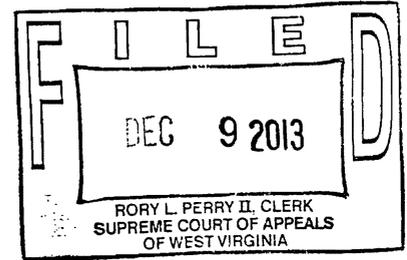


**CONSTANCE M. (CONNIE) BLESSING,**

**Petitioner/Plaintiff Below,**



**vs.**

**No. 13 – 0953**

**(Civil Action No. 13-C-398 Circuit Court of Kanawha County)**

**THE SUPREME COURT OF APPEALS OF WEST VIRGINIA,  
BRENT D. BENJAMIN, in his capacity as Chief Justice, THE  
WEST VIRGINIA STATE BAR and ANITA R. CASEY, in her  
capacity as Executive Director,**

**Respondents/Defendants Below.**

**PETITIONER'S BRIEF**

Richard A. Robb (WVSB #3123)  
P.O. Box 8747  
South Charleston, WV 25303  
(304) 744-8231  
[rrobb@suddenlink.net](mailto:rrobb@suddenlink.net)  
Counsel for Petitioner

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**ASSIGNMENTS OF ERROR**

**1) Constructive Discharge**

The circuit court erred in dismissing petitioner Blessing's claim for constructive discharge stating she had failed to allege the legally protective status necessary for asserting this cause of action. However, the amended complaint asserted this legally protective status with separate counts of age as well as gender discrimination with numerous and specific allegations supporting each of these claims. Further, constructive discharge is not limited necessarily to a specific legal status as it also can occur where there is unlawful discrimination in general which the petitioner alleged here as well.

**2) Intentional Infliction of Emotional Distress**

The circuit court erred dismissing the petitioner's cause of action for intentional infliction of emotional distress stating she had not alleged the requisite extreme and outrageous conduct necessary to support such claim. The lower court's ruling ignored the abuse and humiliation, both physical and emotional, set forth in the amended complaint, that defendant Casey in her capacity as state bar executive director and certain other state bar board members deliberately inflicted upon petitioner. This abuse continued through petitioner's last day of employment as it remained a threat to occur thus refuting defendants' additional argument this particular claim was time-barred.

**3) Gender and Age Discrimination**

The circuit court erred in dismissing petitioner's separate claims for gender and age discrimination holding she had failed to set forth allegations sufficiently related to

claims of this nature. The amended complaint alleged the petitioner as the senior member of an all female staff had endured the brunt of this discrimination in an effort to force her to retire sooner than she had intended. She further alleged the abuse increased after announcing she had decided not to take early retirement. The amended complaint set forth separate causes of action for these claims for gender and age discrimination with numerous factual allegations in support of each of these claims.

#### **4) Violations of Substantial Public Policies**

The circuit court erred dismissing petitioner's claim for violation of substantial public policy ruling the policies she had alleged were general in nature and unrelated to her employment. The wrongful conduct toward the petitioner was contrary to these policies, and there is no authority restricting public policies only to specific matters.

#### **5) Whether Invasion of Privacy Claim Time-Barred**

The circuit court erred dismissing petitioner's claim for invasion of privacy finding it was barred by the applicable statute of limitations. This dismissal wrongfully assumed discovery alone of a mechanical recording or listening device automatically amounts to one knowing his privacy has been invaded thus causing the statute of limitations to begin to run. Although petitioner turned the tape recorder over to the police, she has never learned from the police or any of the defendants the purpose of the tape recorder and whether her privacy had indeed been invaded. The lower court's ruling assumed knowledge that does not necessarily apply to the general public or to Ms. Blessing here.

#### **6) Dismissal of Court and Chief Justice**

The circuit court erred dismissing specifically this Court and its Chief Justice as

party defendants holding the state bar constituted an agency separate and apart from the Court in its duties and functions. This ignored clear statutory language the state bar is an administrative agency of the Court as well as allegations in the amended complaint the Court was knowledgeable of and involved in matters alleged in the amended complaint.

**7) Standards for Motions to Dismiss**

The circuit court erred in general and specifically by dismissing each of Blessing's counts or causes of action thus violating fundamental standards and principles governing motions to dismiss. In dismissing the petitioner's lawsuit in its entirety, the lower court simply accepted without question or scrutiny those arguments the moving parties had set forth while ignoring the validity of those allegations contained in the amended complaint.

**STATEMENT OF THE CASE**

**Introduction**

Petitioner Constance M. (Connie) Blessing was executive assistant to the Executive Director of The West Virginia State Bar. She started in 1986 rising to executive assistant under Tom Tinder, Casey's predecessor and executive director some eighteen years. In 2007 a handful of state bar board directors forced Tinder from this position with vague allegations of improprieties some involving criminal conduct. The following year the board of directors appointed a Charleston attorney, Anita Casey, to take his place.

The ensuing three years Casey with active support from certain board directors and former directors subjected Connie Blessing to unrelenting and unwarranted abuse that ultimately forced her to retire on the last day of February 2011 after some twenty-five years of dedicated service.

**Allegations of Amended Complaint**

From her start as executive director Anita Casey criticized operations of the state bar over the preceding twenty some years, that period corresponding to Tom Tinder's tenure. **[Appendix "App.," p. 21, Amended Complaint, para. 12]** She repeatedly questioned Blessing's abilities and her work performance over these same years. **[App. p. 22, Amended Complaint, para. 13]** She belittled Blessing and the rest of the staff, all women of long-standing employment with the state bar, telling them they were "over-paid and undereducated." **[App. p. 22, Amended Complaint, paras. 14 and 16]** A

handful of state bar board members and former board members joined Casey in this criticism of Tinder, the staff and past operations. **[App. p. 22, Amended Complaint, para. 17]** One former state bar president even told Blessing she was overpaid because “she had covered up for Tom Tinder.” **[App. p. 22, Amended Complaint, para. 19]** The incoming state bar president sent emails to other board members with a copy to Blessing emphasizing those allegations she had covered up for criminal conduct by Tinder. **[App. p. 22, Amended Complaint, para. 24]** Casey and one state bar president even met with prosecutors as part of this effort against Tinder. **[App. p. 22, Amended Complaint, para. 27]** To date nothing has occurred regarding allegations of Tinder’s criminal conduct. **[Id.]** Nevertheless Casey and certain board members and former board members persisted in their relentless criticism and disparagement of Blessing and the rest of the staff. **[App. p. 24, Amended Complaint, paras. 29-32]**

Ms. Casey later hired a male colleague from her previous place of employment paying him more than others, and he immediately joined in the harassment of Blessing. **[App. pp. 24-25, Amended Complaint, paras. 33-45]** In addition to constantly criticizing Blessing and accusing her of criminal cover-up, Casey moved her office a second time so the new male employee could monitor her daily activities. **[App. p. 25, Amended Complaint, paras. 42-44]** Casey also repeatedly interfered with Blessing’s medical needs, acted indifferently to her family setbacks, refused technical office support and would force Blessing engage in humiliating tasks outside the normal scope of her employment such as wading in a basement sewage leak. **[App. pp. 25-27, Amended Complaint, paras. 46-62]**

Following her husband's unexpected death Blessing happened to mention to a board member, who was close to Casey and whose husband as state bar president had been particularly hostile toward Tinder, that she had decided not to retire after all and instead planned to continue working. [App. p. 27, Amended Complaint, paras. 59-61] This only served to increase Casey's harassment forcing Blessing to submit her resignation. [Id.]

Prior to her final day at work Blessing happened to notice a tape recorder hidden behind a credenza in her office and when told by lawyers this was a criminal matter turned the device over to the state police. [App. 28, paras. 64-65] Shortly thereafter the male employee inquired of Blessing about the recorder while relating to Casey and others it had been a well-intentioned prank simply to capture some of Blessing's zany office comments for posterity. [App. p. 28, Amended Complaint, para. 66] State police turned the recorder over to the FBI who later questioned Blessing. [App. p. 28, Amended Complaint, paras. 69-70] When she later asked one of the agents about the matter, she was simply told an investigation was underway as "it appeared to be part of a bigger issue." [App. p. 29, Amended Complaint, para. 78]

After her retirement Blessing informed the head clerk of the supreme court of appeals about the recorder incident. [App. p. 28, Amended Complaint, para. 70] This same time The Lawyers Disciplinary Counsel (LDC) had also commissioned an outside lawyer to investigate the matter. [Id., para. 71] Casey and the state bar president at the time were aware of the tape recorder incident and conferred with another board member, who

specialized in employment law.[App. p. 29, Amended Complaint, para. 76] Notwithstanding all this outside awareness of the matter, Blessing was never able to learn what, if anything, transpired from these events regarding the tape recorder hidden in her office while she was an employee of The West Virginia State Bar. [Id., para. 78]

Also after she had retired Blessing mentioned the tape recorder incident to an attorney on some sort of retainer with this Court. [App. p. 28, Amended Complaint, para.72] A meeting was convened the next day at the Court with Casey and another board member present that resulted in the state bar staff simply being informed the male employee had (suddenly) resigned for “personal reasons.” [Id., para. 73]

The stress of working under Anita Casey and the harassment of other board members caused Ms. Blessing constant anxiety and physical problems associated with anxiety particularly stomach disorders. [App. p. 30, Amended Complaint, para. 81] The anxiety and associated physical symptoms worsened even after Blessing’s retirement as Ms. Casey and certain board members continued their criminal pursuit of Tinder and whatever role Blessing was alleged to have played. [Id., para. 82]

One board member told Blessing Anita Casey also harbored a personal grudge toward her because of Casey’s past affection for one of Blessing’s former spouses. [Id., paras. 84-85] Needless to say Casey and a handful of board members and former board members had succeeded in making Blessing’s life “a living hell.” [Id., para. 87] Ms. Casey’s deliberate and malicious conduct toward Blessing supported by certain others on the state bar board of directors and former directors had created a hostile, in-

intolerable work environment that forced her to resign. [App. p. 31, Amended Complaint, para. 89]

Blessing and other staff members brought their concerns over this intolerable treatment through what they thought were appropriate channels. [Id., paras. 92-94] They also brought these same concerns to the senior clerks at the Supreme Court of Appeals [Id., para. 95] However, none of these efforts stopped the daily harassment and constant belittlement. [Id.] Only since this lawsuit was filed has some semblance of praiseworthy recognition been afforded the long-serving staff with the current state bar president's recent self serving public comments which nevertheless damned Tinder's tenure without specifically identifying him. [Ref. The West Virginia State Bar Magazine, Fall 2013]

### **Causes of Action**

Blessing's amended complaint filed two years from the day she had been forced to resign set forth six (6) separate counts or causes of action: constructive discharge, gender discrimination, age discrimination, violation of public policies, invasion of privacy and intentional infliction of emotional distress. [App. pp. 32-33, Amended Complaint, Counts 1 - 6] The amended complaint named as primary defendants, The West Virginia State Bar and Anita Casey, its executive director. Since the state bar was an agency of the state supreme court of appeals, and this Court had also been involved in some of these matters; it and the chief justice were also named as defendants. Blessing sought compensatory damages for that amount she would have otherwise earned had she been able to complete her customary course of employment until normal retirement, \$200,000. [App.

**p. 34, Amended Complaint, ad damnum clause]**

**Motion to Dismiss**

Upon service of process the defendants immediately moved to dismiss Blessing's lawsuit in its entirety pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure arguing none of Blessing's six separate causes of action had asserted claims upon which relief could be granted. [App. pp. 35-37, Defendants' Motion to Dismiss] The parties exchanged the customary responses and replies with the lower court then conducting a hearing. [App. 38-86] The hearing was scheduled for thirty minutes, and defendants' counsel consumed virtually the entire time with his oral argument. At the hearing's end the judge directed counsel to submit proposed respective orders with findings of fact and conclusions of law. Approximately two weeks after these submissions the lower court entered an Order adopting in its entirety without modification that which defendants' counsel had submitted.

**Specific Claims in Motion to Dismiss**

***Constructive Discharge***  
**(Assignment of Error #1)**

Defendants' motion to dismiss asserted Blessing had failed to plead a valid claim for constructive discharge because such claim can only occur based upon some protected status of the (constructively discharged) employee. [App. pp. 42-43, Memorandum in Support of Defendants' Motion to Dismiss] Blessing responded her amended complaint had contained separate counts for gender and age discrimination with numerous factual allegations supporting each claim as well as specifically setting forth her protected status. [App. pp. 58-60, Response to Motion to Dismiss] Blessing also argued in a

constructive discharge claim a specific protected status was not necessary. [Id.]

***Intentional Infliction of Emotional Distress***  
**(Assignment of Error #2)**

Defendants' motion to dismiss also asserted Blessing's cause of action for intentional infliction of emotional distress had failed to allege extreme and outrageous conduct to support such a claim. [App. pp. 45-46, **Memorandum in Support of Defendants' Motion to Dismiss**] Blessing countered her amended complaint had alleged numerous examples of abuse and humiliation, both physical and psychological, Anita Casey and other certain board directors had inflicted upon her. [App. pp. 62-65, **Response to Motion to Dismiss**] Any statute of limitations dismissal likewise failed because she was exposed to the threat of this outrageous conduct through her last day at work.

***Gender and Age Discrimination***  
**(Assignment of Error #3)**

In moving for dismissal of both these causes of action defendants asserted nowhere in the amended complaint had Blessing made any allegations of either gender or age discrimination. [App. pp. 47-49, **Memorandum in Support of Defendants' Motion to Dismiss**] Blessing responded the amended complaint had made repeated allegations she and the rest of the holdover staff were being pushed around because they were all female, and the abuse against her even increased after Blessing decided not to take early retirement. [App. pp. 65-66, **Response to Motion to Dismiss**]

***Identification of Substantial Public Policy***  
**(Assignment of Error #4)**

Defendants argued for dismissal of Blessing's claim for violation of a substantial public policy because the public policies she had identified were general in nature and

not related to her employment. **{App. pp. 46-46, Memorandum in Support of Defendants' Motion to Dismiss}** Blessing argued notwithstanding the general nature of those principles governing The West Virginia State Bar, defendants' conduct toward her had violated those principles, and defendants had cited no authority limiting public policies to specific situations. **[App. pp. 60-62, Response to Motion to Dismiss]**

***Timeliness of Privacy Claim***  
**(Assignment of Error #5)**

Defendants asserted Blessing's action filed two years from her last day of employment was time-barred by the one-year statute of limitations governing claims for invasion of privacy. Blessing had found the hidden tape recorder just prior to her last day at work. **[App. pp. 41-42, Memorandum in Support of Defendants' Motion to Dismiss]** Ms. Blessing countered there was nothing in her amended complaint to indicate she knew or had ever learned the purpose of the tape recorder which she turned it over to police on the advice of lawyer friends. **[App. pp. 56-58, Response to Motion to Dismiss]**

***Dismissal of Court and Chief Justice***  
**(Assignment of Error #6)**

Defendants' motion argued The Supreme Court of Appeals of West Virginia and its Chief Justice should be discharged from this lawsuit because The West Virginia State Bar constituted a separate entity. **[App. pp. 50-53, Memorandum in Support of Defendants' Motion to Dismiss]** Blessing responded state law made the state bar an agency of the Court, and her amended complaint had alleged the specific involvement of the Court in some of these matters. **[App. pp. 66-67, Response to Motion to Dismiss]**

***Standards for Motions to Dismiss***  
**(Assignment of Error #7)**

Defendants' very own motion to dismiss set forth the standards governing motions to dismiss summarized as favoring the nonmovant as the party with the benefit of the doubt with respect to the pleadings. **[App. p. 40, Memorandum in Support of Defendants' Motion to Dismiss]** Dismissal of Connie Blessing's lawsuit in its entirety violated these standards with respect to each and every cause of action she had asserted in her amended complaint.

**SUMMARY OF ARGUMENT**

**Constructive Discharge (Assignment of Error #1)**

Contrary to the defendants' motion to dismiss that Connie Blessing failed to allege a legally protective status necessary to assert a cause of action for constructive discharge, she set forth separate counts for gender and age discrimination, each a legally protective status. Further her amended complaint set forth numerous allegations of gender and age discrimination. The amended complaint for both gender and age discrimination, counts two and three respectively, specifically stated she belonged to such protective class.

Further, for purposes of constructive discharge, an alleged claimant is not limited to being a member of a protective class but instead may be a victim of other unlawful discrimination in general. In addition to gender and age discrimination, the defendants discriminated against Ms. Blessing because she had been the previous executive director's top assistant and they were hell-bent not only to discredit him and but have him prosecuted as well. As Blessing remained with the state bar, she received the brunt of this zealously.

**Intentional Infliction of Emotional Distress (Assignment of Error #2)**

Contrary to defendants' motion to dismiss, the amended complaint set forth numerous allegations of extreme and outrageous conduct, both physical and psychological, the state bar executive director and certain state bar board members intentionally inflicted upon Ms. Blessing. Their conduct toward Blessing was disdainful, humiliating and designed to

force her to quit. This deliberate and outrageous conduct also caused Ms. Blessing psychological and physical pain and suffering. Further, the lower court's adding her claim was time-barred likewise fails because the threat of the outrageous conduct while still employed does not cause the statute of limitations to start to run until that threat ends.

### **Gender and Age Discrimination (Assignment of Error #3)**

The amended complaint set forth numerous allegations of gender and age discrimination that culminated in separate counts of gender and age discrimination. Ms. Blessing was the senior member of an all female holdover staff who were belittled in general and Ms. Blessing in particular. As alleged in her amended complaint Ms. Blessing was in her sixties with over twenty years of service to the state bar. As also alleged in her amended complaint, when she decided not to retire, the deliberate abusive conduct substantially increased ultimately forcing her to resign.

### **Violations of Substantial Public Policy (Assignment of Error #4)**

The laws and by-laws of The West Virginia State Bar set forth a number of general goals and policies commensurate with an organization that governs officers of the court. While these goals and policies are not specific with respect to the organization's employees, the defendants' conduct nevertheless was contrary to those policies. The conduct of ms. Casey and the state bar also tolerated and sanctioned criminal activity, wire-tapping Ms. Blessing during her final days of employment with that agency.

### **Timeliness of Privacy Claim (Assignment of Error #5)**

In dismissing this cause of action the lower court found the one-year statute of limi-

tations began to run when Blessing found the tape recorder hidden in her office. Although she turned the device over to the police, she never learned its purpose. The employee who allegedly planted the device denied its purpose was to invade her privacy. Although the defendants were aware of what had occurred, they never revealed to Ms. Blessing what had been its purpose. Even that case authority defendants cited in their motion to dismiss this particular claim held the statute of limitations only began to run when the purpose of the tape recorder was established. Here that purpose has never been determined to this day.

#### **Dismissal of Court and Chief Justice (Assignment of Error #6)**

The lower court dismissed these parties holding the state bar was a separate entity. This is contrary to express statutory law the state bar is an agency of the Court, and the amended complaint alleged the Court had been materially involved in some of the actions adversely affecting Ms. Blessing and constituting part of her claims here.

#### **Standards for Motions to Dismiss (Assignment of Error #7)**

In dismissing each and every cause of action Ms. Blessing asserted in her amended complaint, the lower court violated those standards which govern motions to dismiss. The standards include that in appraising the sufficiency of a complaint, a motion to dismiss should not be granted unless it appears beyond doubt the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. These standards also hold if a complaint states a claim upon which relief can be granted under any legal theory it should be allowed and the necessity to construe factual allegations in the light most favorable to the plaintiff. The lower court did not adhere to any of these principles.

**Blessing v. The Supreme Court of Appeals of West Virginia, et al.**  
**No. 13-0953**

**STATEMENT REGARDING ORAL ARGUMENT  
AND DECISION**

The petitioner respectfully asks this matter be set for oral argument under Rule 20 of the Rules of Appellate Procedure. She makes this request on grounds this case involves sensitive public (and private) matters. The petitioner is particularly concerned given those involved, there may be some interest in simply sweeping this entire episode under the proverbial rug of posterity. While the petitioner was admittedly a small cog in a big picture, she is concerned her rights may be ignored in the interest of preserving a false outward posture of tranquility and dignity that protects others.

For the same reasons as set forth above, petitioner's counsel requests sufficient time to present his client's case. He adds a concern as this petition might be viewed as harshly critical of the underlying ruling, this adds to the importance of explaining this matter to a Court largely comprised of jurists who are colleagues of the judge below. Further, having recently returned from London where he was privileged to observe a number of appellate hearings, petitioner's counsel was particularly impressed with the liberality allowed time for oral argument. This also occurred in a visit to this Court early this fall. Allowance of sufficient time for oral argument is preferable to counsel's past experience in this Court and his understanding of argument before the United States Supreme Court. Accordingly, petitioner and counsel ask oral argument be permitted to the extent both the Court and counsel believe all matters at issue have been thoroughly addressed.

**Blessing v. The Supreme Court of Appeals of West Virginia, et al.  
No. 13-0953**

**ARGUMENT**

***Introduction***

Plaintiff/petitioner Connie Blessing filed this lawsuit two years from the day she took early retirement at age 62 from her position with The West Virginia State Bar. During her some twenty-five years with the state bar she had risen under former director, Tom Tinder, to become executive assistant, second highest paid position in the agency. Anita Casey replaced Tinder in 2008 after he was forced out as executive director by a cabal of board directors and former directors amidst allegations of wrongdoing including efforts, albeit apparently unsuccessful, to have Tinder prosecuted for criminal conduct.

Upon assuming the executive director position Casey immediately embarked upon a relentless effort to discredit Tinder and the state bar's past efforts. Certain board directors and former directors joined in this effort. The disparagement included criticism of the holdover staff, particular Ms. Blessing who had been Tinder's senior assistant. The holdover staff was comprised entirely of women, all of whom like Blessing had been employees of long standing with the agency. The disparagement of Blessing and the staff was both belittling and humiliating with Casey and the directors repeatedly referring to them as "overpaid and undereducated."

During the three years of Blessing's tenure under Casey she and others on the staff brought their concerns over this treatment through what they thought were appropriate

grievance channels including representatives of the state supreme court of appeals. The harassment however persisted, and Blessing initially planned to take an early retirement and simply leave the constant workplace abuse behind her.

Her husband's unexpected death caused her to reconsider this decision. She related her decision not to take early retirement to a close friend and colleague of Casey's. This resulted in the workplace abuse and harassment increasing exponentially.

Finally Blessing had endured enough and decided to take early retirement after all. The harassment at work had caused her both psychological and physical health problems. During her final official days at work she happened to discover a tape recorder hidden in her office. Upon the advice of a lawyer friend saying this amounted to a criminal act, she turned the recording device over to the state police who later forwarded it to the FBI. Casey, certain board directors and representatives of the supreme court were all aware of this matter. The individual Casey had hired from her previous place of employment, who constantly monitored Blessing and also contributed to her harassment, admitted to planting the device claiming he had only done so in good fun to preserve for posterity Blessing's humorous workplace commentary.

Even after Blessing had formally left the state bar, reports from that office continued to haunt her, particularly efforts by Casey and certain board directors seeking to have Tinder prosecuted for criminal conduct. As some of these same persons had accused Blessing of covering up for Tinder, this news understandably distressed her even more. Incidentally nothing to date has transpired as a result of these allegations against Tinder

save for a less than subtle accusatory and self-promoting column by the current state bar president in the Fall 2013 issue of the state bar magazine.

Blessing's lawsuit alleged constructive discharge, intentional infliction of emotional distress, gender and age discrimination, violation of substantial public policies and invasion of privacy amounting to six (6) separate counts or causes of action. She named as defendants Casey, the state bar, the supreme court of appeals and its chief justice.

Defendants responded filing a motion to dismiss Blessing's lawsuit in its entirety including each and every claim. Counsel exchanged written arguments, and a half hour hearing was held before the trial court, the Honorable Paul Zakaib, Jr. presiding. Defendants' counsel consumed virtually the entire hearing with his oral argument, and Judge Zakaib ended the hearing by instructing each attorney to submit proposed orders containing findings of fact with conclusions of law. Approximately two weeks following these submissions, the trial court entered an Order dismissing Connie Blessing's lawsuit in its entirety. This Order adopted without modification that proposal the defendants' attorney had submitted.

These activities at the state bar amount to a tawdry story not only of vicious workplace harassment but of long-standing grudges by certain directors and former directors for the former executive director of The West Virginia State Bar. Those remaining on the staff after Tom Tinder's departure, particular Ms. Blessing, suffered a different sort of consequences. Mr. Tinder now works for an organization still associated with lawyers in this state. Many of the protagonists in this matter are prominent in the state's legal com-

munity. Anita Casey's brother is a leading candidate for Congress. Dwane Tinsley was recently appointed a United States Magistrate, Letitia (Tish) Chafin a recent nominee to this Court and Harry Dietzler is now president of the state bar. Even the leading clerks of this Court were involved in this matter. However, Connie Blessing also enjoys support in the state legal community from former state bar presidents as Sandra Chapman and Rob Fisher as well as former executive director, Forrest "Jack" Bowman and certainly Tom Tinder. These persons uniformly viewed the conduct here and treatment of Blessing as despicable and reprehensible.

Nevertheless Ms. Blessing is concerned there may be an interest by influential persons within the state legal community not to air this "dirty linen." She and her attorney truly feel this matter was not given its due attention by the circuit court. She hopes notwithstanding this being a small state where the protagonists are all well known and acquainted within the legal community, the adjudication of this appeal will receive the full and fair consideration it justly deserves.

### *Discussion*

#### **1. Constructive Discharge – First Assignment of Error**

##### **Statement of Facts**

From the time Anita Casey replaced Tom Tinder as Executive Director of The West Virginia State Bar she, certain board members and former members of the state bar board commenced a relentless campaign denouncing the past performance of the state bar and the holdover staff, who were all females and had all served a considerable number of

years with that entity. Connie Blessing presented a particular target for this campaign because she had been the top assistant to former executive director, Tom Tinder, who the directors had earlier forced out of office. **[Appendix Record “App.”p. 22, Amended Complaint, paras. 12, 15 & 17]** Additionally, Anita Casey also harbored animosity toward Blessing based upon past personal matters. **[App. p. 30, Amended Complaint, para. 85]**

Casey and the directors’ conduct included belittling Blessing’s past and present work performance, the amount she was paid, her educational level, and even included accusing her of covering up for alleged criminal activity by Tinder. **[App. Amended Complaint, p. 21, paras. 4, 5, & 12; p. 22, paras. 13, 14, 15, 16, 17 & 19; p. 23, paras. 24-28; p. 24, paras. 29, 31, & 32; p. 25, paras. 43-45; p. 30, para. 87; p. 31, paras. 88-90; and p. 32, para. 100]**

Casey’s harassment as Blessing’s daily supervisor also entailed physical abuse making her wade in sewage without being vaccinated, work from a hospital bed after surgery, forcing her to reschedule this surgery three times then compelling her to return to work immediately after the surgery even though she had sufficient sick days. **[App. Amended Complaint, p. 25, para. 46 and p. 26, paras. 47-50]** There was also unwarranted emotional abuse as Casey made her work the day following her husband’s unexpected death even though she had accumulated sick days. **[App. p. 26, Amended Complaint, para. 51]**

Casey twice moved Blessing’s work area and constantly monitored her activities

even having a favored employee to eavesdrop on her. [App. Amended Complaint, p. 22, para. 18 and p. 25, paras. 42-43] Three months of records were mysteriously deleted from Blessing's computer that according to technical staff at the supreme court could have only happened deliberately without any offer to investigate by Casey or help restore the deleted data. [App. p. 26, Amended Complaint, paras. 52-55] Blessing regarded the deletion an unwarranted intrusion of her workspace with many in the office believing the favored employee, who later would secretly tape-record Blessing, had been responsible. [Id., para. 55; infra.]

When Blessing decided after her husband's unexpected death to continue working for the state bar, the harassment increased exponentially and she saw no alternative but to resign. [App. p. 27, Amended Complaint, paras. 59-63] The constant harassment at work caused Blessing emotional stress and stomach disorders as a result of the stress. [App. p. 30, Amended Complaint, para. 81] Her stress and stomach ailments increased after her retirement because Casey and board members were seeking criminal action against Tinder which Blessing surmised included her allegedly covering up for him. [Id., para. 82] Casey along with certain board members and past board members had truly made Blessing's life a "living hell." [Id. para. 87]

Sympathetic former past presidents or former board members as Sandra Chapman, Rob Fisher and David Jividen, all seasoned lawyers, told Blessing the abusive and belittling conduct causing her resignation had amounted to a constructive discharge. [App. p. 32, Amended Complaint, paras. 97-98] Connie Blessing's amended com-

plaint filed two years from the day she had been forced to resign asserted as her first count or cause of action the conduct here had been deliberate and malicious creating an intolerable working environment forcing her to resign thus amounting to a constructive discharge. [App. p. 32, Amended Complaint, Count One]

### Argument

The circuit court dismissed Blessing's claim for constructive discharge adopting fully defendants' argument such claim can only be valid for an employee based upon an explicit protected status of that employee, and Blessing had failed to identify any type of unlawful discrimination to support this claim. [App. pp. 5-6, Order Granting Defendants' Motion to Dismiss, "Dismissal Order," paras. 15-17] Dismissing this particular claim the lower court stated:

A constructive discharge cause of action arises when the employee claims that because of age, race, sexual or other unlawful discrimination, the employer has created a hostile working climate which was so intolerable the employee was forced to leave his or her employment.

Syl. Pt. 4, Slack v. Kanawha County Housing and Redevelopment Authority, 188 W.Va. 144, 423 S.E.2d 547 (1992) emphasis in original. [Id., para. 15]

Regarding Blessing's age the amended complaint stated she was 62, automatically placing her in this protective status, and the harassment increased forcing her to take early retirement after she had earlier decided not to retire. [App. p. 20, para. 1 and p. 27, paras. 61 & 63 – Amended Complaint] The amended complaint alleged harassment occurred because of her many years with the state bar. [App. p. 21, para. 12 and p. 22, para. 13 – Amended Complaint] Blessing set forth as the third count or cause of

action in her amended complaint the defendants' conduct had constituted age discrimination as she "belongs to this protected class and the abuse she was subjected to was because she was near retirement age and designed to force her to retire against her will." (emphasis supplied) [App. p. 33, Count Three of Amended Complaint]

The amended complaint also made numerous allegations of gender discrimination that Blessing as senior member of an all female staff was exposed to the brunt of this discrimination, particularly the humiliation of repeatedly being told one is "undereducated and overpaid." [App. p. 22, paras. 13-17; p. 23, para. 28- Amended Complaint] State bar directors even resorted to gender-derogatory terms terming Blessing's and the staff's complaints about Casey a "bitch session." [App. p. 31, Amended Complaint, para. 94] As with her age the amended complaint said "conduct described in this document amounted to sexual discrimination as the plaintiff and all others subject to the harassment and belittlement thus members of a protected class, and such abusive behavior toward her would not have occurred had she been male." [App. pp. 32-33, Count Two of Amended Complaint]

The lower court in referring to syllabus point 4 in Slack to dismiss Blessing's claim for constructive discharge also failed to note the language in that syllabus point termed "other unlawful discrimination" also as basis for a protective class. [App. p. 6, Amended Complaint, para 15] As set forth repeatedly in her amended complaint the primary grounds for the abusive conduct toward Blessing had been solely in retaliation for her being the former executive director's top assistant, a prime example of "other

unlawful discrimination.” [App. p. 21, para. 12; p. 22, paras. 13, 15 & 17; p. 24, para. 31; p. 27, paras. 58 & 60; p. 30, para. 87 and p. 31, paras. 88-90 – Amended Complaint] Casey and certain state bar board members had specifically accused Blessing of covering up for criminal conduct. [App. p. 22, paras. 19-20; p. 23, paras. 21, 24 & 25; p. 29, para. 29 and p. 30, para. 82 – Amended Complaint] These amounted in effect to criminal accusations against Blessing, simply because she had been Tinder’s top assistant, also unlawful discrimination.

With respect to the lower court’s reliance upon the foregoing syllabus point, there remains the question of whether a syllabus point, customarily added later as an assistance tool for subsequent readers, accurately reflects the holding of the Court in the opinion itself. In its discussion of constructive discharge this Court made no particular finding the subject employee was required to be a member of a protective class. Slack, 188 W.Va. 144, 152-155, 423 S.E.2d 547, 555-558 (1992) The closest this Court came to adding such requirement was stating “typically” constructive discharge occurs where an employee claims because of age, race, sexual, or other unlawful discrimination, the employer has created a hostile working climate so intolerable the employee is forced to leave. 188 W.Va. 144, 153, 423 S.E.2d 547, 556 The focus of the discussion in Slack for constructive discharge is whether the employer has created a hostile working environment so intolerable it forces the employee to leave, not whether that employee is also a member of a protective class. Interestingly for the succeeding discussion of intentional infliction of emotional distress, defendants refer to a holding that cites Slack, and no protective status requirement is discussed. Ref. Footnote No. 2, Travis v. Alcon Labora-

tories, Inc., 202 W.Va. 369, 504 S.E.2d 419 (W.Va. 1998) Anita Casey and others created such a hostile working climate, and the lower court erred that Blessing was not a member of a protective class to dismiss her claim or implying she had not been subject to other unlawful discrimination.

## **2. Intentional Infliction of Emotional Distress – Second Assignment of Error**

### **Statement of Facts**

The circuit court dismissed Blessing’s cause of action for intentional infliction of emotional distress saying her amended complaint does not allege any “extreme and outrageous” conduct which would support such a claim. **[App. p. 9, Dismissal Order, para. 28]** Notwithstanding numerous allegations of mental torment, belittlement, humiliation, invasion of privacy and even accusations of criminal conduct, all set forth more specifically in the preceding argument, the lower court stated with this particular ruling even giving Blessing “every benefit of a doubt,” the factual allegations in the amended complaint “compels the conclusion that the defendants engaged in no conduct which could reasonably be considered ‘extreme and outrageous.’” **[Id.]**

At risk of appearing argumentative such conclusion calls for a definition of what amounts to “extreme and outrageous.” A cursory review of the amended complaint shows fully over fifty (50) allegations of extreme and outrageous conduct toward Ms. Blessing. **[App. pp. 20-34, paras. 12, 13, 14, 15, 16, 17, 19, 24, 25, 26, 27, 28, 29, 31, 32, 44, 46-50, 51, 52-55, 57-58, 59-62, 64-78, 81-82, 87, 88-90 and 91-Amended Complaint]** These allegations run the gamut from humiliating Blessing about her education

compared to how money she was paid, constantly criticizing her past and present work performance, accusing her of a criminal cover-up, physical and mental abuse endangering her health, invading her privacy on multiple occasions, once blatantly, and increasing this torment when decided she might not retire after her husband's unexpected death. To state this conduct could not be "reasonably" extreme and outrageous demonstrates isolation from reality.

### **Argument**

The circuit court held a claim for intentional infliction of emotional distress requires one to show the conduct in question was "atrocious, intolerable, and so extreme and outrageous as to exceed the bounds of decency." Syl. Pt. 3, Travis v. Alcon Laboratories, Inc., 202 W.Va. 369, 504 S.E.2d 419 (1998) [**App. p. 9, Dismissal Order, para. 27**] Alcon involved a supervisor allegedly abusive toward an employee with the company's knowledge. Alcon discussed whether the supervisor's abuse had been outrageous and applied certain tests for making this determination as whether the conduct could be regarded as "atrocious and utterly intolerable in a civilized community." 202 W.Va. 369, 504 S.E.2d 419, 425 The holding also acknowledges the jury's role in making such determination, yet here the court is doing so on a motion to dismiss

An objective reading of the abusive conduct described in Alcon will probably agree the conduct toward Blessing here was worse, and further, because of her repeated efforts through appropriate channels to stop the abuse, Casey's superiors were even more aware than those superiors in Alcon. Even more telling once more is here, unlike Alcon, the allegations of whether abuse has occurred is being adjudicated solely on pleadings alone

where the plaintiff's allegations are to be taken as true.

Additionally, the circuit court referred to Alcon further ruling the subject abuse had occurred more than two years prior to Blessing's filing this lawsuit thus causing her claim for intentional infliction of emotional distress to be time-barred by the applicable two-year statute of limitations. [App. p. 10, Dismissal Order, para. 30] However, Alcon allowed the plaintiff's claim to go forward based upon the plaintiff's last day of work holding the statute "begins to run on the date of the last extreme and outrageous conduct, or threat of extreme and outrageous conduct, which precipitated the termination of employment." (emphasis supplied) 202 W.Va. 369, 504 S.E.2d 419, 433. In other words, in Alcon the threat of outrageous conduct from the supervisor during the employee's final days, not any actual outrageous conduct, starts the statute running. This is no different here for Blessing as the threat of abusive conduct persisted through her last day of work. The lower court's order even quotes this language of the "threat" yet still holds Blessing's claim time-barred. [Id.]

### **3. Gender and Age Discrimination – Third Assignment of Error**

#### **(Gender Discrimination)**

##### **Statement of Facts**

It was apparent from her name and related identification in the amended complaint Blessing is female, and the second count of that document stated the conduct described amounted to sexual discrimination. [App. p. 20, paras, 1-2 and pp. 32-33, Count Two-Amended Complaint] Count two continued saying Blessing and the others (holdover staff) were "female, thus members of a protected class, and such abusive behavior toward

her would not have occurred had she been male.” (emphasis supplied) [Id. pp. 32-33, **Count Two**] The amended complaint set forth those numerous allegations discussed previously. Notwithstanding language this conduct would not have occurred toward her had she been male, the circuit court dismissed her claim for gender discrimination stating this amounted to a mere conclusion, and none of her allegations were related specifically to gender discrimination. [App. pp. 10-14, **Dismissal Order, paras, 32-40**]

### **Argument**

Dismissing Blessing’s claim for gender discrimination, it was the lower court being conclusory by arbitrarily holding the conduct had not amounted to gender discrimination. The circuit court excused the alleged wrongful conduct as “general harassment” suggesting it amounted to mere “common office pettiness or politics.” [Id., pp.12-14, **paras. 39 & 35**] The lower court even ignores defendants’ resort to gender-derogatory language, “bitch session” in referring to Blessing’s efforts to stop the continual abuse. [App. p. 31, **Amended Complaint, para. 94**] Would racial slurs have been just as easily ignored?

The trial court here was adjudicating a motion to dismiss and doing so, it must not grant such motion unless appears beyond doubt the plaintiff can prove no set of facts in support of the claim. Zirkle v. Elkins Road Public Service Dist., 221 W.Va. 409, 655 S.E.2d 155 (2007) Motions to dismiss are viewed with disfavor, and trial courts are counseled to rarely grant such motions. Forshey v. Jackson, 222 W.Va. 743, 671 S.E.2d 748 (2008). Dismissing Blessing’s claim of gender discrimination, just the opposite occurred. Every possible benefit of the doubt, and then some, was accorded defendants.

## **(Age Discrimination)**

### **Statement of Facts**

The amended complaint denoted Blessing's age (62) and the length of her employment with the state bar (25 years). [App. pp. 20-21, Amended Complaint, paras. 1-3] This document further stated the conduct described had amounted to age discrimination specifically noting she was a member of a protected class, "and the abuse she was subjected to was because she was near retirement age and designed to force her to retire against her will." (emphasis supplied) [Id., p. 33 Count Three]

Allegations in the amended complaint noted Anita Casey's repeated criticism of Blessing's work during her long tenure at the state bar. [App. p. 21, para. 12; p. 22, paras. 13-16; p. 24, paras. 31-32 and p. 27, paras. 57-58 – Amended Complaint] State bar board directors and former directors joined in this criticism of past performance. [Id., p. 22, para. 17 and p. 23, paras. 26 & 28] The motivating factor behind this criticism of Blessing's past efforts over the years was the zeal of Casey and others to discredit Tom Tinder and anyone who happened to be associated with his tenure at the state bar. The amended complaint noted particularly when Blessing decided not to retire after her husband's unexpected death, the harassment and abuse increased thus forcing her retirement. [Id., p. 27, paras. 56 & 59-63] The circuit court dismissed Blessing's claim for age discrimination combining the dismissal with that of gender discrimination. [App. pp. 10-14, Dismissal Order, paras. 32-40]

### **Argument**

Dismissing both claims together, the lower court's order however arbitrarily omitted

language in the amended complaint for each count specifically attributing the actionable conduct to discrimination. **[Id. p. 11, para. 33]** These omissions give a false impression the amended complaint simply concludes gender and age discrimination. **[Id.]** Contrary to the omissions in lower court's order, the amended complaint states the abuse would not have occurred to Blessing had she been a male and occurred because she was near retirement age. **[App. p. 33, Amended Complaint, Counts Two & Three]**

As with gender discrimination the lower court found Blessing had not alleged any conduct specifically attributed to age discrimination. **[App. pp. 10-14, Dismissal Order, paras. 32-40]** This ignores those matters contained in the foregoing Statement of Facts with repeated criticism of Blessing's past performance of over twenty years in an effort to discredit Tinder. This also ignores specific, detailed allegations of the amended complaint where Anita Casey added to the abuse of Blessing after learning she was not going to take early retirement.

Factual allegations in motions to dismiss are to be construed in a light most favorable to the plaintiff. Murphy v. Smallridge, 196 W.Va. 35, 468 S.E.2d 167 (1996) The policy of the rule governing motions to dismiss is to decide cases upon the merits, and if a complaint states a claim on which relief can be granted under any legal theory, the motion must be denied. John W. Lodge Distributing Co. v. Texaco, Inc., 161 W.Va. 603, 245 S.E.2d 157 (1978) Appraising the sufficiency of a complaint on a Rule 12(b)(6) motion to dismiss, the trial court should not dismiss the complaint unless it appears beyond doubt the plaintiff can prove no set of facts in support of his claim that would entitle him to

relief. Chapman v. Kane Transfer Cp., 160 W.Va. 530, 236 S.E.2d 207 (1977) The lower court did not adhere to any of the foregoing precepts in dismissing Blessing's claim for age discrimination, gender discrimination or any of her other claims for that matter.

#### **4. Violations of Substantial Public Policies – Fourth Assignment of Error**

##### **Statement of Facts**

Blessing's amended complaint alleged the conduct that had resulted in her forced resignation from the state bar had constituted a violation of public policy by that organization and was tolerated or sanctioned by its supervising entity (The Supreme Court of Appeals of West Virginia) responsible for the administration of justice in this state.

**[App. pp. 33, Amended Complaint, Count Four]** In dismissing this cause of action, the lower court ruled these public policies were not related to Blessing's employment, nor were they substantial. **[App. pp. 6-9, Dismissal Order, paras. 18-26]** This dismissal (presumably) also addressed the substantial public policies violated by the supreme court of appeals with its later dismissal of this Court and chief justice *in toto*. **infra.**

##### **Argument**

The state bar's conduct toward Connie Blessing had violated its own governing constitution which advocates advancing the administration of justice as well as upholding and elevating standards of honesty, integrity, competency and courtesy in the legal profession. **Constitution, The West Virginia State Bar, Art. II** The abuse of Blessing by no means advanced the administration of justice. As for upholding and elevating standards, only competency was missing. Conduct toward Blessing was anything but honorable, courteous or done with integrity. This unwarranted abuse was visited upon Blessing as

the prime available target in the zeal to discredit Tom Tinder.

Inherent in the term “substantial public policy” is the concept the policy will provide specific guidance to a reasonable person. Syl. Pt. 3, Birthisel v. Tri-Cities Health Servs. Corp., 188 W.Va. 371, 424 S.E.2d 606 (1992). No amount of sophistry can escape the logical conclusion, the conduct of Casey and other board directors was contrary to the state bar’s public policies as set forth in that organization’s constitution. The lower court’s dismissal offers no authority the particular public policies here exempt the bar, Casey and directors. It simply says that should be the case. This Court in its supervisory role of the state bar was made well aware of these problems, and only after criminal conduct had occurred with the wire-tapping took any action. Even then it took two notices of the wiretapping before this Court finally acted

Advancing administration of justice as well as upholding and elevating standards of honesty, integrity and courtesy within the legal profession are all public policies of The West Virginia State Bar. All were violated in the abuse of Connie Blessing, and the self-serving rationale those policies do not apply here is without merit or supporting authority.

#### **5. Whether Invasion of Privacy Claim is Time-Barred – Fifth Assignment of Error**

##### **Statement of Facts**

During her final two weeks of employment with the state bar Blessing discovered a tape recorder hidden in her office and turned it over to the state police upon the advice of attorney friends it was a criminal matter. [App. pp. 28-29, Amended Complaint, paras. 64-78] She filed this action two years from the last day of her employment. Nowhere

does the amended complaint state Blessing ever learned the disposition of this matter or the purpose of the tape recorder. [Id.] The amended complaint included a cause of action for invasion of privacy adding Blessing's belief Ms. Casey had sanctioned, if not encouraged, the invasion of privacy. [Id., p. 33, Count Five] The circuit court dismissed this claim holding it was barred by the applicable one-year statute of limitation stating the one-year period commenced from the time she had found the hidden device. [App. pp. 3-5, Dismissal Order, paras. 8-13]

### Argument

Dismissing Blessing's invasion of privacy action as time-barred, the circuit court mistakenly concludes this cause of action arose at the time she actually found the tape recorder. [Id. p. 4, para. 10] This however ignores the explicit representation set forth in the amended complaint Ms. Blessing did not know or learn what was the purpose of the recording device. [App. p. 29, Amended Complaint, para. 78] Indeed she has never learned to this date. [Id.] The lower court simply adopts the view that one finding a tape recorder and subsequently learning nothing further about it or its purpose nevertheless causes the clock to run for bringing an invasion of privacy action.

In reaching this decision the lower court cites a similar wiretapping incident. Slack v. Kanawha County Housing and Redevelopment Authority, 188 W.Va. 144, 423 S.E.2d 547 (1992) However, the circuit court fails to note in Slack the time period began to run only when the protagonist admitted to planting such device, not when it was found as the lower court rules should govern here. 188 W.Va. 144, 151, 423 S.E.2d 547, 554. Here the lower court imposes a sophistication or specialized knowledge not common to the

general public. Simply finding a hidden tape recorder does not mean one automatically knows or should know his or her privacy has been invaded. There is no ruling in this jurisdiction to that effect, and none certainly noted in the dismissal of Blessing's claim.

## **6. Dismissal of Court and Chief Justice – Sixth Assignment of Error**

### **Statement of Facts**

Blessing named these parties as defendants because state law places the state bar under the supervisory authority of the Court, and the Court had been made aware of the primary transgressions that had occurred here: abuse of Blessing and staff as well as the invasion of privacy. It is generally understood the chief justice acts as the administrative agent for the Court. The circuit court dismissed these parties saying the state bar functioned separately including personnel matters notwithstanding its express delineation as an agency of the Court. [App. pp. 14-18, Dismissal Order, paras. 41-50]

### **Argument**

The West Virginia State Bar is part of the judicial department of state government under the authority of The Supreme Court of Appeals of West Virginia. *W.Va. Code 51-1-4a* The amended complaint alleged Blessing and others on the staff brought their concerns over the abuse they were suffering to Rory Perry and Edythe Nash, the Court's top clerks, but the abuse continued. [App. p. 31, Amended Complaint, para. 95] After Blessing had been forced to retire, she related the tape recorder incident to an agent of the state supreme court. [Id., p. 28, para. 72] A meeting was hastily convened the next day at the Court with Casey and another board member present. [Id., p. 28, para. 73] The

state bar staff was only informed the perpetrator of the recording device had resigned “for personal reasons.”

State law and actual events make the Court and its Chief Justice parties to this action. While some may question whether the state bar and Court are indeed separate, in actual function those events that resulted in the perpetrator’s abrupt employment departure suggests otherwise. In appraising the sufficiency of a complaint on a motion to dismiss for failure to state a claim upon which relief may be granted, the complaint is to be construed in a light most favorable to the plaintiff. Highmark West Virginia, Inc. v. Jamie, 221 W.Va. 487, 655 S.E.2d 509 (2007) The perfunctory dismissal of this Court and its Chief Justice contrary to express state law and actual events clearly indicates this principle was not followed.

## **7. Standards for Motions to Dismiss – Seventh Assignment of Error**

### **Statement of Facts**

The circuit court dismissed Connie Blessing’s entire lawsuit under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure based upon the allegations of her amended complaint. While foregoing assignments of error address specific allegations and claims in the amended complaint, this assignment of error deals with the overall dismissal in general of this action.

In lieu of an answer to the amended complaint defendants filed a motion to dismiss together with a supporting memorandum. [App. pp. 35-55] Blessing filed a Response to this motion, and defendants followed with a Reply. [App. pp. 56-68 and pp. 69-81]

Plaintiff concluded these pleadings with a Response to defendants' Reply. [App. pp. 82-86] A half hour hearing was conducted before the Honorable Paul Zakaib, Jr., Judge of the Circuit Court of Kanawha County. In addition to their attorneys both Connie Blessing and Anita Casey were also present. Defendants' counsel consumed virtually the entire time with his oral presentation. When the Court inquired of Blessing's counsel whether he had anything to add in the final moments of the hearing to what had already been submitted in writing, he replied he did not except saying defendants' motion should not be granted. The Court then directed opposing counsel to submit proposed orders with findings of fact and conclusions of law. [App. pp. 87-101 and pp. 1-19] Approximately three weeks after defendants' submission, the Court entered an Order dismissing Blessing's lawsuit in its entirety adopting fully defendants' proposed order. [Id., pp. 1-19]

### **Argument**

Motions to dismiss must consider factual allegations in a light most favorable to the plaintiff. State ex rel. McGraw v. Scott Runyan Pontiac-Buick, 194 W.Va. 770, 461 S.E.2d 516 (1995) Dismissing this lawsuit, each of six counts or causes of action, the circuit court most decidedly did not follow this maxim. Given the numerous factual allegations of abuse, criminal slander and invasion of privacy, it appears the lower court rather than viewing the allegations in a favorable light, did not even consider the plaintiff's allegations at all.

Trial courts in appraising the sufficiency of a complaint on a motion to dismiss for failure to state a claim upon which may be granted, should not dismiss the complaint unless it appears beyond doubt the plaintiff can prove no set of facts in support of his

claim which would entitle him to relief. Roth v. DeFeliceCare, Inc., 226 W.Va. 214, 700 S.E.2d 183 (2010) While some of Blessing's specific claims may be stronger or weaker than others, the dismissal of this action in its entirety lends a conclusory effect to the entire process. This document (and those submitted here previously as well as before the trial court) have attempted to distinguish the individual issues at bar. It is difficult to comprehend from one hundred (100) separate allegations together with six (6) separate causes of actions this lawsuit would be dismissed in such summary fashion. With a substantial majority of trial judges reviewing this appeal, it seems redundant to continue rehashing those principles which govern motions to dismiss any further.

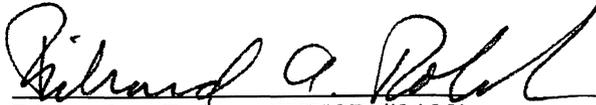
**Blessing v. The Supreme Court of Appeals of West Virginia, et al.**  
**No. 13-0953**

**CONCLUSION**

Based upon the foregoing, this Honorable Court should set aside the circuit court's Order dismissing this lawsuit remanding this action for further proceedings.

Respectfully submitted;

CONSTANCE M. (CONNIE) BLESSING  
By Counsel



Richard A. Robb (WVSB #3123)  
P.O. Box 8747  
South Charleston, WV 25303  
(304) 744-8231  
rrobb@suddenlink.net

**CERTIFICATE OF SERVICE**

I, Richard A. Robb, counsel for the petitioner, certify I have sent by U.S. Mail this day of December 9, 2013 a true copy of the foregoing Petitioner's Brief to John J. Polak, Atkinson & Polak, counsel for the respondents, at the address of P.O. Box 549, Charleston, WV 25322.

  
Richard A. Robb