

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

UNITED STATES OF AMERICA)	
)	
)	Case No. 5:11CR00002
)	
v.)	ORDER
)	
PAUL HAMPTON THOMSON, ET AL.,)	By: James P. Jones
)	United States District Judge
Defendants.)	

John P. Flannery, II, one of the attorneys for the defendant Paul Hampton Thomson, has filed a letter to me (ECF No. 148) in which he claims that I have had “secret proceedings” with the government attorneys in this case, involving, among other things, “discussions about investigative strategies.” In support of his accusation, he attached copies of documents from the court docket, a printout of the public docket itself, and notes about these items, the authorship of which is unspecified.

Mr. Flannery’s assertion is outrageously false and unfounded.

The basis for his claim is that two motions previously filed by the government in this case on February 28, 2011, and March 2, 2011 (ECF Nos. 75 and 78), requested the sealing of “attached documents.” Flannery states that such “documents” have not been provided to him. In fact, however, as would be expected, the attached documents were the motions which the government sought

to file under seal, namely the United States' Expedited Application for Order Authorizing Direct Contact with Two Unrepresented Parties (ECF No. 76) and United States' Response to Court Order Regarding Unsealing of Application (ECF No. 80). By order entered March 2, 2011 (ECF No. 79), I directed that all of these motions be either unsealed or filed without being sealed – in other words, I denied the government's motions that the documents be sealed for 30 days.

The only other basis for Flannery's accusation is that there are documents on the electronic court docket that are viewable by court users only and which he thus cannot view. That is of course correct, since as he would know if he had inquired, the electronic docket is used by the clerk's office to record purely internal case processing matters, such as the filing of the court reporter's notes after a hearing or the data or bond sheets for defendants, showing their home addresses.¹

Instead of inquiring of the court if there were documents still unsealed in the case or requesting an explanation of items on the electronic docket that he could not view, attorney Flannery has simply accused me, without any reasonable basis, of misconduct. In fact, I have engaged in no proceedings with the government that did not occur on the record, in Mr. Flannery's presence.

¹ The only substantive documents that are not unsealed in the case are the original arrest warrants for the defendants issued January 6, 2011 (ECF Nos. 4 and 5). Since the defendants were long ago arrested in the case, those warrants may be unsealed.

I have been lenient with attorney Flannery in this case, believing that his conduct on occasion was the result of either misguided zeal or inexperience. I caution him, however, that my patience is not inexhaustible. I will not tolerate further unprofessional conduct, as exhibited by his letter.²

It is so **ORDERED**.

ENTER: April 21, 2011

/s/ James P. Jones
United States District Judge

² Virginia Rule of Professional Conduct 8.2 provides that “[a] lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or other judicial officer.” *See Pilli v. Va. State Bar*, 611 S.E.2d 389, 397 (Va. 2005) (upholding suspension of lawyer’s license under Rule 8.2 where he filed a motion accusing a judge of professional misconduct “without any basis in fact and with utter indifference to the absence of such facts.”).