



A. Scott Bolden
Direct Phone: + 1 202 414 9266
Email: abolden@reedsmith.com

1301 K Street, N.W.
Suite 1000 – East Tower
Washington, D.C. 20005-3373
+1 202 414 9200
Fax +1 202 414 9299
reedsmith.com

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Confidential

By Electronic Mail

Jeffrey Ragsdale
Director and Chief Counsel
Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530-0001

Re: Complaint Against Former Acting United States Attorney Stephen M. Schenning and Assistant United States Attorney Leo J. Wise for the District of Maryland

Dear Mr. Ragsdale:

This is to advise you that I have been engaged by State’s Attorney for Baltimore City Marilyn Mosby (“State’s Attorney Mosby”) and Baltimore City Council President Nick Mosby (“Council President Mosby”) in connection with a federal criminal tax investigation commenced by the United States Attorney’s Office for the District of Maryland (“USAO”). Please direct all future correspondence regarding this matter, to my attention.

I write to inform you of certain troubling misconduct by Former Acting United States Attorney Stephen M. Schenning (“Mr. Schenning”) and Assistant United States Attorney Leo J. Wise (“Mr. Wise”) while performing their duties in connection with above-referenced investigation against my clients. Their misconduct warrants their immediate removal from this matter and an investigation by your office.

There is no question that the investigation against my clients is frivolous, politically-motivated, and arises from the animus both Mr. Schenning and Mr. Wise have against State’s Attorney Mosby. But for their genuine animus towards my client, what could have been a routine civil tax examination resulted in a vindictive federal criminal investigation.¹ Their animus is further demonstrated by the fact that they have intentionally revealed facts of a secret grand jury investigation to the media in an effort to harass, degrade, and embarrass my clients.

¹ See *United States v. Johnson*, 325 F.3d 205, 210 (4th Cir. 2003) (citing the elements to establish prosecutorial vindictiveness as “(1) the prosecutor acted with genuine animus toward the defendant and (2) the defendant would not have been prosecuted but for that animus”) (internal citation omitted).

On March 10, 2021, Mr. Schenning issued grand jury subpoenas to State's Attorney Mosby and Council President Mosby, among others, in connection with a federal criminal investigation into their federal income tax filings for tax years January 2014 to the present. Even a cursory review of the history here reveals that since at least 2017, Messrs. Schenning and Wise have been engaged in a smear campaign to falsely accuse State's Attorney Mosby and her staff of improperly leaking certain facts regarding the USAO's prosecution of members of the Baltimore Gun Trace Task Force (the "GTTF Prosecution"). Despite State's Attorney Mosby's multiple requests to Mr. Schenning for relevant evidence regarding the alleged leak within her office, Mr. Schenning's office instead chose to make a public accusation (through Mr. Wise) against State's Attorney Mosby and her office during the detention hearing of Wayne Jenkins, an officer charged and convicted as part of the GTTF Prosecution. For more than a year, State's Attorney Mosby engaged in dialogue with Mr. Schenning and Mr. Wise about their rationale for implicating her office in what was determined to be unsubstantiated accusations that were motivated simply to cast aspersions on her office.

Given this tumultuous history, Messrs. Schenning and Wise were required to report to the Executive Office for United States Attorneys General Counsel's Office ("GCO") about their relationship with State's Attorney Mosby that would necessitate their recusal in the instant federal criminal investigation against my clients. *See* Justice Manual § 3-1.140. Their prolonged smear campaign demonstrates a conflict of interest between them and State's Attorney Mosby or, at the very least, an appearance of a loss of impartiality. *Id.* However, there are no facts to indicate that they alerted the GCO "to discuss whether a recusal is required." *Id.*

Instead of taking the appropriate actions to recuse themselves from the investigation, Messrs. Schenning and Wise have led the instant investigation with reckless disregard for the secret nature of grand jury investigations by prematurely alerting the media and community members of my clients' connection to this investigation. In fact, on March 10, 2021, at the direction of the prosecutors, FBI agents interrupted Council President Mosby while he was conducting a city-wide Board of Estimates meeting and demanded to speak with him. Rather than leave a subpoena or conduct their field investigation outside of the scope of public view, the FBI interrupted Council President Mosby during a public meeting in an effort to alert the public of the pending investigation.

As a direct result of the FBI's intentional lack of discretion, that same night, Fox News sent a media inquiry to Council President Mosby's office requesting comment on not only the FBI investigation, but also the subpoena that was served on him. Although the FBI's presence was publicly known, the fact that Council President Mosby was served with a subpoena was not publicly known, suggesting that someone on the prosecution team leaked the existence of the subpoena to the media.

The roles played by Messrs. Schenning and Wise in leaking to the press is only further supported by the fact that State's Attorney Mosby was made aware by a reporter in October 2020 that she was under investigation. There is reason to believe that Mr. Wise is communicating with the media regarding this federal investigation since a reporter with knowledge of the investigation has a close relationship with him and also authored a book on the GTTF Prosecution – a prosecution led by Mr. Wise.

As a career prosecutor, including serving as Chief of the Homicide Section at the U.S. Attorney's Office in the District, you are well aware of the vital importance of maintaining the secrecy and overall integrity

of a grand jury investigation. In fact, the Justice Manual provides that the function of the grand jury is not only the investigation of crime, “but also the protection of the citizenry from unfounded criminal charges.” *See* Justice Manual, § 9-11.010. Prosecutors like Mr. Schenning and Mr. Wise are required to conduct themselves as officers of the court who have a duty to ensure justice is done and “must do nothing to inflame or otherwise improperly influence the grand jury.” *Id.* (emphasis added). The evidence here suggests that Messrs. Schenning and Wise have no regard for the Justice Manual or their oath, given that their conduct has been entirely focused on treating my clients like criminals all while inflaming the grand jury with their improper prosecutorial tactics effectuated through the FBI and leaks to the media. Given Mr. Schenning’s specific role in leadership of the USAO, I am also copying Acting Assistant Attorney General McQuaid, in the hope that he determines in his judgment that, given the instant referral to OPR, these prosecutors are immediately removed from the investigation and that this animus-driven investigation is immediately suspended.

Attorney Mosby and Council President Mosby are high-profile public servants that fight everyday against systems of injustice, inequality, and racism. They have been at the forefront of police accountability reform, criminal justice reform, and racial health disparities. Although they have not been charged with a criminal offense, Mr. Schenning and Mr. Wise have already led them to be tried and convicted in the court of public opinion.

Based on Mr. Schenning’s and Mr. Wise’s exhibited genuine animus towards State’s Attorney Mosby and Council President Mosby that resulted in an unwarranted investigation into their taxes, I request that these prosecutors be immediately removed from this baseless and politically-motivated investigation and that OPR investigate their misconduct.

Please do not hesitate to contact me should you have any questions or need any additional information regarding this matter.

Sincerely, I am,

/s/ A Scott Bolden /RQ

A. Scott Bolden

CC: Nicholas L. McQuaid, Esq.
Stephen M. Schenning, Esq.
Leo J. Wise, Esq.
Rizwan A. Qureshi, Esq. (Reed Smith LLP)