by the Commission not to exceed \$10,000.00);
- and
- (3) A fine of no more than \$1,000.00.

If the commission approves this conciliation agreement, respondent Charnock and his legal counsel will in turn waive the opportunity to make an appearance before the ethics commission in an adjudicatory session prior to the ethics commission making

a determination as to which, if any, sanctions are appropriate based upon the applicable facts and circumstances.

Mr. Charnock agrees to remit any monetary sanction to the Ethics Commission within 30 days of the date of the entrance of the Order by the Commission in which it imposes sanctions. It is further hereby agreed that if the Commission fails to approve this conciliation agreement that the matter will be referred back to the Probable Cause Review Board where the Complaint will continue to be processed in accordance with the West Virginia Code and the Commission's legislative rules.

The Respondent understands that should this Conciliation Agreement not be returned signed that the Probable Cause Board will decide this issue on September 19, 2007.

If the Ethics Commission approves the agreement, it will enter an Order in which it approves the agreement and sets forth the sanctions upon which it determined.

Both parties understand that pursuant to W.Va. Code § 6B-2-4(s), the Conciliation Agreement and Commission Order must be made available to the public.

Date: 10/04/07


Kemp Morton, Chairman
W.Va. Ethics Commission

Date: 7/18/07


William Charnock

2007 SEP 19 PM 1:14
RECEIVED

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:
WILLIAM CHARNOCK

COMPLAINT NO. : CIC 2005-01
AND VCRB 2005-16a

COMMISSION'S ORDER

After considering the foregoing FINDINGS OF FACT, ALLEGED VIOLATION and CONCILIATION OF VIOLATION, the West Virginia Ethics Commission finds that the Conciliation Agreement is in the best interest of the State and the Respondent as required by West Virginia Code § 6B-2-4(s). In accordance with the Conciliation Agreement and in accordance with West Virginia Code § 6B-2-4(r), the Commission imposes the following sanctions:

- (1) The West Virginia Ethics Commission hereby **Orders** that the former public official, William Charnock, should be and hereby is **publicly reprimanded** for using the resources of his office for personal gain;
- (2) The West Virginia Ethics Commission hereby declines to consider whether it should recommend the removal from office of Respondent William Charnock inasmuch as he has resigned his positions of Executive Director of the West Virginia Prosecuting Attorneys Institute and of Kanawha County Prosecuting Attorney, and is no longer a public official in West Virginia;
- (3) The West Virginia Ethics Commission hereby **Orders** Respondent William Charnock to pay **\$11,000** for his actions, as follows:

a. Reimburse the West Virginia Prosecuting Attorneys Institute \$10,000.00 for the use of its public resources. This sum is to be paid within thirty (30) days of the entrance of this Order; and

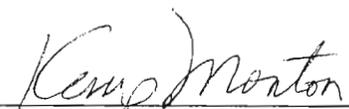
b. Pay a fine of one thousand dollars (\$1,000.00) to the West Virginia Ethics Commission for violating the West Virginia Governmental Ethics Act. The fine is to be paid within thirty (30) days of the entrance of this Order;

(4) The West Virginia Ethics Commission hereby **Orders** that, in the event that Respondent William Charnock returns to the State of West Virginia and falls under the jurisdiction of the West Virginia Ethics Commission, Respondent William Charnock shall participate in ethics training to be conducted by the Ethics Commission.

(5) The West Virginia Ethics Commission recognizes that its jurisdiction is limited to the Ethics Act, W. Va. Code § 6B-1-1, *et seq.*, and it cannot enforce other laws or rules. The West Virginia Ethics Commission hereby **Orders** that a copy of its Order be transmitted to the West Virginia State Bar's Office of Disciplinary Counsel, the West Virginia Prosecuting Attorneys Institute, and the Kanawha County Commission.

Date

10/04/07


Kemp Morton, Chair
W. Va. Ethics Commission