
Diane Ruberton, Esq.

[REDACTED]

Lt. Heather McManus

[REDACTED]

Donna Fetzer, Esq.

[REDACTED]

October 4, 2018

U.S. Attorney for the District of New Jersey, Craig Carpenito United States Attorney District of New Jersey Criminal Division 401 Market St. Camden, NJ 08102	New Jersey Attorney General Gurbir S. Grewal State of New Jersey Hughes Justice Complex 25 Market Street, Box 080 Trenton, New Jersey 08625
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**Re: Complaint and Matters of Public Concern About Atlantic County
Prosecutor Damon Tyner**

Dear U.S. Attorney Carpenito and New Jersey Attorney General Grewal:

We write to file a complaint against Atlantic County Prosecutor Damon Tyner. By way of introduction, we have all been long term employees within the Atlantic County Prosecutor's Office. We understand that you have become acquainted with Prosecutor Tyner and perhaps developed a friendship. Nonetheless, we formally request an investigation into conduct and practices that we believe, in good faith, to be violative of the laws. We have worked under a number of Prosecutors and administrations, yet, never before have we had cause to file a complaint or request an investigation into the practices of any past Prosecutor or administration.

We feel compelled to bring certain matters to your attention as we believe, in an exercise of good faith, that criminal conduct (inclusive of mortgage fraud and subsequent foreclosure by Prosecutor Tyner) may have been committed by Prosecutor Tyner. The Attorney General Internal Affairs Policies and Procedures (*Revised 2017*), the ABA Criminal Justice Standards for the Prosecution Function and the Rules of Professional Conduct (*RPC 8.3*), requires us to file, and requires your office to consider, this communication as a formal complaint regarding the allegations we raise below.

Indeed, respectfully, we jointly request an investigation of the same (*See Requirements 2 & 4; see also ABA Standard 3-2.5 Removal or Suspension and Substitution of Chief Prosecutor (a) ("Fair and objective procedures should be established by appropriate legislation that empowers the governor or other public official or body to suspend or remove, and supersede, a chief prosecutor for a jurisdiction and designate a replacement, upon making a public finding after reasonable notice and hearing that the prosecutor is incapable of fulfilling the duties of office due to physical or mental incapacity or for gross deviation from professional norms")*).

Background

By way of background, on or about February 14, 2017, Damon Tyner ("Tyner") was nominated as the Atlantic County Prosecutor by Governor Christie. The appointment was confirmed by the full Senate on March 14, 2017. The appointment was sudden and wholly unexpected, and may have been "pushed" through without proper vetting and background investigation.

In March 2017 we were all employed in our respective titles within the Atlantic County Prosecutor's Office ("ACPO"). Diane Ruberton was a Deputy First Assistant Prosecutor with

nearly twenty (20) years at the ACPO, Heather McManus was a Lieutenant with fourteen (14) years at the ACPO and Donna Fetzer was and continues to be a Chief Assistant Prosecutor with more than twenty two (22) years at the ACPO. All three of us have expressed concerns over the actions of Prosecutor Tyner by way of complaints and concerns made to others internally within the ACPO. We eventually were forced to seek out a third party employment lawyer to assist us because Prosecutor Tyner was not interested in remedying the problems. In fact, just the opposite.

This complaint identifies the following allegations for which we request an investigation:

- **Mortgage fraud** (which was the subject of an FBI investigation and still may be ongoing) which involved a sale by Tyner of his home to his father-in-law at a doubly inflated amount and sell-back of the home by the father-in-law to Tyner that allowed him to pay off the first mortgage and secure a second mortgage at double the value of the home in order to, essentially secure a low interest loan to, it is believed, pay off a political campaign debt (Tyner ran for political office in 2005, State Assembly and again in 2011); Tyner was in default on the mortgage at the time he became the Prosecutor. In fact, on the day Tyner was sworn in as Prosecutor, a lis pendens for foreclosure had been filed by the mortgage lending company;
- **Potential violations of disclosure laws under *Brady v. Maryland***, as it pertains to a high-profile murder case (the April Kauffman murder that involved the arrest of her husband, Dr. James Kauffman and a Pagan gang related opioid drug operation);
- **Refusal to conduct internal affairs investigations** into the activities of certain detectives so as not to cloud the Kaufman prosecution, that is, potential hiding of exculpatory evidence;

- **Unethical hiring of unqualified relatives and political friends;**
- **Refusal and/or failure to conduct background checks** on hirees as required by law;
- **Misuse of government property and money for personal gain;**
- **Refusal to prosecute friends and political allies for alleged criminal wrongdoing;** and refusal to recuse himself from making Prosecutorial decisions on matters involving friends, associates and family;
- **Unethical media contact** and TV (ABC's "20/20" program) appearance by Tyner to further his other political career-oriented aspirations at the risk of damaging the ongoing criminal investigation and prosecution of criminal defendants in the Kaufman murder trial ("[P]rosecutor should be circumspect in publicly commenting on specific cases or aspects of the business of the office," ABA Standard 3-1.4; and ABA Standard 3-1.10, Relationship with the Media); (RPC 3.6, Trial Publicity); (AG Guidelines on Prosecutors' Code of Ethics); (ACPO Code of Ethics, VI. Public Statements).

We therefore have grave concerns that Prosecutor Tyner has engaged in conduct which violates:

- Criminal laws;
- Attorney General Code of Ethics for County Prosecutors
- Attorney General Directives/Guidelines
- Atlantic County Prosecutor Directives
- Rules of Professional Conduct (e.g. RPC 3.6, 3.8, 4.2 and 8.4).

We tried to bring these issues to the attention to Tyner and give him an opportunity to help us and correct the situation. Unfortunately, Tyner chose to react with anger and revenge—he fired Diane Ruberton. Tyner has also threatened to fire McManus and Fetzer. This reaction is obviously troubling yet it confirms that bad conduct within the Prosecutor’s Office is likely to continue and quite possibly worsen. We therefore share with you, as the highest law enforcement agencies, the following information in an effort to rectify and repair the integrity of the Atlantic County Prosecutor’s Office.

1. **Concerns Regarding Mortgage / Foreclosure Fraud By Prosecutor Tyner**

Upon information and belief: In late 2003, early 2004, Tyner and his wife purchased a 2200 sq. ft. primary residence located at [REDACTED] for approximately \$275,000. *(Documents regarding the Mortgage transaction and related documents that establish alleged fraud and Timeline are attached hereto, Exhibit “A”).*

- a. In 2005, Tyner ran for the State Assembly seat but lost the election.
- b. In 2006, the property was assessed at \$267,000.00 which is in keeping with the assessed value of all the homes in that neighborhood.
- c. In March 2006, Herbert Milan, Tyner’s father-in-law bought the home from Tyner for \$425,000.00.
- d. In September 2006, Milan sold the home back to Tyner for \$1.00.
- e. The property, however, then and now has never been assessed for more than \$269,000.00. The average sale price for homes in that area of comparable value in 2006 through today is \$270,000.00. The home is currently valued at \$278,000.00.
- f. In 2011 Tyner ran again for State Assembly and lost the election.

- g. In 2017, the bank filed an action against Tyner for lis pendens in Court to foreclose on the same property for failure to make the mortgage payments. The foreclosure was filed on or about March 14, 2017.
- h. On March 15, 2017 Tyner was sworn in as the Atlantic County Prosecutor.
- i. We have concerns that the failure to make mortgage payments which eventually resulted in a foreclosure action, was not disclosed by Tyner as part of the appointment process to the position of Prosecutor, which would be a transgression of ethics obligations. (See *ABA Standard 3-1.4, The Prosecutor's Heightened Duty of Candor*).
- j. If it was disclosed, why then would the appointment be made? That is, how is it that the appointing authorities would overlook such serious financial difficulties when it is axiomatic that a Prosecutor may not permit his professional judgment or obligations to be affected by his financial interests. The Prosecutor has enormous discretion regarding the use of forfeiture and other government monies and must maintain financial stability so as to avoid the risk of abuse of government funds.
- k. Moreover, it appears that the above mortgage transaction is very similar to another mortgage transaction which our office was required to prosecute against a fellow employee, Detective Betsy Borges.
- l. The Federal laws that govern mortgage fraud, 18 U.S.C., Chapter 47 and specifically, the Fraud Enforcement and Recovery Act ("FERA") are implicated here. The mortgage fraud laws recognize transactions that constitute mortgage fraud which look much like the Tyner real estate transaction and which are commonly referred to as "Phantom Sales." A phantom sale typically involves an individual who transfers title to a property

to fraudulently obtain funds via a mortgage loan. Additionally, the laws recognize as a criminal transaction another scheme called "Property Flipping Fraud" which is a scheme in which individuals buy a property amongst themselves to artificially inflate the value of the property.

- m. In any event, mortgage fraud is a crime in which the intent is to materially misrepresent or omit information on a mortgage loan application in order to obtain a larger loan than could have been obtained had the lender known the truth.
- n. We are aware that the FBI was and/or is conducting an investigation into the possible mortgage fraud issues involving the sale by Tyner to his father-in-law for \$425,000.00 when the property has never had a market value greater than \$280,000.00, the subsequent sale back to Tyner of the property for \$1.00 and apparent failure by Tyner to pay the mortgage payments thereafter.
- o. Obviously, there are serious concerns regarding Tyner's finances in light of his handling of forfeiture monies. (See, *infra*) We also have concerns that a proper vetting of Tyner to hold the position as Atlantic County Prosecutor was not made under then-Governor Christie and the reason, we suspect, in part, may be the fact that at the time Tyner was under consideration for the Prosecutor appointment, he was a sitting State Superior Court Judge and the background check and associated rules may have been relaxed.
- p. Our office previously prosecuted a very similar case to that of Tyner's case. That case was against an Atlantic County Detective employed by the Atlantic County Prosecutor's Office. The detective was convicted of conspiracy to commit bank fraud,

see,

https://www.pressofatlanticcity.com/pac/former-atlantic-county-detective-sentenced-to-prison-for-mortgage-fraud/article_c84a524b-0a82-5826-a133-e5ea33f66c3e.html; see

also,

https://www.nj.com/atlantic/index.ssf/2017/11/ex-detective_admits_to_mortgage_fraud_conspiracy.html; and see,

https://www.nj.com/atlantic/index.ssf/2018/04/ex-detective_gets_18_months_in_prison_for_mortgage.html

The above provides a significant matter for which we seek an investigation by your office in light of the numerous questionable legal issues raised. Mortgage fraud has reached epidemic proportions in the United States. Mortgage fraud is a substantial drain on the U.S. economy as estimated annual losses from mortgage fraud exceed \$10 billion during the last four years (ACFE, 2013), especially in Atlantic County. The county is known for having the highest rates of foreclosure in the U.S. Such fraud is an attractive playing field for white-collar criminals due to the many types of mortgage fraud, its complexity, and the lack of effective government regulation and private sector self-policing. When mortgage fraud occurs, one or more parties knowingly make deliberate misstatements, misrepresentations, or omissions during the mortgage lending process.¹

Mortgage fraud allows perpetrators to reap substantial profits through illicit activity that presents a relatively low risk of getting caught. Mortgage fraudsters include licensed and non-licensed mortgage brokers, lenders, appraisers, underwriters, accountants, lawyers, realtors,

¹ See, http://web.nacva.com/JFIA/Issues/JFIA-2014-2_7.pdf

developers, investors, builders, financial institution employees, homeowners, and homebuyers. Mortgage fraud schemes often involve falsification of bank statements and deposit verifications, illegal transfers of property, production of fraudulent tax returns, and legal documents, and other fraudulent activities. Victims include individuals from across a demographic range, lending institutions, neighborhoods, and the economy as a whole (due to higher default rates, higher mortgage prices, and decreased availability of mortgage credit). Given the severe impact of mortgage fraud on the economy and its role in the recent financial crisis, it is incumbent upon the public and private sectors to combat such fraud more effectively.

While individual types of schemes exist, the FBI categorizes mortgage fraud into two broad categories: “fraud for property” schemes and “fraud for profit” schemes (FBI, 2010a).

Fraud for property is most often committed by home buyers attempting to purchase a personal residence. Typically, fraud for property occurs when a loan applicant materially misrepresents or omits information with the intent to deceive the lender into lending money. http://web.nacva.com/JFIA/Issues/JFIA-2014-2_7.pdf

We believe that the transactions by Tyner, his wife Nicole Milan-Tyner, and his father-in-law, Herbert Milan constitute illegal property flipping—a type of mortgage fraud. This fraudulent scheme occurs when property is purchased, appraised at a higher value than it is worth, and then sold immediately for a profit with an artificially inflated value. This scheme can involve one or more of the following: fraudulent appraisals, falsified loan documentation, inflated buyer income, and collusion of and/or kickbacks to buyers, investors, loan brokers, real estate brokers, appraisers, and title company employees (FBI, 2005). Straw buyers (e.g., Herbert Milan) often are

used to execute fraudulent property flipping schemes. Typically, a real estate agent is not employed, and these are not arm's length transactions.

Additionally, we believe that this matter constitutes a continuing offense because it “involves (1) an ongoing course of conduct that causes (2) a harm that lasts as long as that course of conduct persists.” *United States v. Morales*, 11 F.3d 915, 921 (9th Cir. 1993). Unlike most crimes, it is only after this ongoing course of conduct is complete that the “crime is complete” for statute of limitations purposes. *Toussie v. United States*, 397 U.S. 112, 115 (1970). See, *United States v. Najjor*, 255 F.3d 979, 983 (9th Cir. 2001) (Defendant challenged his bank fraud conviction and asserted that the statute of limitations barred the conviction because all of the conduct constituting the alleged bank fraud occurred before the applicable ten year statute of limitations had commenced. The court disagreed, holding that bank fraud, under 18 U.S.C. § 1344, was a continuing offense because the statute, by its terms, implicates schemes).

2. Prosecutor's Duty to Disclose Information to Defense and Failure to do so: Kauffman Case

April Kauffman, a 47-year-old woman who earned a following on the radio and as a veterans activist, was found shot dead on May 10, 2012, in the bedroom of the Linwood, New Jersey, home she shared with her husband, a prominent medical doctor, Jim Kauffman. This case had been under investigation since 2012. Dr. Kauffman was suspected in the murder. It was not until 2017 that an investigation by the FBI made any significant movement towards solving the homicide.

In May 2017 the ACPO working with the FBI developed a confidential informant who was involved in a drug ring in which Dr. Kauffman was alleged to be involved. From that

point forward in the investigation, there were multiple instances when Prosecutor Tyner learned of possible inappropriate actions by detectives working on the case, but purposefully failed to initiate internal affairs investigations consistent with and required by the Attorney General Directive on Internal Affairs. His failure to conduct these internal affairs investigations in turn led to a failure to disclose potentially exculpatory evidence pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963).

It appears that serious transgressions were essentially ignored so as not to damage the prosecution of the case. This homicide case garnered significant media attention. Prosecutor Tyner himself was responsible for several press releases and media attention on the case.

- a. First, in or about August 1, 2017, Ms. Ruberton advised First Assistant Prosecutor Cary Shill that there was a prior internal affairs investigation involving the lead detective assigned to the Kauffman matter and that it needed to be reviewed for possible disclosure as *Brady* material. That prior internal affairs investigation was not reviewed by Shill nor ever disclosed to the court or defense counsel in the Kauffman case.
- b. Second, in or about November 17, 2017, information was provided to the ACPO that an Egg Harbor Township (EHT) police officer may have leaked confidential information. This EHT police officer had been a member of the Atlantic County SWAT team that participated in the arrest of Dr. Kauffman at his medical office in June 2017 for gun charges. Dr. Kauffman was eventually charged with the murder of April Kauffman in January 2018.

The leak involved the EHT police officer talking to a woman named Sharon Loftus. Loftus had reported that an EHT officer had been leaking confidential information about a cooperating witness named Andy “Chef” Glick, ex-president and vice president of the Cape May County chapter of the Pagans Motorcycle Club, and a resident of Egg Harbor Township. Tyner and First Assistant Prosecutor Cary Shill directed that no internal affairs investigation be conducted against the EHT police officer to determine the veracity of the information.

- c. Third, it is believed that an ACPO detective, Mattioli, lost evidence and/or failed to complete reports in the Kauffman case. First Assistant Prosecutor Cary Shill directed the Captain of Internal Affairs for ACPO that no investigation should be conducted despite the custom and practice of ACPO to treat matters of lost evidence as serious and potentially criminal investigations, consistent with Attorney General Guidelines. Additionally, the same detective had been previously disciplined for failure to write reports and inappropriate conduct in another homicide case.

Prosecutor Tyner may have committed illegalities to avoid disclosing to the court and/or defense counsel information that had the potential to jeopardize his prosecution of the high profile Kauffman case when he directed that there be no internal affairs investigation regarding possible police misconduct. If there were internal affairs investigations, as required by law, the results of those investigations may be required to be turned over to the defense counsel in the April Kauffman murder case, under *Brady v. Maryland*, 373 U.S. 83 (1963)². Thus, we believe Tyner

² *Brady v. Maryland*, 373 U.S. 83 (1963), was the landmark United States Supreme Court case that established that the prosecution must turn over all evidence that might exonerate the defendant (exculpatory evidence) to the defense. The prosecution failed to do so for Brady and he was convicted.

may have decided against conducting an internal investigation so as to avoid having to disclose the investigation's results, solely for the purpose of self promotion and publicity.

As to each matter, the ACPO did not conduct any internal affairs investigation despite clear and unambiguous directives that require internal affairs investigations under such circumstances. The Atlantic County Prosecutor's Office has adopted the New Jersey Attorney General Guidelines and is therefore required to follow them. See N.J.S.A. 40A:14-181. The Guidelines require every law enforcement agency, including the Atlantic County Prosecutor's Office (ACPO), to receive, investigate and resolve complaints of officer misconduct. N.J.S.A. 52:17B-98; N.J. Internal Affairs Policy & Procedure, revised November 2017.

Indifference to the internal affairs function will have a negative impact on the administration of criminal justice and the delivery of police services to New Jersey's citizens. Agencies that fail to make the internal affairs function a priority can lose the respect and support of the community. The integrity of individual law enforcement agencies, and the reputation of the New Jersey's criminal justice system, can also suffer if agencies fail to identify and correct officer misconduct. In addition, law enforcement agencies that fail to implement a meaningful and objective internal affairs process may be found liable in civil lawsuits for their failure to effectively address officer misconduct.

3. *Tyner and First Assistant Prosecutor Cary Shill Directed the Second Degree Assault, and Weapons Criminal Prosecution of an individual to be Dismissed which is Suspicious in light of fact that this individual is Known to have Close Political Ties to the Atlantic City Democrats and had Previously been Under Investigation for Voter Fraud*

In September 2017, an individual was charged with a second degree assault and weapons offenses. Consistent with ACPO practice, the undersigned, Chief Assistant Prosecutor Donna Fetzer moved to have him detained pending trial based upon his record and the nature of the charges. Curiously, Tyner directed, via First Assistant Prosecutor Cary Shill, to withdraw the motion to detain. Inexplicably, no action or further investigation was taken in the case.

In March of 2018, FAP Shill directed then Deputy First Assistant Prosecutor Diane Ruberton to allow the court to dismiss the case for lack of prosecution at the direction of Tyner, despite the victim wishing to pursue the case and additional investigation that should have been completed. Ruberton asked FAP Shill if she could assign a detective to conduct the needed investigation. FAP Shill directed that no further action was to be taken in the case. This individual is known to have political allies in Atlantic City and was investigated by the Attorney General's Office in the late 2000s for voter fraud.

4. *Tyner Failed to Investigate a Complaint of a Serious Breach of Ethics by an Assistant Prosecutor in a Show of Favoritism to that Assistant Prosecutor.*

In November 2017, a probation officer and State employee made a complaint about an Assistant Prosecutor, Tracey O'Brien, alleging she was in violation of the Code of Ethics and Rules of Professional Conduct by having direct communications via text message with a drug court participant and defendant. It was also alleged that she interfered and gave advice to the

same defendant for a domestic violence case that was also pending. That domestic violence case was subsequently dismissed.

It was also alleged that she met privately with the defendant in the holding cell, without his defense counsel, then intervened with the judge and had a drug court sanction changed on the defendant's behalf. This information was passed through the chain of command via e-mail from Ruberton to FAP Shill and Prosecutor Tyner. Tyner advised Ms. Ruberton that he received and reviewed the email she had sent and would handle the matter. No further action or investigation was ever taken regarding this complaint, despite a possible serious breach of the Prosecutor's Code of Ethics and the New Jersey Rules of Professional Conduct.

In March 2017, O'Brien filed a lawsuit against Ms. Ruberton and the ACPO alleging age and disability discrimination by the prior administration which included Ms. Ruberton in her capacity as First Assistant Prosecutor and Acting Prosecutor.

Just a few months prior to this complaint about O'Brien, Tyner had promised her a \$30,000 raise, despite O'Brien being covered by a union contract, alleging it was in settlement of her lawsuit. Any such negotiation would be an ethical violation to attempt to settle a lawsuit by a represented party. O'Brien was given the raise, however, her attorney has clearly stated the raise was not a settlement of the lawsuit and is still actively pursuing the case. Tyner ignored a serious breach of ethics and the Rules of Professional Conduct for the sole purpose of disparaging Ms. Ruberton.

5. *Refusal to Investigate and Address Sexual Harassment and Gender Discrimination Reported by Women in the ACPO Other than the Undersigned*

We are also concerned about the failure to take any action on complaints of discrimination by female employees. In December 2017, FAP Shill advised the undersigned, Diane Ruberton that a female under her supervision had made an allegation of gender discrimination against a male under her supervision. Ruberton stated to FAP Shill that he should refer the complaint to the County Law Department so an investigation could be conducted by the County EEOC officer.

Later, Shill reported to Ruberton that he had discussed the matter with Tyner who directed that County Counsel should not be advised of the gender discrimination complaint because Tyner wanted to keep it from County Counsel to avoid having the legal department know that there were any problems within the ACPO regarding gender discrimination.

Again in May 2018, a female attorney, Allison Eiselen reported to her supervisor, Anne Crater that she believed that she was being sexually harassed by Chief Assistant Prosecutor Seth Levy. Crater discussed this with Ruberton and McManus and they counseled her it needed to be reported to Shill. The supervisor reported the complaint to First Assistant Prosecutor Shill. Shill is required to report this to Tyner. Crater attempted to report this to retired State Superior Court Judge Michael A. Donio as part of the independent investigation Judge Donio was leading that was underway because Ruberton made a complaint of gender discrimination to Tyner and the County Law Department on March 2018.

Ruberton, the undersigned, heard Seth Levy on the phone with Tyner and heard Levy state "thank you, Boss, for having my back." Ruberton was aware it was Tyner on the phone

not only because Levy called the person “boss” but also because she had heard just prior Shill state to Levy that Tyner would be calling him. Again, Tyner covered up the sexual harassment complaint and never reported it to the EEOC officer or County Counsel as is required by law.

Subsequently, Ruberton was terminated from employment. The supervisor who initially reported it to Ruberton has asked in a meeting with other assistant prosecutors if she would be the next one to be fired because she reported the sexual harassment complaint to be begin with.

6. *Tyner Directed that No Criminal Charges be Brought Against Matthew Leonard, an Attorney Friend, Who was Alleged to Have Brought Marijuana into the Jail to Give to an Inmate and Tyner Further Failed to Ethically Deconflict Himself from the Prosecution of the Case Despite Ties to the Lawyer’s*

In February 2018, Sergeant Robinson, supervisor of the Internal Affairs Unit at the Atlantic County Justice Facility, contacted Lt. McManus to advise that an attorney, Matthew Leonard, was caught bringing contraband into the jail. Sgt. Robinson had already discussed the incident with County Counsel who banned Mr. Leonard from the jail and instructed they should file criminal charges. Lt. McManus in turn advised Ms. Ruberton and both determined that because it involved criminal charges against an attorney, Prosecutor Tyner should be advised.

Mr. Leonard brought three highlighter pens into the jail and attempted to give them to his client, a criminal defendant. When the corrections officer did not allow Mr. Leonard to pass the pens to his client, he attempted to discard them in a trashcan. The officer retrieved the pens and determined they contained marijuana.

Matthew Leonard is the brother and law partner of James Leonard, a close personal friend of Tyner's. James Leonard and Tyner are known to have a long-standing friendship, previously worked together, and frequently socialize together. Due to this close personal relationship, Tyner should have recused himself from the case, or at least advised the Attorney General's Office Prosecutors Supervision Bureau to ask for a review of the conflict. Tyner did neither but instead directed no charges be filed against Matthew Leonard. Tyner instructed FAP Shill to write a memo to Sgt. Robinson directing that no criminal charges should be filed.

7. *Tyner has Mismanaged and/or Misappropriated Forfeiture and Grant Funds to Further His Own Personal Political Agenda*

As you are well aware, asset forfeiture or asset seizure is a form of confiscation of assets by the state. It typically applies to the alleged proceeds or instruments of crime. This applies, but is not limited, to terrorist activities, drug related crimes, and other criminal and even civil offenses. The monies that are realized from forfeiture activities are considered public funds and are to be used to pay any necessary expenses associated with forfeiture operations such as property seizure, detention, management, forfeiture, and disposal. The Fund may also be used to finance certain general investigative expenses.

We have concerns about the use of certain public funds by Tyner. We have been advised that Tyner has used forfeiture funds and/or substituted funds from other accounts for expenditures which are inappropriate according to the State of New Jersey Forfeiture Program Administration Standard Operating Procedure ("Forfeiture SOP"). It is believed that Tyner has directed office funds, including forfeiture funds, to be used to pay for things

such a bar dinners, bar golf outing, NAACP breakfast, NOBLE dinners, and shirts and meals for non-law enforcement agencies.

In fact, we believe your own office has questioned some of these expenditures and a 2017 audit evidenced violations of the Forfeiture SOP for failure to secure AG approval on expenditures.

For example, a community agency requested money for shirts and food for non-law enforcement personnel administering an expungement program. Tyner was advised by Ms. Ruberton and another Assistant Prosecutor that such expenses were an inappropriate use of forfeiture funds, especially in light of the fact that the State is the adverse party in an expungement proceeding. Nevertheless, Tyner approved the expenditure without Attorney General approval in violation of the State of New Jersey Forfeiture Program SOP.

In another example, property funded by the Confidential Funds account has been improperly channeled for personal use. As you are aware, the confidential funds account is a cash fund maintained for payments, reimbursements and certain expenses associated with investigative efforts undertaken in further of undercover or confidential investigations. The ACPO rented a pick-up truck with special tags to be used for undercover narcotics operations which is paid for with confidential funds.

Prosecutor Tyner permitted his brother, Michael Graham, (who he has employed at the office) to use the vehicle for personal use, picking up mulch on the weekend for his home to avoid the \$50 delivery fee. Not only was the use of the vehicle for personal purposes inappropriate and in violation of multiple ACPO policies, it presents a safety issue for the undercover officers who use the vehicle for operational purposes. Further, the use of

governmental equipment and funds for personal use has been investigated by the ACPO in various cases and criminal charges, including official misconduct, have been filed in some cases.

Further, the employment of Graham itself is suspect as it violates the County nepotism policy. Graham reports directly and only to Tyner, and no one else in the chain of command. Tyner was aware of and permitted Graham's use of the undercover truck. However, upon a formal complaint being made to the Chief of County Detectives, Tyner was forced to take action. Tyner again failed to deconflict himself from the matter and handled it himself, imposing the loss of a vacation day as punishment.

We also have concerns regarding the management of certain grant funds. A brand new vehicle was purchased with VAWA grant money for use by the ACPO Victim Counselors on staff. Tyner assigned this new vehicle to FAP Shill for his use to commute back and forth to the office. The Acting Victim/Witness Supervisor managing the VAWA grant questioned the propriety of this decision and asked the grant manager in your office if this was an allowable use under the VAWA grant. Your office then directed FAP Shill that he was not permitted to use the vehicle and it must be used for purposes associated with victims.

That employee was then disciplined in retaliation for reviewing the issue with your office. The office has two other vehicles with equipment purchased from the Drunk Driving Enforcement Grant. Despite the fact that grant requires use of these two vehicles for drunk driving enforcement operations, Tyner and his brother, Graham, are assigned the vehicles for

their exclusive use. Tyner has been observed using the vehicle when he is off duty and at social events.

8. **Tyner has Engaged in Questionable Hiring Practices**

We are also concerned about the failure to follow procedures for the hiring of employees and conducting background investigations ACPO policy requires pre-employment drug screening. (*ACPO Prosecutor Directive PD-00481-10 (Section IV)*). For example, in December 2017, an Assistant Prosecutor (Tyner's former law clerk) failed a pre-employment drug test by testing positive for a prescription medication which she was not prescribed. Tyner offered her a position and she is currently employed by the Office.

In closing, we respectfully request that the above issues be addressed and we, as law enforcement officers, past and present, seek an independent investigation. Moreover, we have brought these matters to the attention of the State Attorney General for purposes of removing it as an internal investigation because we suspect it would be quashed and lead to further retaliation by Prosecutor Tyner [against us] as conscientious employees and concerned public citizens.

It is important to bear in mind that we have decided to copy our elected representatives because we believe the actions of Tyner, as described above, who is an appointed public official deserve public scrutiny and oversight by our publicly elected officials.

Very truly yours,

Donna Fetzer
Donna Fetzer, ACPO Assistant Prosecutor

Heather McManus
Heather McManus, ACPO Lieutenant, retired

Diane Ruberton
Diane Ruberton, former Deputy First Assistant Prosecutor

cc: AAG Veronica Allende, Director, Division of Criminal Justice
AAG Analisa Holmes, Bureau Chief, Prosecutor Supervision
Senator Christopher Brown
Assemblyman Vincent Mazzeo
Assemblyman John Armato
Michelle Douglass, Esq. and Phillip Burnham, Esq. (*legal
counsel for Ruberton, McManus and Fetzer*)