

MEMORANDUM OF BRIAN DAVID HILL IN SUPPORT OF “Virginia Indigent Defense Commission Standards of Practice of Indigent Defense Counsel Complaint Form” DATED JANUARY 27, 2024.

I, Brian David Hill, shall type up this memorandum and Declaration/Affidavit in support of my complaint noted herein, my filing of “Virginia Indigent Defense Commission Standards of Practice of Indigent Defense Counsel Complaint Form”, dated January 27, 2024, against Attorney Fred Dempsey Smith (Fred D. Smith). My statements are under oath, but I recommend to the Virginia Indigent Defense Commission to thoroughly investigate my claims and the evidence I am filing in support of my complaint. I recommend that witnesses be contacted (*Justin Hill Asst. Attorney General, Roberta Hill, Stella Forinash, Kenneth Forinash, Jeanie Nunn (Clerk)*) who may know something in support of my complaint and may better clarify the situation as to what is going on here, and bring more light to darkness as to what is going on here.

I believe Attorney Fred D. Smith had committed the following misconduct/unethical unprofessional behavior here:

1. Violation of RULE 4.1 Truthfulness In Statements To Others.
2. Violation of RULE 3.3 Candor Toward The Tribunal: (a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal; -- NOTE FROM BRIAN HILL: Fred Smith didn't make one or more false statements directly to the Court of Appeals of Virginia itself but made one or more false statements directly to the officer of the Court of Appeals of Virginia, which would be Assistant Attorney General Justin Bryon Hill, counsel for Appellees before the Court of Appeals of Virginia.
3. Violation of RULE 1.2 Scope of Representation, (d) A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation...and Scope of Representation [1] Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by the law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. – NOTE FROM BRIAN HILL: This attorney had deprived his client Brian David Hill of his constitutionally protected statutory right to appeal in the Court of Appeals of Virginia while not protecting his appeal

rights which led to the wrongful dismissal of appeals of right caused by the consequences of the prohibitions set by this lawyer while at the same time this lawyer lied to the Attorney General's office that Brian David Hill his client could file in the appeals while his client was told not to file.

4. Violation of **Standards of Practice for Indigent Defense Counsel at Trial Level**, Standard 1.0 The Lawyer-Client Relationship, A.: In all phases of representing a person accused or convicted of a crime, counsel and the client enjoy a lawyer-client relationship. While the relationship is governed by the Virginia Rules of Professional Conduct, it is also governed by the law of agency. – NOTE from Brian Hill: This means that Attorney Fred Smith has to follow the Virginia State Bar Rules, according to the STANDARDS OF PRACTICE FOR INDIGENT DEFENSE COUNSEL. If Attorney Fred Smith violates State Bar Rules when representing his client Brian David Hill, an indigent defendant, then Attorney Fred has already violated the STANDARDS OF PRACTICE FOR INDIGENT DEFENSE COUNSEL. He has to follow the rules given to him as court appointed counsel, and he has to follow the State Bar Rules governing his ethical and professional conduct. When he violates any of those rules, then it clearly is an issue which is a violation of the STANDARDS OF PRACTICE FOR INDIGENT DEFENSE COUNSEL.

5. Violation of **Standards of Practice for Indigent Defense Counsel at Trial Level**, Standard 1.0 The Lawyer-Client Relationship, B.: As a general matter, the client, after consultation with the lawyer, holds the ultimate decision making authority over lawful objectives of the representation. The lawyer, owing to his or her training and experience, generally chooses the means of obtaining the client's objectives. – NOTE from Brian Hill: However, the attorney was never directed to lie to the Assistant Attorney General. Even if it is up to the attorney to make the professional decision regarding the client's objectives aka the lawful objectives of the representation, I don't know if the attorney had sworn an oath of office or not, but Constitutional law is the supreme law of the land. My Attorney should have clearly protected my constitutional rights first before statutory law, regardless of what the charge is. The attorney clearly can have a lawful objective to protect the Constitutional rights of his client including his freedom of speech. Fred Smith didn't do any of that and caused appeals to fail as untimely. He caused more harm to Brian David Hill, his client, and caused the court to rule that Brian Hill was not compliant with the Rules of the Supreme Court of Virginia due to untimely filing caused by the prohibition six-month no filing period.

6. Violation of **Standards of Practice for Indigent Defense Counsel at Trial**

**Level, Standard 1.1 Role of Indigent Defense Counsel;** The paramount obligation of criminal defense counsel is to provide zealous and quality representation to their clients at all stages of the criminal process. Attorneys also have an obligation to abide by the Virginia Rules of Professional Conduct and act in accordance with the rules of the court and all applicable law. – NOTE from Brian Hill: This means that Attorney Fred Smith has to follow the Virginia State Bar Rules, according to the STANDARDS OF PRACTICE FOR INDIGENT DEFENSE COUNSEL. If Attorney Fred Smith violates State Bar Rules when representing his client Brian David Hill, an indigent defendant, then Attorney Fred has already violated the STANDARDS OF PRACTICE FOR INDIGENT DEFENSE COUNSEL. He has to follow the rules given to him as court appointed counsel, and he has to follow the State Bar Rules governing his ethical and professional conduct. When he violates any of those rules, then it clearly is an issue which is a violation of the STANDARDS OF PRACTICE FOR INDIGENT DEFENSE COUNSEL.

7. Violation of **Standards of Practice for Indigent Defense Counsel at Trial Level, Standard 1.2 Education, Training, and Experience of Defense Counsel,** A. To provide quality representation, counsel must be familiar with the substantive criminal law, the law of criminal procedure, immigration consequences of criminal convictions, and its application in the particular local jurisdiction. Counsel has a continuing obligation to stay abreast of changes and developments in the law. - Note from Brian Hill: Attorney Fred Smith knew that his client Brian David Hill had ongoing appeals and that Brian Hill was obligated to comply with the rules of those appeals. Instead under the guise of having his client's contempt of court case dismissed, Attorney Fred Smith directed his client not to file anything in any state court in Virginia for six months (no-filing prohibition), while telling the Assistant Attorney General that his client can file in the Court of Appeals of Virginia, while telling his client's mother to tell his client that Brian Hill would have to make a phone call to the Assistant Attorney General who had already agreed to extend Brian's appeals because of the six-month no-filing prohibition. Then the Attorney General tells the client of Attorney Fred Smith that they will not and cannot file an extension for Brian's appeals on his behalf, and thus Attorney Fred Smith had lied to both his client and had lied to the Assistant Attorney General. This is not quality representation. This is misrepresentation. In violation of the standards of practice.

## DECLARATION / AFFIDAVIT

Pursuant to the Virginia Code § 8.01-4.3. “Unsworn declarations under penalty of perjury; penalty.”, Complainant Brian David Hill hereby state to the Standards of Practice Enforcement Attorney and to the Virginia Indigent Defense Commission (VIDC) the statement of facts as under penalty of perjury, pro se Complainant Brian David Hill, on oath deposes and states:

1. Attorney Fred D. Smith was appointed to my criminal contempt of court case by Hon. Giles Carter Greer, on March 3, 2023. He was appointed because I am considered indigent as my only source of income is my SSI disability disbursement payments on a monthly basis. I am also on the Medicaid program, and SNAP/EBT benefits program.
  
2. I was charged with criminal contempt of court on February 24, 2023. Case no. CR19000009-01. The reason why I was charged with this was due to my freedom of speech within three of my pro se filed NOTICES OF APPEAL. Where I had accused Judge Greer of fraud, conspiracy, and the reasons why I brought such allegations were based on different factors here. One such factor was that he overlooked any and all evidence of extrinsic fraud perpetuated by Commonwealth’s Attorney Glen Andrew Hall, and the judge never charged him with contempt of court for disobedience of multiple court orders for discovery regarding discovery evidence including police body-camera footage I had repeatedly requested from another court appointed attorney. It is complicated to bring up in this memorandum declaration/affidavit, so I, Brian David Hill simply said in my own unique way that Judge Greer was not doing his job like he was supposed to and that got me in hot water. That got me in trouble for pointing out that and for saying that Judge Greer is buddies with different people as I felt that it was the truth for things I have witnessed inside and outside of the Circuit Court for the City of Martinsville. I witness attorneys and a staff person behaving in a way like they are all buddies or all connected. Like for example, I went to see a private attorney named McPheeters and he refused to represent me after agreeing to represent me at an earlier time after speaking with Public Defender employee Lauren McGarry. Then I noticed that the employee there who worked for McPheeters at the reception desk, was the same assistant who worked for Matthew Scott Thomas Clark, a court appointed lawyer who represented me in the past. So, I had witnessed the sort of, hanky panky of the legal world, where everyone in the legal system seems to know each other and this creates conflicts, issues, and in my belief causes issues with the separation of powers in our

Constitution. The lawyers seem to know each other to such an extent where they allow wrongdoing by the Commonwealth's Attorney Glen Andrew Hall, and that he can get away with disobeying court orders and he can get away with fraud and he can get away with destroying evidence illegally. I have a lot of evidence and things I have witnessed which was why I had lashed out at Judge Giles Carter Greer, because I know there is a lot of buddy buddy stuff going on here and it affects my constitutional rights in a negative manner involving the single-judge Circuit Court. I don't think it is a good idea for there to be just one single judge of an entire circuit court. Too many issues. Anyways, now you understand why I was charged with contempt of court, because I was accused of **CRIMINAL CONTEMPT FOR "VILE, CONTEMPTUOUS, OR INSULTING LANGUAGE ADDRESSED TO OR PUBLISHED OF A JUDGE FOR OR IN RESPECT TO ANY ACT OR PROCEEDING HAD IN SUCH COURT WITH RESPECT TO THE ATTACHED NOTICES OF APPEAL."** So, I was made into a speech criminal (they wanted me to be a speech prisoner), where I was not allowed to say to the Court of Appeals of Virginia that the judge is ignoring evidence and is not doing his job, and is going along with potentially illegal stuff. Essentially that was what got me in legal trouble for. You don't have to take my word for it, read the **NOTICES OF APPEAL** yourselves to see what was said. That was where Attorney Fred Smith comes in as my appointed lawyer.

### **ATTORNEY FRED SMITH:**

3. I had multiple meetings with Attorney Fred Smith. The first initial meeting at his law office, I did not record that meeting, which I wish I had recorded that one too, but I had recorded other attorney/client meetings (I'm the client) because I had trust issues with this attorney. I did what he told me to do, but I had recorded my conversations with my court appointed Attorney Fred Smith, because I had already suspected that the attorney was looking out for the **BEST INTERESTS** of Judge Giles Carter Greer and not looking out for my best interests of protecting both my constitutional right to freedom of speech and my constitutional/statutory due process right to appeal. I felt like this attorney did not represent me to the best extent under the law because he told me not to file anything in the state court including in my pending appeals which had strict deadlines to file (according to the **RULES**) which Judge Greer does not have jurisdiction in the Court of Appeals of Virginia. This attorney told basically me not to file at all even in my appeals, then lied to me and lied to my mother Roberta Hill. He lied to make me believe that my appeals would be continued or extended to protect my appeal rights while I complied with my attorney's wishes of not filing in the state court. I want to explain the various issues I had with my attorney, proving that he had

engaged in unprofessional or unethical or unlawful or unconstitutional misconduct. He had deprived me of my procedural due process of law in my statutory protected right to my appeals which were pending before the Court of Appeals of Virginia.

4. I had recorded the phone conversation with my attorney Fred Smith on the date of March 6, 2023. The recording is in the evidence CD under filename: Mar06-20230306154652-O-12766382555.wav. I had consented to recording my own conversation with this attorney under one party consent of Virginia Law. This recording reveals that my attorney told me: "Just hang tight. Don't, don't file anything". However, I had pending appeals before the Court of Appeals of Virginia, which Attorney Fred Smith does not represent me in all of those pending appeals, seven of them which at the time were considered active appeals. Appeals cases no. 1424-22, 1425-22, 0313-23-3, 0314-23-3, 0317-23-3, 0289-22-3, 0290-22-3. He told me that Judge Greer had made an unusual move to set my contempt of court case for JURY TRIAL. I was confused about that. I may have called the Clerk's office to try to confirm that, but have no recording of that conversation, so I am not sure. I did file an emergency letter with the Clerk's office to try to confirm whether there was a jury trial or not. The Clerk acted as though there was no jury trial set for my contempt of court case. If there was no jury trial ever set, then my Attorney Fred Smith may have lied to me, his client, about that.

5. I had recorded the phone conversation with my attorney Fred Smith on the date of March 9, 2023. The recording is in the evidence CD under filename: Mar09-726407.wav. I had consented to recording my own conversation with this attorney under one party consent of Virginia Law. He had spoken with me, Roberta Hill (my mother), Stella Forinash (my grandma), and Kenneth Forinash (my grandpa). He refused to have a first amendment defense/challenge to the contempt of court case, which that defense can also be under Article 1, Sect. 12 of the Virginia Constitution. I am knowledgeable about law and other subject matters because I have Autism Spectrum Disorder and OCD. I used to run USWGO Alternative News at uswgo.com from 2009 to 2012, was sued by Righthaven LLC in 2011. So, I have had my fair share of involvement in the federal and state legal systems. He was angry or frustrated saying that I had accused the judge of fraud, of almost said the whole word of "conspiracy", and he acted like I had done something really wrong here. Then Roberta Hill spoke up about my freedom of speech. Then Fred argued that I got to have facts here. Stella Forinash had argued to Fred: "He did have facts." Then I said: "did you read all of the facts I have?". Fred said in response: "*I've read your facts. I haven't seen any facts, that would*

*have, that would suggest that Judge Greer didn't do anything but follow the law". I then rebutted with the argument: "disobeying court orders is disobeying the law." Note: I was referring to where I have evidence that multiple court orders for discovery were not being followed by the Commonwealth's Attorney Glen Andrew Hall.* Then Fred said in response to my rebuttal: *"I'm in a situation to get this chapter closed.... I do not want to get into all this other stuff, and I will not get into all this other stuff. So if you want me to conclude this matter with respect to this contempt proceeding in the fashion of which I've described I will. But you are gonna have to get some other lawyer...to pick this up, uh, and pursue, uh, the issues that you all, uh, have focused a great deal of time and attention on in recent years?"* So, I told this attorney like I had tried to explain to the judge that disobeying court orders is disobeying the law, and of course the judge didn't do anything about it, never charged the prosecutor with criminal contempt of court for disobedience of court order or decree. Only I was charged for pointing out how the judge refused to charge the other side for deletion of evidence after two court orders for discovery then a third court order for discovery not knowing that material evidence was already destroyed. Then Attorney Fred Smith stating: *"I've read your facts. I haven't seen any facts, that would have, that would suggest that Judge Greer didn't do anything but follow the law".* The law was not being followed. I have to obey the same laws as the prosecutor, both sides of the case have to follow the rules. Fred Smith acts as though there is a different set of rules for the prosecution and that the court rules don't apply to the Commonwealth's Attorney, only the rules apply to myself. That makes no sense to me. The law applies to everybody within its lawful jurisdiction and territorial jurisdiction. Fred Smith acts as though the judge did nothing wrong here because the prosecution appears to have an entirely different set of unwritten rules that they follow, rules I cannot find anywhere, rules that are not set in writing or set in stone. They follow whatever they want to follow, law or not. I knew recording the conversation was a GREAT IDEA because I had a feeling that Attorney Fred Smith is looking out for Judge Greer's best interests and not looking out for my best interests. The way he defended Judge Greer as if he may be a friend of his or an ally of his or somebody he may know. He acts similar to the other attorneys who don't want to rock the boat when I face federal incarceration for even a misdemeanor for my supervised release. They don't want to challenge the prosecution when challenging the prosecution may upset the judge of the court. How could that be??? Constitutionally, is Virginia supposed to run a two-tiered justice system where I obey a different set of laws and rules while they don't have to follow any laws or rules; or operate under an indefinite and hidden sets of rules or rules of whatever they want it to be. That was why I had called out Judge Greer and got charged with

contempt, because this judge appears to be protecting the prosecution, and not giving me a fair day in court. My constitutional rights have been taken away by Judge Greer, I complain about that, and then my right to appeal and my freedom of speech are at risk with the contempt of court charge. This is clear cut retaliation by the judge against both my freedom of speech and my right to appeal a judge's decision with healthy criticism. Even judges have to follow the U.S. Constitution and Virginia Constitution when a judge is under the Commonwealth of Virginia. Judges have to be loyal to the U.S. Constitution including the freedom of speech. Yet Attorney Fred Smith would not protect my right to freedom of speech here. I felt like I am the victim of a conspiracy here, and I am sick of it. A conspiracy of no constitutional rights for me if any constitutional right may anger the judge. The judges have to follow the case law authorities and the Constitution. Fred Smith did not protect any of my constitutional rights. All he did was have me not file anything in the state court for six months. Anyways, he was going to have me under state probation and one of my top conditions would be that I cannot file in the court for six months without the assistance of a lawyer, even though I cannot afford an attorney, and could not afford an attorney for my pending criminal appeals of right in the Court of Appeals of Virginia. He said: *"you would be placed on probation for probably six months and probably the only the biggest term of your probation be that you don't make any more filings, uh without the assistance of a lawyer, that, that, that would be the primary condition."* So, this lawyer may have tried to put me under a condition which would have affected my Federal Habeas Corpus case (2255 motion) negatively where I cannot file anywhere without the assistance of a lawyer. I am not guaranteed the appointment of counsel for federal 2255 motion cases, so it would wreck my pending federal case as well. Fred Smith did not do a good job protecting my constitutional rights on that day saying that I couldn't file without the assistance of a lawyer, could have applied to state and federal cases which were pending and which I am a party of. This attorney was going to wreck my pending appeals knowing that I cannot afford a private lawyer for any of them. This would cost me dearly and mess up my Federal Habeas Corpus (2255 Motion) which would cause a permanent repercussion.

5. I knew after that meeting on March 9, 2023, I had to act fast on two of my pending appeals before the Court of Appeals of Virginia (CAV) to prevent them from being defaulted, failure to prosecute aka dismissed for not filing a timely appeal brief which would deprive me of procedural due process of law. My mother was afraid at this time to file anything on the internet with the CAV on my behalf so I had a friend to file with the VACES to file my brief and motion to consolidate so that it was timely filed before Attorney



Fred Smith had gotten me to possibly sign any agreement or state probation agreement or anything of that nature. I had to at least protect CAV appeal cases no. 1425-22 and 1424-22. Fred would have been angry if he had found out about those brief filings. It seemed to me like Fred didn't want me to participate in my pending appeals until after the deadlines have passed. The brief for those appeals were accepted on Monday, March 13, 2023, Confirmation Number: 277015; Confirmation Number: 277014.

5. I had recorded the phone conversation with my attorney Fred Smith on the date of April 13, 2023. The recording is in the evidence CD under filename: Apr13-045432.wav. I had consented to recording my own conversation with this attorney under one party consent of Virginia Law. He had spoken with me, and Roberta Hill (my mother). It was at that point where I had agreed not to file anything in the "state court" for six months including the Court of Appeals of Virginia (CAV). It didn't make sense to me that Attorney Fred Smith told me not to file in the Court of Appeals of Virginia, because I had deadlines, and it angers the judges of the higher court for me to file notices of appeal and then just not file anything by the deadlines set by the court. So, Attorney Fred Smith made me look like I am playing games with the Court of Appeals of Virginia, wasting their time and wasting their docket. I think if he thought that not agreeing to this would put me more at risk of being convicted of contempt of court regarding Judge Greer, then ethically/professionally, it is his responsibility as an attorney who was supposed to represent me to notify both the Court of Appeals of Virginia and the Assistant Attorney General as to my prohibition that I couldn't file in any of the "state court" for six months. That conversation, yeah, he didn't mention the actual words "Court of Appeals" when he told me not to file for six months, but the recorded conversation on June 22, 2023, does prove that Attorney Fred Smith did encompass the Court of Appeals of Virginia into the six-month prohibition where I was not to file anything for six months in any of the Courts of Virginia while I was still allowed to file in the federal courts during the six month prohibition period. Basically, the recorded conversation proves that Fred Smith and the Commonwealth's Attorney had agreed to a six-month continuance period in my contempt of court case, upon the what appears to me to be an unwritten verbal agreement that I not file in the state court for six months including the appeals court. I think it would have been better to be prohibited from filing in the Circuit Court to not upset Judge Greer any further, but to prohibit me from filing in my pending appeals was not a good move on the part of Attorney Fred Smith. I think Fred Smith did this to wreck my appeals, and further conversation recordings and then what Asst. Attorney General Justin Hill had filed, revealed to me that Attorney Fred Smith was not looking out for my best interests but was there to mess up my appeals,

thwarting my constitutional due process right to my appeals, and to protect Judge Greer. I feel this way based on all of the evidence I have which is being submitted to the commission, to the Standards of Practice Enforcement Attorney. He wasn't appointed to represent the best interests of Giles Carter Greer; he was appointed to represent the best interests of Brian David Hill, his client. He was supposed to find any and every lawful means to create the best outcome for my criminal case. The First amendment right to freedom of speech is a lawful means to create the best outcome for my criminal case. Change of venue is a lawful means to create the best outcome for my criminal case.

6. My mother Roberta Hill had recorded the phone conversation with my attorney Fred Smith on the date of June 22, 2023. The recording is in the evidence CD under filename: Jun22-20230622090230-I-2766382555.wav. My mother can provide a declaration or affidavit if requested. She informed me that she recorded the conversation since it was with my attorney and she had consented to recording her conversation with my attorney under one party consent of Virginia Law. He had spoken with Roberta Hill (my mother). The attorney Fred Smith had informed my mother that he had been contacted by the Assistant Attorney General who was concerned about me not being allowed or able to file by the deadline set by the CAV, and so Fred told my mother to tell me that the Attorney General had agreed to give me an extension of time to file my filings, as long as I call the gentleman from the Attorney General's Office which Fred claimed to have spoken with. To tell him that I "would like to agree to do that," "that he would like that extra time to make filings until sometime on a date after his October hearing date." Referring to me contacting the assistant attorney general and ask for that extra time. I decided not to call, even though I did have phone call recording capabilities, I had decided to request that extra time in writing, in a typed letter correspondence with Justin Hill, the Assistant Attorney General.

6. I had my mother Roberta Hill email the 2nd emergency letter to Justin Hill informing him as to what Attorney Fred Smith had told my mother to tell me to tell him. See file: Attachments to Motion for Leave of Court\5-2nd Emergency Letter to Justin Hill, Attorney General.pdf; and 6-Emergency Letter Justin Hill 6 28 2023.pdf.pdf. I did everything appropriate according to what Attorney Fred Smith had instructed me to do by informing my mother Roberta Hill on what I needed to do. Then Justin Hill responds back with a very disappointing response email. SEE FILE: 11-Re\_2nd Emergency Letter to Justin Hill, Attorney General.pdf. This proves to the commission and any investigator that Justin Hill had sent a very disappointing email which disturbed me that I ignored it and didn't fight back

against Justin Hill, because I didn't know what to make of this, but they are refusing to extend my time to file my appeal briefs and refused any extension of time for me after being informed that Attorney Fred Smith instructed me, actually more like ordered me not to file in (any) state court for six months. I agreed to this and I had complied with this prohibition in good faith. Then Justin Hill acts like they had nothing in place to file a motion for extension of time for me to file my appeal brief. Attorney Fred Smith told my mother in that recorded phone conversation which I had listened to. Fred said the Attorney General already agreed to extend the time for my appeals, then Justin Hill tells my mother by email that they will not extend the time for my appeals. Either Justin Hill lied to my attorney, or my appointed Attorney Fred Smith had lied to my mother which meant he had lied to me by lying to my mother. Somebody is lying here. I think it is odd that I am finding no written agreement about me not filing for six months in the state court. When there is no written agreement somewhere, then it is my word against my attorney and my word against the Assistant Attorney General. If I had not recorded my conversations with Attorney Fred Smith, I would have no proof of my verbal agreement not to file for six months including in my state appeals, my hands tied behind my back symbolically by Attorney Fred Smith.

7. I had recorded the phone conversation with my attorney Fred Smith on the date of October 20, 2023. The recording is in the evidence CD under filename: Oct20-077885.wav. I had consented to recording my own conversation with this attorney under one party consent of Virginia Law. He had spoken with me, Roberta Hill (my mother). On that day, Attorney Fred Smith had informed me and my mother that "I'll walk up to the bench with a dismissal order. The judge will sign it and we'll leave." That sounded great, I was happy that he and the Commonwealth's Attorney would have the contempt of court case (over my free speech) dismissed after I had complied with the six months of no filing with the state court including my appeals. I had complied and acted in good faith. Then he assured me that my appeals deadlines were extended. He said: "Now about your question about what to do about your subsequent filings. I have talked to that, uh, assistant Attorney General. What's his name?". I told him it was Justin and then Hill. He then said: "he, he, he, he knew about the six-month thing and I talked to him and they get, I understood that you got an extension to, to file." That was also a lie because later on my appeals were dismissed for untimely filing.

8. The contempt of court case was dismissed which I was grateful to Attorney Fred Smith for, but little did I know on that day that my appeals were destined to be dismissed for not filing by the deadlines which the CAV had later informed me of the deadline dates, which clued me in that Justin Hill

never filed any extension while Attorney Fred Smith told me on October 20, 2023, in the recorded conversation that I was given an extension to file my appeals. What Fred claimed never made any sense to me as I never received any copies of motions Justin Hill would have to file with the CAV, and I have the record of the appeals which were dismissed, and no motions for extending time for my three (dismissed) appeals was ever filed by Justin Hill, the Assistant Attorney General.

9. On October 27, 2023, I filed a motion for leave of court to file my appeal brief and Appellant's Designation of the Record, with an affidavit and email exhibits and other exhibits demonstrating that I was prohibited from filing for six months and therefore I had given good reason why I could not file timely. That motion was later denied on January 17, 2024, for me not filing by Monday, July 24, 2023. And under Rule 5A:19(b)(4) any motion for an extension of time to file the opening brief was due not later than Thursday, August 3, 2023. I didn't know this at the time since I thought I was given an extension of some kind or that I would be allowed to file my appeal brief after my contempt of court case was dismissed, after complying with Attorney Fred Smith's orders/instructions, his prohibition on filing in the "state court" including the Court of Appeals of Virginia. The conversation recording on June 22, 2023, did indicate that I was prohibited from filing in the Court of Appeals of Virginia, according to Attorney Fred Smith.

10. I had assumed that the Court of Appeals was not acting on my motion because I thought I had 40 more days to file after I had filed my motion for leave of court. So, I had filed my appeal brief and Designation of the Record on December 1, 2023. See 011724 record request 0313-23-3.pdf, 011724 record request 0314-23-3.pdf, and 011724 record request 0317-23-3.pdf.

11. Then I had received a brief of the Commonwealth from the Assistant Attorney General Justin Hill, with what I felt was VERY DISTURBING INFORMATION. It disturbed me, it angered me, and I was wondering why Justin Hill had said such things when I knew that it was a lie, that it wasn't true, that it was false statements. I felt like that, I felt like Justin Hill had uttered false statements based on my recorded conversations with Attorney Fred Smith. Justin Hill made this claim: "The contempt charges were dismissed on joint motion of the Commonwealth and Hill on October 23, 2023. Upon information and belief, Hill agreed during the pendency of those contempt charges not to file any new motions in the Circuit Court. That agreement did not prohibit his from filing anything in this Court.<sup>4</sup>" then footnote 4 said: "4 Undersigned counsel confirmed this fact with Hill's appointed counsel in his contempt case during the pendency of those

proceedings.” He was referring to Attorney Fred Smith, the one who told me that an extension was already granted, informed me that the Attorney General had already agreed to extend my appeals until after my contempt of court case hearing in October. The same Attorney Fred Smith who told me not to file in “state court” but I could still file in federal court. I felt like Justin Hill had lied to the Court of Appeals of Virginia. I got very angry and pushed for sanctions against Justin Hill, because at that time after I had received the brief of the commonwealth, I felt that Justin Hill had lied to the court and had lied about me. See FILE: 5-010224 Commonwealth Brief 0313 23 3 0314 23 3 and 0317 23 3.pdf.

12. I then submitted on January 15, 2024, and was filed on January 16, 2024, my “MOTION FOR SANCTIONS AND INQUIRY AGAINST JUSTIN HILL, ASSISTANT ATTORNEY GENERAL FOR POSSIBLY DEFRAUDING THIS COURT”. I was very angry that he said I filed my appeal brief untimely and acted as though I was not under a prohibition for six months, to not file anything in the “state court” including in my appeals for six months. I was angry at Justin Hill and tried to have an investigation or inquiry on him.

13. Then the day after I had filed that, on January 17, 2024 the CAV had dismissed my three appeals, see FILE: 2-011724 order - deny motion for leave and dismiss BW 0313-23-3 & 0314-23-3 & 0317-23-3.pdf. It said that: *“Under Rule 5A:19(b)(1), the appellant’s opening brief was due not later than Monday, July 24, 2023. And under Rule 5A:19(b)(4) any motion for an extension of time to file the opening brief was due not later than Thursday, August 3, 2023. Nothing in the Court’s consolidation order indicated that appellant could not or should not file a timely opening brief in the three identified appeals. Moreover, his requests for relief are untimely.”* They dismissed my appeals because I didn’t file timely. So, my Attorney Fred Smith, my court appointed attorney, had told me things which were not true. I thought Justin Hill was the liar, and that the Court of Appeals of Virginia sided with the liar so I got even more angry. I thought somebody lied, somebody wanted my appeals to fail, somebody misled me. I thought Justin Hill was the ultimate liar, and I was angry at him thinking he was mean, nasty, and should be removed from office. Little did I know once my emotional anger started to subside, I started thinking that it was Attorney Fred Smith who repeatedly lied to me, and it was Fred Smith who should have filed an affidavit or a copy of the verbal agreement by typing up the agreement I had with him, and he should have informed the Court of Appeals of Virginia of my prohibition on me not to file for six months. The CAV isn’t going to believe just my word, they need proof, they need documents or a

recorded conversation like I have.

14. After my anger and frustration started to subside, after I realized that Attorney Smith may be the liar and not Justin Hill (*he could still be, I cannot rule that out since it was false statements in the brief of the commonwealth*), I had wrote a typed letter to Justin Hill, who confirmed receipt by email to Roberta Hill that he did receive my letter and links to the exhibit audio recordings but could not open those links due to IT policy of not opening links from unverified websites, but the CAV can get those recordings, put them into evidence or file or whatever he was referring to, and then he can retrieve those audio recordings. SEE FILE: RE Emergency Letter to Justin Hill, Attorney General.pdf. See FILE: EMERGENCY LETTER TO JUSTIN HILL January 22, 2024(4).pdf. The letter entitled: “EMERGENCY LETTER TO JUSTIN HILL OF OFFICE OF THE ATTORNEY GENERAL; INFORMING THE ATTORNEY GENERAL AS TO THE TRUTH; AS TO BEING DECEIVED BY FRED SMITH”. I finally figured out that it may not have been Justin Hill lying about me in order to have my appeals dismissed as untimely, but I had been lied to by my court appointed lawyer Attorney Fred Smith. I can’t rule out Justin Hill entirely until I hear his side of the story. I need to know from Justin Hill as to what exactly Fred had told him.

15. I had filed an amended motion for delayed appeal. It was reviewed and accepted by the Clerk on January 22, 2024. SEE FILE: VACES 1-22-2024 pdf-acceptances.pdf. Justin Hill was served on January 21, 2024.

16. I had done some inquiring and had contacted the Circuit Court Clerk’s office to see if there was any agreement or anything hoping to find some kind of written proof that I was prohibited from filing for six months. See FILE: Emergency request letter.pdf. The letter was entitled: “EMERGENCY LETTER TO CLERK OF THE CIRCUIT COURT OF MARTINSVILLE, VIRGINIA, REQUESTING COPIES OF WHAT ATTORNEY FRED SMITH HAD FILED ON BEHALF OF BRIAN DAVID HILL, CRIMINAL DEFENDANT IN THAT CASE”. See FILE: LETTER TO JEANIE NUNN CLERK January 17, 2024(4).pdf. I said in one part of the letter: “5. *I was never given a copy of the agreement for what led to the joint motion being filed by both the Commonwealth's Attorney and Attorney Fred Smith for dismissal.*” The letter was dated January 17, 2024. I also said in that letter: “*So I am asking for filings I was never given any copies of by Attorney Fred Smith who was appointed to my contempt of court criminal case, no. CR19000009-01. I was going to let it go and never try to seek a record from a case which was dismissed, but my appeals have also been dismissed and my constitutional rights to my appeals were taken away because Attorney Fred*

*Smith lied to me the entire time. I have been lied to and I have hard evidence proving that he lied to me and lied to my family, lied to my face. Along with Justin Hill, the Assistant Attorney general who lied to the judges of the Court of Appeals of Virginia to have my appeals dismissed using the contempt of court case as the scapegoat, as leverage to set me up for my appeals to fail wrongfully.”*

17. Clerk responded to my letter with: “*I have reviewed the Contempt File on Mr. Hill CR19000009-01 and I don’t have the documents that you are referring to. Mr. Smith was appointed March 3, 2023, and all documents prior to that were filings by the defendant. I have attached the Order for Appointment of Special Prosecutor, a Motion for 19.2-169.5 Evaluation (filed by Mr. Smith); a letter from Mr. Smith withdrawing the Motion for Evaluation; a letter dated October 20, 2023, from Aaron Foster requesting a dismissal and the Dismissal Order dated October 23, 2023.*” See FILE: RE Emergency request letter.pdf and CR19000009-01 Brian Hill.pdf. This proves that no written agreement was ever found, no written documents showing that there was any prohibition on Brian David Hill from filing for six months in the “state court” including the Court of Appeals of Virginia. This agreement was verbal and kept off of the record of the trial court. This proves that the one who seems to be lying and pulling stuff would happen to be Attorney FRED SMITH. I am starting to not believe it would be Justin Hill, maybe he did still knowingly lied, maybe he didn’t, but it is weird that I would agree not to file for six months verbally and there would be nothing in writing, nothing documenting my compliance with the agreement, no agreement in any written record I can find whatsoever. It appears to me that Attorney Fred Smith had taken me for a ride, lied to me over the six months period or longer. I am feeling like Attorney Fred Smith was out there appointed by Judge Greer to have my appeals fail by ordering me not to file in my own appeals to have my contempt of court case be dismissed when my contempt of court charge was over my truthful allegations against Judge Greer, my freedom of speech. Something is wrong here. Something is wrong with what Fred Smith had done. He messed up my appeals, Fred Smith is responsible for it. He should be held responsible for messing up my appeals. I feel like it is his fault. He lied to my mother. Lied to the Attorney General assistant, and lied to me. Fred Smith should be held accountable for what trickery and deceit he had done.

**ATTORNEY FRED SMITH MISREPRESENTATIONS AND FRAUDS  
CONCERNING MYSELF HIS CLIENT BRIAN DAVID HILL:**

18. It appears to me that Attorney Fred Smith had misrepresented me

throughout my contempt of court case, based on the evidence which myself, Roberta Hill, Kenneth Forinash, and Stella Forinash all have copies of. Fred acted as though he could get me out of my free speech caused criminal contempt of court charge if I simply don't file in (any) state court for six months, sounds fair enough. Not, and here is why. He informed Justin Hill, according to his brief of the commonwealth that I was only prohibited from filing motions in the Circuit Court but did not prohibit me from filing in the Court of Appeals of Virginia. While he informed Roberta Hill in a recorded phone conversation that the Attorney General had agreed to extend my time to file in the Court of Appeals of Virginia if I had simply called them. Then I contacted them in writing and Justin Hill responded back by email to Roberta Hill that he is not my attorney and therefore it is only me or my attorney who can file things on my behalf. That means they did not agree to extend the time for my appeals while Attorney Fred Smith said that the Attorney General would have in the recorded phone conversation dated June 22, 2023. Then of course the clerk has no written agreement, where is the joint motion??? Where is any of the things which Attorney Fred Smith had spoken of??? It appears to me that he had made misrepresentations with the Assistant Attorney General and with me and with my family members. This Attorney isn't going to elicit trust from his client by lying to his client about things. He clearly lied to me, and didn't keep things on record in writing which he clearly should have. If I had agreed not to file in any Virginia Court for six-months, then where is the agreement in any writing or maybe an email between Attorney Fred Smith and the Commonwealth Attorney or judge or clerk??? I still have not found any written agreement at all that proves that I had a six-month prohibition. If there was such an agreement, I had not seen it. Clearly, Justin Hill had not seen it or maybe he was told what the agreement was or maybe there was an agreement which was different from what my attorney told me during my recorded conversations with him regarding the case and the six-month prohibition.

19. The Attorney Fred Smith clearly misrepresented me. Had I not recorded my private conversations with my own attorney, Fred Smith, then I clearly would have been out of luck in proving any of my allegations. I probably would have been sued for defamation or called "delusional" or crazy, cocoo, or simply I didn't know what I was talking about. Had I not recorded my conversations with court appointed lawyer Fred D. Smith, I would have no proof for anybody as to my claims. I do have proof. I have proof that Attorney Fred Smith may have given false information and misrepresentations to Assistant Attorney General Justin Hill, who represents the Commonwealth's Attorney aka the City of Martinsville and Commonwealth of Virginia, and would be considered an officer of the Court



of Appeals of Virginia. Attorney Fred Smith didn't file anything in my appeals, so he could argue that he didn't directly lie to the Court of Appeals of Virginia concerning my six-month prohibition, but he did lie directly to the Attorney General's Office who are officers of the Court of Appeals of Virginia. So, Attorney Fred Smith lied to an officer of the Court of Appeals of Virginia since an attorney is considered an officer of the court. That lie had gone on the record of the Court of Appeals of Virginia. His lies had caused me a lot of damage and caused me irreparable harm to me, his client, by causing the wrongful dismissal of three of my important appeals before the CAV. Fred has caused false information to be in my appeals by Justin Hill, Appellees counsel. Fred had caused me to wrongfully lose my appeals possibly permanently not being able to get them revived unless my motion for delayed appeal is granted for all three of my appeals. If my motion is not granted, then Attorney Fred Smith lied and misrepresented and caused me harm to the extent where I may owe more money to the City of Martinsville and Commonwealth of Virginia over the indecent exposure case appeals which three of those appeals had been dismissed because of the lies and misrepresentations caused by Attorney Fred Smith. He had caused me to possibly owe more legal fees for my criminal case which began in 2018. Those appeals were concerning issues of fraud upon the court and I believe I did have evidence of extrinsic fraud on the trial court record; those appeals may now be ruined because of Attorney Fred Smith. He has caused me further financial hardship by my appeals being dismissed with the Appellees who represent the City of Martinsville and Commonwealth of Virginia, the Government. Because of my appeals being dismissed, I may now owe more legal fees money in my indecent exposure case in the Circuit Court for the City of Martinsville, as this attorney had caused me undue financial hardship (for my appeals being dismissed) and my appeals to not have a good chance to try to win them, because Attorney Fred Smith told me not to file in my appeals or in the state court. He did this to me. This attorney had caused me more harm than his supposed good by what he had done in my contempt of court case.

**WHAT ATTORNEY FRED SMITH COULD HAVE DONE TO PROTECT MY BEST INTERESTS AND STILL GOTTEN BRIAN DAVID HILL A FAVORABLE RESULT IN HIS CONTEMPT OF COURT CASE:**

20. Attorney Fred Smith may likely claim in response to my complaint that he did the best job he could to give me the best outcome for my contempt of court criminal case. Here is what he could have done instead of where he lied and made misrepresentations to both me and to the counsel for the

Commonwealth of Virginia and City of Martinsville (Appellees) which had caused my appeals to be wrongfully dismissed by the CAV.

21. Since attorney Fred Smith had made a misrepresentation that I could not file (motions) in the Circuit Court for six months and that it did not prohibit me from filing in the Court of Appeals of Virginia, he could have simply not lied but instead could have just told the truth and let me file in the Court of Appeals of Virginia during the six-month continuance for my contempt of court case. Since he lied that it was the agreement, he should have just told me and Roberta Hill that I can go ahead and finish my appeals, to file timely, and do what I needed to do within the Court of Appeals of Virginia. He could have asked me to run my appeal brief by my attorney before filing it so that he can review it to determine if this could further upset Judge Greer and may cause more problems which could not give me the best result. Judge Greer has no jurisdiction over the Court of Appeals of Virginia. I do not have to serve Judge Greer with any appeal brief or anything I file with the Court of Appeals of Virginia unless Judge Greer is a named party to such appeal. What Fred Smith should have done was that, since he said I could file in the CAV but just not in the Circuit Court. He should have told me that instead of giving me false information while he gives contradictory information over to the Attorney General Assistant.

22. Attorney Fred Smith should have considered my earlier requests for change of venue. See FILE: Re Brian David Hill, court appointed attorney.pdf; Re Brian David Hill, court appointed attorney(2).pdf; and Letter to Attorney Fred Smith - April 10, 2023(8).pdf. I had Roberta Hill ask Attorney Fred Smith for a change of venue. I believe that a change of venue was the most important and critical issue over my contempt of court case, because the very judge I had accused of fraud, collusion, and other issues, that same judge who I had filed allegations against in my notices of appeal was going to be over my contempt of court case. So, the one I had accused of fraud had accused me of contempt of court over my freedom of speech. The contempt of court criminal case never would have been fair since the disputed facts aka the allegations would go in front of the very same judge I had accused of. It clearly should have been a different judge who would not have been upset at me. My freedom of speech is at greater risk of having me jailed upon a partial trier of fact, not an impartial trier of fact. Attorney Fred Smith seemed to have ignored my requests and my mother's requests for a change of venue for my contempt of court case. A change of venue would have been appropriate and necessary for an impartial trier of fact for my contempt of court criminal charge. Both the Constitution and law requires it, when I am charged with any criminal charge, and that should include a criminal

contempt of court charge which carries jail time as well as a federal supervised release violation charge for me. There was also a threatening email which Roberta Hill had received, the threatening email with death threats and rape threat, which was forwarded to Attorney Fred Smith and the Virginia State Police with the metadata to try to trace that email back to the criminal perpetrator. SEE FILES: Fwd Evidence of threatening email.pdf; Xfinity Connect WE WARNED YOU BITCH Printout.pdf (Threatening email!!!!). Attorney Fred Smith did absolutely nothing about the threatening email threatening to kill me and my mother. Never asked me and my family about it. He did nothing but treated such a scary dangerous message as if it were nothing at all. It also said they have “MARTINSVILLE”, and that clearly is a very dangerous threat. Why didn’t Attorney Fred Smith ever push to change venue??? Why didn’t he knowing that the very judge I made allegations against, TRUTHFUL ALLEGATIONS, What I felt was truthful, and this judge was going to make a finding on contempt of court based on my allegations, truthful allegations against Judge Greer. If the threatening email came true and I was shot dead or died in a house fire caused by arson or I die of poison or I may die by some other means, then this attorney who ignored things aka Attorney Fred Smith would look like the bad guy here because he did nothing about the threatening email. He did nothing about change of venue. He seems to be out to protect Judge Greer but not to protect his client, myself, my name is Brian David Hill.

23. See the FILES: EMERGENCY-Motion-to-Dismiss-Vacate-Bench-Summons.pdf; Notice-Autism-Defense-Feb-26-2023.pdf; and Notice-Additional-Legal-Defenses-Mar-1-2023.pdf. Attorney Fred Smith refused to try for a first amendment challenge of me protecting my freedom of speech from despotic retaliation including my protection under Article 1., Sect. 12 of the Virginia Constitution. He refused to try the autism defense under VIRGINIA CODE § 19.2-271.6. Instead, I read from a filing that he pushed for a sanity evaluation when being found not-guilty by reason of insanity would have also wrecked my appeals as to filing untimely. If I was found not-guilty by reason of insanity then I would have been taken to a mental institution where I would have no access to filing things with the Court of Appeals of Virginia, and that would default my appeals with dismissals for not filing anything timely. He filed a “MOTION FOR CODE§ 19.2-169.5 EVALUATION”. So, he won’t fight for my autism defense under VIRGINIA CODE § 19.2-271.6, he won’t fight for my freedom of speech protection from retaliation under the first amendment of the U.S. Constitution, Art. 1 Sect. 12 of the Virginia Constitution, but instead he wanted a sanity evaluation where I would risk being placed in a mental hospital or mental

institution over a charge where I would only face 10 days or 11 days in jail or whatever number of days in jail. This was clearly an attempt to thwart my appeals. The show cause order was clearly retaliation against both my freedom of speech and retaliation against my right to appeal Judge Greer's court orders. I have a right to appeal, and I have a right to tell the Court of Appeals of Virginia that Judge Greer ignored evidence in my filed motions. I have a right to preserve issues for appeal in the record of the trial court. I have a right to preserve my constitutional issues and document what the judge did in response to my motion. I have a constitutional right to document any of these things without fear of a contempt of court charge. I have a constitutional right to file an appeal with the Court of Appeals of Virginia without fear of a contempt of court charge from Judge Greer. I have a right to not be afraid of retaliation against my protected first amendment right of free speech. Judge Greer or the Circuit Court Clerk caused not just the contempt of court case charge against me but that charge had caused my appeals to fail and be dismissed because Attorney Fred Smith ordered me or told me not to file anything for six months. Why would he do that? Why would he wreck my appeals? The best outcome as an attorney clearly should have been an autism defense and first amendment challenge together. That way I cannot be found legally guilty of contempt of court because of my freedom of speech being protected. My autism defense would be a protection under that Virginia law as it would negate intent as to the contempt of court charge. People with autism can say things which may hurt another person's feelings including a judge. My autism should have been a factor in having my contempt of court case dismissed or finding me not guilty of contempt.

24. Attorney Fred Smith had failed to cause any change of venue including but not limited to the Circuit Court of Danville, Virginia. Attorney Fred Smith had ruined and wrecked my timely filed criminal appeals of right before the Court of Appeals of Virginia. Attorney Fred Smith had refused to protect my first amendment right to freedom of speech and my freedom of speech right under Article I, Section 12 of the Virginia Constitution. Attorney Fred Smith had clearly lied and misrepresented things to the Assistant Attorney General, which has been proven with the brief of the Commonwealth, filed by Justin Hill, Assistant Attorney General on January 2, 2024. This means he lied to the Government, he lied to the Assistant Attorney General, which is the Government of Virginia. Attorney Fred Smith LIED TO THE GOVERNMENT, lied to the government of Virginia. It is clear as day that he lied to or misrepresented things to the Government. The Attorney General is the government as they part of the Virginia state government. I hope I made that clear as I understand political sciences enough to be able to explain that.

25. There may be more violations of the STANDARDS OF PRACTICE FOR INDIGENT DEFENSE COUNSEL and/or the Virginia State Bar Rules including professional conduct rules but since Brian David Hill, which is myself has autism spectrum disorder which is a neurological disability, I am mentally limited to how many rule violations I can address in my complaint. There may be more rule violations than what I am bringing up. That is why I think there needs to be a full investigation and thorough investigation into Attorney Fred Smith based on evidence I am submitting in support of my complaint.

I rest my case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 27, 2024.

**BRIAN DAVID HILL**

**Pro Se**

A handwritten signature in black ink that reads "Brian D. Hill". The signature is written in a cursive style and is positioned above a horizontal line.

**Brian D. Hill**

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