Supreme Court Clerk
P.O. Box 30052
Lansing, MI 48909

January 20, 2004

Complaint for Superintending Control
Against the Attorney Grievance Commission
File No. 2401/03

This is an appeal for a review by the Supreme Court of the decision by the State of Michigan Attorney Grievance Commission (AGC) to close my Request for Investigation of attorney Douglas W. Sprinkle without taking action.

Overview of Events

On September 15, 2003, I submitted to the AGC a Request for Investigation of attorney Douglas W. Sprinkle [attachment 1].

On October 15, 2003, Mr. Sprinkle submitted a response to my complaint [attachment 2].

On October 20, 2003, I was sent a letter by Ruthann Stevens, Associate Counsel of the AGC, notifying me that the matters raised in my Request for Investigation "do not merit further attention by the Commission" [attachment 3].

On October 27, 2003, I sent a letter to Ms. Stevens asking the AGC to clarify the reasoning behind their decision so that I might better appeal it [attachment 4].

On October 30, 2003, I was sent a letter by Cynthia C. Bullington, Assistant Deputy Administrator of the AGC, notifying me that my Request for Reconsideration had been denied [attachment 5]. This was especially surprising to me because I had submitted no such request, and I had been hoping that the AGC would not deny my Request for Reconsideration until after I had actually submitted it.

On November 4, 2003, I submitted to the AGC a Request for Reconsideration of their dismissal of my complaint [attachment 6].

On December 9, 2003, Mr. Sprinkle submitted a response to my Request for Reconsideration [attachment 7].

On December 29, 2003, I submitted a reply to Mr. Sprinkle's response [attachment 8].

On January 7, 2004, I was sent another letter by the AGC's Ms. Bullington, notifying me once again that my Request for Reconsideration had been denied [attachment 9]. (The

letter was nearly identical to the rejection that Ms. Bullington had sent me **before** I filed my request.) Ms. Bullington's note further informed me that an AGC decision "to close a file without taking action against an attorney is subject to review by the Michigan Supreme Court on a complaint for superintending control," and included an instruction sheet with suggestions for preparing such a complaint [attachment 10].

In accordance with those suggestions, this document is a Complaint for Superintending Control against the Attorney Grievance Commission in reference to file number 2401/03, which is my Request for Investigation of attorney Douglas W. Sprinkle.

Notes about the Process

Although I suspect that you're all very busy and that it's probably not a good idea to begin this document with anything other than a discussion of the issues at hand, I want to briefly discuss my confusion about this process and my fear that I might not be approaching it correctly.

Although I'm not a lawyer, I found that there was an enormous amount of resources available on the Internet that proved to be very helpful when I had to represent myself (for a while) in the lawsuit that spawned the complaint that is the subject of this document. However, even though the process of pursuing an ethics complaint is supposed to be accessible to lawyers and non-lawyers alike, I paradoxically find myself much more confused about the procedures I should follow than when I was involved in formal legal proceedings. For example:

- I'm not certain as to exactly why my initial request to the AGC was denied, as their notification was vague and ambiguous. I wrote to the AGC seeking clarification [attachment 4], but instead of answering me, they rejected a Request for Reconsideration that I had not made [attachment 5], leaving me bewildered and reluctant to seek further information. It is difficult for me to appeal a decision when I don't know the basis of that decision, and the AGC seems to be under no obligation to provide me with that information.

- One of the pages on the AGC website mentions that, in certain circumstances, an AGC decision can be appealed to the Attorney Discipline Board. However, in the letter that notified me of the AGC's denial of my Request for Reconsideration [attachment 9], the AGC outlined an appeal procedure to the Michigan Supreme Court, which this document represents. This procedure is expensive and time consuming, and I would have liked to have known if it were actually possible to appeal to the Attorney Discipline Board as the AGC's website suggests; however, as I have said, I am understandably reluctant to seek clarification from the AGC.

- The appeal procedure outlined by the AGC [attachment 10] does not specify the kinds of materials that I should submit to you. (The procedure does not even specify a time limit, forcing me to prepare this document in some haste so as to

increase the likelihood that it will arrive in a timely fashion, but also possibly decreasing its effectiveness.) I don't know, for example, if you have access to the various materials submitted to the AGC by me and by Mr. Sprinkle, so I don't know if I can simply cite those materials in this document or if I have to actually attach copies of them. To err on the side of caution, I have tried to attach **all** relevant materials, which means that I may have created a great deal of extra work (and expense) for myself, and which also means that I may have burdened the Court with a lot of unnecessary paperwork, which cannot make you feel especially kindly toward me and my complaint at the outset.

- Finally, I don't even know exactly what it is that I'm asking you to do, which makes it difficult for me to frame a coherent request. If you rule in my favor, does that mean that the AGC will be directed to accept my Request for Reconsideration? If that's the case, I'm clearly wasting my time, as the AGC has already demonstrated its eagerness to dismiss my complaint. Will a favorable decision on your part lead directly to a trial before a panel of the Attorney Discipline Board? Am I appealing the AGC's original decision to dismiss my complaint or its decision not to reconsider its dismissal? Am I trying to convince you that the AGC's final decision was incorrect, or that my original complaint had merit, or both, or somewhere in between?

As you see, I'm confused about several aspects of this process, and I therefore fear that this document may appear to be unnecessarily lengthy and complicated, when perhaps a short note would have sufficed. Obviously, I'm trying to cover all the bases, and I beg your indulgence if, in my ignorance, I've created extra work for the Court.

Initial Summary

On October 16, 2002, attorney Douglas W. Sprinkle made false statements during a hearing before the United States Sixth Circuit Court of Appeals. Mr. Sprinkle represented the Taubman Company, the plaintiff in the hearing; I was the defendant.

Mr. Sprinkle's statements were indisputably false. However, Mr. Sprinkle did not admit to that fact until he responded to my complaint to the AGC, despite a request from my attorney that he make the Court aware of his misstatements so that the false information he provided would not figure into the Court's decision.

Rule 3.3 ("Candor Toward the Tribunal") of the Michigan Rules of Professional Conduct states, in part, that:

> *"(a) A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal;…"*

As I said earlier, Mr. Sprinkle now admits that the statements in question were false. However, he maintains that they were not made knowingly and that they did not involve matters of material fact, and thus that his false statements do not invoke Rule 3.3.

I provided the AGC with proof that Mr. Sprinkle's contention that the statements were immaterial was in itself false. In fact, his claim of immateriality involved deliberate false statements to the AGC that were even more audacious than the false statements he made to the Court of Appeals.

I also provided the AGC with compelling evidence that Mr. Sprinkle's false statements in the appeals hearing were deliberate. Mr. Sprinkle now claims that he made false statements because he was unfamiliar with the details of the case – but not only has he mischaracterized his false statements, he also made a statement that showed a thorough and comprehensive familiarity **with the very details in question** just a few seconds after he made the false statements that he now claims were accidental.

In the commentary that accompanies the Michigan Rules of Professional Conduct, a note on Rule 3.3 says:

> *"…an assertion purporting to be on the lawyer's own knowledge, as in… a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry."*

The false statements that Mr. Sprinkle admits making to the Court of Appeals were assertions purporting to be on his own knowledge. Therefore, according to the commentary, Mr. Sprinkle's contention that his false statements were accidental, even if true (a position which the evidence does not support), fails to bring him into compliance with the Rules. I made this point in my complaint to the AGC; in two detailed responses, Mr. Sprinkle has not even bothered to address it.

My initial complaint to the AGC involved several issues in addition to the issue of the false statements. As I said in that document, although I believe that each of the issues I raised involves a violation of the Rules, none of the other issues was as serious as the issue of the false statements. (In fact, were it not for the false statements, I would not have filed a complaint.) Accordingly, in this document, in an effort to expedite the process, I will discuss only the issue of the false statements. Having said that, I should emphasize that I do wish to keep all of the issues I raised in my initial complaint in force. I am omitting them from this document only because I do not wish to burden the Court with a discussion of those *relatively* minor issues, as this document is surely lengthy enough even without them.

The False Statements

On October 16, 2002, an appeals hearing was conducted in Cincinnati at the United States Court of Appeals for the Sixth Circuit. Through my attorney, I was appealing two preliminary injunctions that had been issued against me by Judge Zatkoff of the United States District Court in Detroit. The case involved allegations of trademark violation and cybersquatting that had been made against me by the Taubman Company in relation to two of my websites. Mr. Sprinkle represented the Taubman Company for the appeal. [I have enclosed a transcript of Mr. Sprinkle's presentation at the hearing as attachment 11.]

At the hearing, Judge Boggs pointed out that I had not asked for money for my domain name, nor had I initiated settlement discussions with Taubman – and that, in fact, the first mention of money was in an unsolicited settlement offer that I received from Mr. Sprinkle's firm. Mr. Sprinkle interrupted Judge Boggs to claim that he and I and engaged in settlement discussions (note the plural) via telephone prior to their offer. This was a complete fabrication on the part of Mr. Sprinkle. (I have never engaged in even a single substantive telephone discussion with Mr. Sprinkle, either before or after the offer.)

Here is a transcript of their exchange:

> **[Judge Boggs]** Correct me if I'm wrong. My understanding of the facts is that the website had been in operation for at least a year, maybe nearly two years. You began by making a sort of standard trademark demand letter and ratcheted it up to, you know: "We're going to sue you." It didn't quite say: "You know, you've got a nice business there, shame if you had to litigate against us forever." And then you offered the thousand dollars, right? I mean, so the thousand dollars only came up as your offer as –
>
> **[Mr. Sprinkle]** There were telephone discussions, Your Honor.
>
> **[Judge Boggs]** Okay.
>
> **[Mr. Sprinkle]** There were telephone discussions between me and my partner, Julie Greenberg, and Mr. Mishkoff.
>
> **[Judge Boggs]** Prior to that letter?
>
> **[Mr. Sprinkle]** Yes.
>
> **[Judge Boggs]** Okay, but that's not directly in the record.
>
> **[Mr. Sprinkle]** That's not directly in the record.

Except for the last statement, every one of Mr. Sprinkle's statements in the above exchange is completely and utterly false. (And, as I will explain later, the last statement makes it clear that Mr. Sprinkle knew that the other statements were false.) As I pointed out earlier, the statements were purportedly made from Mr. Sprinkle's own knowledge,

putting him under a special ethical obligation to ensure their accuracy, an obligation that he has obviously not fulfilled (since the statements, by his own admission, were false). However, that point is made moot by the evidence that Mr. Sprinkle's misstatements were not accidental – that they were, in fact, knowingly made.

Knowingly Made: To sum up the sense of Mr. Sprinkle's false statements at the hearing: Mr. Sprinkle claimed that he and I had engaged in telephone discussions about settling the case (or about his client paying me for the domain names), and that those discussions occurred **prior** to their offer. Mr. Sprinkle now characterizes the misstatements as errors only in "timing," his point being that the discussions **did** actually occur, but that he believed at the time of the hearing that the conversations took place **before** their offer, when in fact they did not (a point that Mr. Sprinkle now admits).

However, Mr. Sprinkle's assertion that the misstatements were mere "timing" errors is not the slightest bit credible because **I have never engaged in a substantive discussion of any kind with Mr. Sprinkle**, either before their offer or after it. I did seek Mr. Sprinkle's concurrence on a few motions that I was filing; on each occasion, we spoke for a few seconds, just long enough for him to deny concurrence. Not only have I never engaged in a settlement discussion with Mr. Sprinkle, I have never discussed **any** aspect of the case with Mr. Sprinkle.

Mr. Sprinkle now essentially claims that he confused one of our discussions with another of our discussions, but this is absolutely impossible: As we have never engaged in any substantive discussions whatsoever, there are no other conversations about which he might have been confused.

I have raised (and, in fact, stressed) this precise point in both my original complaint to the AGC and in my Request for Reconsideration. In Mr. Sprinkle's letter to the AGC of December 9, 2003 [attachment 7], he included this surprising section, which I am reproducing in its entirety:

> *"Next, the Complainant argues – again – that he and I have never had a substantive telephone conversation. This, however, has already been fully addressed in my initial letter to the Commission and which I adopt herein my reference."*

I characterize this section as "surprising" because Mr. Sprinkle did **not**, in fact, address this issue in his initial letter to the AGC, fully or otherwise! I have enclosed a copy of his initial letter to the AGC [attachment 2], and if you can find even the slightest hint that Mr. Sprinkle addressed this issue in any way whatsoever, your eyes are a great deal sharper than mine.

Mr. Sprinkle's consistent refusal to address this issue is strong evidence that he cannot explain it away, and that his false statements were, in fact, deliberate. His willingness to brazenly claim that he had previously "fully addressed" the issue when, in fact, he had never even alluded to it provides powerful support to my suspicion that Mr. Sprinkle does

not hesitate to resort to outright deception when he has to extricate himself from difficult situations. Frankly, the decision of the AGC to dismiss my complaint in spite of the fact that Mr. Sprinkle made no effort to deal honestly with them defies comprehension.

The most convincing evidence that Mr. Sprinkle was aware that his statements were false at the time he made them comes from Mr. Sprinkle himself. In the excerpt of the appeals hearing that I quoted above, note that within seconds of emphatically asserting to Judge Boggs that he and I had engaged in settlement discussions via telephone prior to their offer, Mr. Sprinkle confirmed to Judge Boggs that the record of the case would not support his contention.

The obvious question is: **If Mr. Sprinkle believed that his statements were true, how did he know that they would not be supported by the record?** Under what set of convoluted circumstances would it have been possible for Mr. Sprinkle to be so **unfamiliar** with the details of the case that he believed that he and I had engaged in settlement discussions (which we did not) and that those discussions took place before their offer, and yet simultaneously be so **familiar** with the record of the case that he was certain that his version of events did not appear in the record? If Mr. Sprinkle believed that he and I **had** engaged in settlement discussions, why would those discussions (which would have been critically important to his characterization of me as a "cybersquatter") not have been in the record in the first place?

Not only can I not imagine a logical answer to these questions, Mr. Sprinkle apparently cannot come up with one either, because he has not responded to that point in any way whatsoever, despite the fact that I made it in great detail in my letter to the AGC of November 4, 2003 [attachment 6]. Even more distressingly, the AGC dismissed my complaint even though Mr. Sprinkle has never responded to this key point.

Material Fact: Although I'm not a lawyer, it seems to me that I prevailed on the appeal only because the Court recognized that Mr. Sprinkle's statements were false. If I had actually initiated discussions to sell my domain names to Mr. Sprinkle's client, I clearly would have been a cybersquatter, and I would have lost the case – and, in fact, I would have had no business in wasting the time of the Court of Appeals (or of this Court).

Fortunately for me, the judges saw through Mr. Sprinkle's attempt at deception. In the Court's decision, Judge Suhrheinrich said:

> *"Although Taubman's counsel intimated at oral argument that Mishkoff had in fact initiated the negotiation process, correspondence in the record supports the opposite conclusion…"*

Judge Suhrheinrich was clearly being kind to Mr. Sprinkle. As you know from the portion of the transcript that I quoted, Mr. Sprinkle didn't "intimate" anything; rather, he made clear and unequivocal statements, ostensibly from personal knowledge. Not only were Mr. Sprinkle's statements not supported by the record, they were utterly false. But if the judges had believed Mr. Sprinkle's assertions, I probably would have lost the case.

To me, the critical nature of Mr. Sprinkle's statements renders them "material" in the dictionary-definition sense of "having real importance or great consequences." However, I recognize that the word "material" has specific connotations in the legal process, and I recognize that I am at a disadvantage in this discussion because I do not have any kind of legal training. Therefore, I will rely on Mr. Sprinkle's own words to demonstrate that, even in a legal sense, his misstatements were indeed material.

In his letter to the AGC of December 9, 2003 [attachment 7], Mr. Sprinkle says:

> *"There is absolutely no dispute, then or now, that the $1,000 offer (or counter offer) made by the Complainant to sell his website was material to the appeal."*

Disregarding the fact that, despite Mr. Sprinkle's contention, I made **no** offer to sell my website to his client, his statement seems to support my contention that his misstatements were material. However, perhaps I misunderstand the fine points of Mr. Sprinkle's argument, because he makes this statement less than a page later:

> *"The timing of the $1,000 offer from the Complainant for the sale of his domain name is quite arguably material with respect to the anti-cybersquatting count in the lawsuit, but was simply not material to the trademark infringement count. As stated, the interlocutory appeal to the Sixth Circuit Court of Appeals involved **only** the preliminary injunction issued with respect to the trademark infringement; anti-cybersquatting was not an issue on the appeal."*

The emphasis in the quotation above is Mr. Sprinkle's. However, I've enclosed a copy of the motion by Mr. Sprinkle's client that led to the injunction [attachment 12], and you can plainly see that the anti-cybersquatting count figured **prominently** in that motion. Mr. Sprinkle's statement that the injunction involved trademark infringement ***only*** is patently false, and no amount of emphasis can obscure that simple fact. (I've also enclosed copies of the injunction that was issued in response to the motion [attachment 13] and of my Notice of Appeal of the injunction [attachment 14]; as you can see, nothing in those documents alters the fact that anti-cybersquatting was, indeed, a material element of the appeal.) The appeal **did** involve the anti-cybersquatting count, and thus Mr. Sprinkle's misstatements were, in his own words, "quite arguably material."

I cannot understand why Mr. Sprinkle would include such transparently false statements in a letter to the AGC in response to an allegation that he made false statements in Court, thereby compounding his offense. His actions betray a breathtakingly reckless disregard for the truth and a sense that he is certain that his reprehensible actions will result in no negative consequences. I'm even more dismayed at the fact that the AGC, after learning that they had been repeatedly misled by Mr. Sprinkle, declined to pursue my complaint.

Final Conclusions

As I understand it, the decision by the AGC to "close the file" basically means that the AGC does not think that my complaint is even worth investigating. They reached this conclusion despite the facts that:

- I specified the Rule that Mr. Sprinkle violated.

- Mr. Sprinkle admits that his statements were false, which means that he indisputably violated one of the three necessary conditions of the Rule.

- I provided strong evidence that Mr. Sprinkle violated the other two necessary conditions of the Rule – and in reference to each of those conditions, I demonstrated that Mr. Sprinkle had made false statements to the AGC in his defense against my complaint.

Short of obtaining a signed confession from Mr. Sprinkle, I do not know what I could have provided the AGC that would have made a more compelling case that an attorney violated the Michigan Rules of Professional Conduct. If the AGC is not willing to insist that attorneys be truthful in court, then perhaps they should ask you to rescind the Rule that calls for "Candor Toward the Tribunal." But as long as that Rule remains in effect, I feel strongly that the AGC erred in declining to take action on my complaint, and I hereby respectfully request that the Supreme Court assume superintending control against the Attorney Grievance Commission.

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January 20, 2004