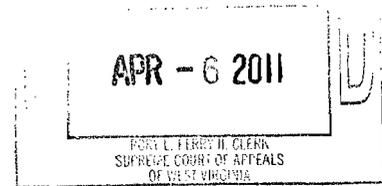


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
DOCKET NO.: \_\_\_\_\_



IN RE:           WOODIE KEVIN DEAN,  
                    Petitioner for membership in the  
                    West Virginia Bar.

---

**RESPONSE BRIEF ON BEHALF OF THE**  
**WEST VIRGINIA BOARD OF LAW EXAMINERS**

---

Prepared By:

John M. Hedges  
(WV Bar ID 1662)  
Stephanie J. Shepherd  
(WV Bar ID 9176)  
Hedges Lyons & Shepherd, PLLC  
141 Walnut Street  
Morgantown, WV 26505  
304-296-0123

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. STATEMENT OF FACTS ..... 1

III. STANDARD OF REVIEW..... 10

IV. ARGUMENT OF LAW ..... 11

The West Virginia Board of Law Examiners Correctly Concluded  
that the Applicant, Woodie Kevin Dean, Failed to Demonstrate He  
Possesses the Good Moral Character Necessary for Admission to  
the Practice of Law.. ..... 11

1. Mr. Dean Was Not Candid with the Board Regarding His  
Post-Arrest Use of Cocaine..... 13

2. Mr. Dean's Failure to Disclose His 2006 Arrest for Domestic  
Assault and Battery to the WVDE Exacerbated the Board's  
Concern that He was Not Being Candid About His Past  
Conduct..... 16

V. CONCLUSION..... 18

## TABLE OF AUTHORITIES

### **A. CASES**

<i>Frasher v. West Virginia Bd. of Law Examiners</i> , 185 W. Va. 725, 408 S.E.2d 675 (1991) .....	12
<i>In re Eary</i> , 134 W. Va. 204, 58 S.E.2d 647 (1950) .....	11
<i>In re McMillian's Eligibility for Conditional Admission to the Practice of Law</i> , 210 W. Va. 265, 557 S.E.2d 319 (2005) .....	17
<i>In the Matter of Dortch</i> , 199 W. Va. 571, 486 S.E.2d 311 (1997) .....	11
<i>Law Students Civil Rights Research Council, Inc. v. Wadmond</i> , 401 U.S. 154, 91 S. Ct. 720, 27 L. Ed. 2d 749 (1971) .....	12
<i>Schware v. Board of Law Examiners</i> , 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957) .....	12

### **B. CONSTITUTIONS, STATUTES AND RULES**

Virginia Code § 18.2-57 .....	4
West Virginia Code § 61-2-28 .....	4
Rule 5.0, Rules for Admission to the Practice of Law .....	11
Rule 6.0(a), Rules for Admission to the Practice of Law .....	8

## I. INTRODUCTION

This case presents the issue of whether the applicant, Woodie Kevin Dean carried his burden of establishing he has the requisite good moral character necessary for admission to the practice of law. After carefully considering Mr. Dean's application, his statements during two personal interviews, the report of Dr. Bobby L. Miller, M.D., documents and other evidence submitted, and the findings of the hearing examiner following two administrative hearings, the West Virginia Board of Law Examiners ("Board") determined that he failed to meet his burden. The Board concluded that Mr. Dean was not completely candid about his drug use and previous criminal conduct. Particularly, it was only when he was pressed on these matters and when his inconsistent reporting was brought to light that he was forthright. Thus, in the Board's opinion, he does not presently possess the requisite good moral character necessary for admission to the West Virginia Bar.

## II. STATEMENT OF FACTS

The Petitioner, Woodie Kevin Dean received his J.D. degree from the Appalachian School of Law in Grundy, Virginia upon his graduation in June 2002. Prior to his graduation, he submitted an application to sit for the July 2002 West Virginia Bar Examination ("bar examination"). Unfortunately, Mr. Dean failed to achieve a passing score on the July 2002 bar examination. Thereafter, he sat for the February 2003 and February 2004 bar examinations, but he did not achieve a passing score on either of these exams.

On or about October 30, 2006, Mr. Dean updated Section XI of his original application in anticipation of sitting for the February 2007 bar examination. In his

update, Mr. Dean disclosed that in the intervening years he had experienced some problems with the criminal justice system. Mr. Dean disclosed the following in his update to the Board:

(1) Criminal Case No. 04-M-2130, Cabell County Magistrate Court. Cabell County, WV. Charged with misdemeanor possession of controlled substance (cocaine); plead guilty and paid fine of \$100.00 plus court costs.

(2) Criminal Case No. 05M-0000879, Mingo County Magistrate Court. Mingo County, WV. Charged with battery; case was dismissed without prejudice.

(3) Criminal Case No. A6814-01, Buchanan County, Virginia. Charged with assault & battery of family member (wife). Plead not guilty but judge entered finding of "facts sufficient for finding of guilt." Paid Court costs of \$66.00 and ordered to take anger management class.  
(Letter of Applicant, Dated October 30, 2006).

Additionally, Mr. Dean disclosed that he was involved in a civil domestic relations matter arising out of Buchanan County, Virginia. Of considerable concern to the Board, it appeared this civil case concerned Mr. Dean's obligation to pay child support for his two young sons. This case is styled, *Department of Social Services Division of Child Support Enforcement v. Dean*, Case No. JA 006814-03-00.<sup>1</sup>

Despite submitting the proper fee and updating his application, for reasons that are unknown, Mr. Dean informed the Board that he would not be present for the February 2007 examination. Approximately, two years later, Mr. Dean again updated

---

<sup>1</sup> At his first meeting with the Board on November 11, 2009, Mr. Dean explained that his two sons, ages 7 and 4 at the time, are in the legal and physical custody of their maternal grandparents in Grundy, Virginia. He sees them every other weekend when they come to Mingo County, West Virginia and stay with his parents. Pursuant to the parties' agreement, Mr. Dean is not required to make monthly child support payments. Further, Mr. Dean provided sufficient evidence to the Board that he does not owe any past due child support. Consequently, this was not an issue bearing upon his admission after the November 2009 meeting with the Board. (November 11, 2009, Board Interview Trans., pp. 28-31).

Section XI of his application for the February 2009 bar examination. In this update, Mr. Dean disclosed that he had been charged with brandishing a weapon in Mingo County. This case is styled, *State v. Dean*, Case No. 08-M-444. Mr. Dean indicated this case was dismissed when the alleged victim failed to show-up for the hearing.

As discussed in greater detail below, the Board was also concerned about a letter it received in April 2008 from Heather L. Deskins of the West Virginia Department of Education ("WVDE"). The letter from Ms. Deskins stated that Mr. Dean had applied for a long-term substitute teacher's license on March 4, 2008, and in his application, he failed to disclose his August 2006 arrest for domestic assault and battery in Buchanan County, Virginia. (Letter from Heather L. Deskins dated April 10, 2008). The letter also stated that Mr. Dean failed to disclose that the Board had taken adverse action against him regarding his application for a license to practice law.<sup>2</sup>

Mr. Dean passed the February 2009 bar examination, and he was given a qualified but favorable recommendation by the District 6 Character Committee. However, due to the aforementioned criminal and civil matters, the Board requested a face-to-face interview with Mr. Dean. This interview was conducted on November 11, 2009, at the Board's office in Charleston, West Virginia. At this meeting, Mr. Dean was questioned about his cocaine abuse, and the 2004 criminal charge of possession of a controlled substance that resulted from his illicit drug use. He indicated that the first time he ever used cocaine was in December 2003 when he and another individual studying for the February 2004 bar examination used the drug. (November 11, 2009, Board Interview Trans., pp. 3-5). Mr. Dean told the Board during the November 2009

---

<sup>2</sup> The WVDE letter is in error on this point. The Board had taken no adverse action against Mr. Dean before the time he applied for a teaching license in March 2008.

interview that his second time using the drug was in March 2004. Next, he stated he purchased the drug in Huntington, West Virginia in April 2004, but did not have the opportunity to use it because he was arrested. (November 11, 2009, Board Interview Trans., pp. 5-6). Upon further questioning by the Board, Mr. Dean stated that he did not have any more contact with the illegal drug after his April 2004 arrest, concluding that the arrest was "a hard lesson learned." (November 11, 2009, Board Interview Trans., p. 10):

During the November 2009 interview, the Board also questioned Mr. Dean regarding the other three criminal charges he disclosed in his application. With regard to the 2005 misdemeanor battery charge brought in Mingo County, he stated that this charge was groundless. Further, Mr. Dean explained that the charge was dismissed without prejudice by the magistrate court, because the alleged victim and the investigating officer failed to attend the hearing.

When questioned by the Board, Mr. Dean also denied any criminal liability relating to the 2006 assault and battery charge filed in Buchanan County, Virginia. (November 11, 2009, Board Interview Trans., pp. 14-17). Apparently, the charge stemmed from a disagreement he had with his then wife, Tracy Owens Dean. *Id.* The presiding judge entered a finding of "facts sufficient for finding of guilt." However, the Virginia court deferred judgment for one year and ordered Mr. Dean to pay court costs of \$66.00 and to attend anger management classes.<sup>3</sup> Mr. Dean paid the court costs,

---

<sup>3</sup> The deferral was entered pursuant to Virginia Code § 18.2-57. This statute is similar to West Virginia Code § 61-2-28, which authorizes first time offenders charged with a crime of domestic violence to be placed on a pre-trial diversion program. Like West Virginia's law, the Virginia law allows the court to dismiss the charge if the defendant complies with the terms in place during the deferral period.

but he did not complete the anger management classes. Ultimately, the charge was dismissed and a conviction was not entered against Mr. Dean.

Related to the domestic assault and battery charge, the Board asked Mr. Dean why he did not disclose this charge to the WVDE in his application for a long-term substitute teaching license. According to Ms. Deskins' letter, the question posed on the application was: "Have you ever been charged with or convicted of a misdemeanor." Apparently, Mr. Dean disclosed the 2004 possession charge and conviction, but he did not disclose the domestic assault charge.<sup>4</sup> Mr. Dean characterized this omission as an "oversight," and stated that he subsequently provided the WVDE with appropriate documentation when they inquired about the arrest. (November 11, 2009, Board Interview Trans., pp. 37-38). Finally, at the November meeting, the Board questioned Mr. Dean about the 2008 brandishing charge. He stated that this charge was baseless, and he reported it was dismissed by the magistrate court because the alleged victim did not attend the hearing.

Following the November 2009 interview, by letter dated November 30, 2009, the Board asked Mr. Dean to undergo a psychiatric evaluation to be conducted by Dr. Bobby L. Miller, M.D. Mr. Dean complied with this request, meeting with Dr. Miller at his Huntington office on November 30, 2009. Dr. Miller issued his report on or about December 11, 2009, summarizing some of the facts regarding Mr. Dean as follows:

1. His first exposure to cocaine was at the suggesting of a peer law student during a time when they were studying for the Bar.
2. After failing the Bar he experienced a negative emotional reaction. After recollecting the favorable mood elevating

---

<sup>4</sup> The WVDE learned of this charge when a FBI background check revealed the arrest.

feelings of cocaine, he decided to purchase more which resulted in his arrest due to a "sting" circumstance causing his arrest before he could take the drug. He pled guilty to a misdemeanor and paid a fine.

3. Despite the legal and social consequences of his arrest, he again bought cocaine and used a near-gram quantity in only 5 hours.

4. Two weeks later he used cocaine again and at that time he "realized" that this behavior was self-destructive. He claimed he made a simple decision to never use the drug again (2004).

5. At the time of the evaluation, Mr. Dean agreed to an unannounced urine drug screen. He then refused to submit to the test claiming it was an "invasion of his physical privacy" and not a legitimate part of the evaluation.

6. After discussing the matter with his Counsel, Mr. Dean returned to the office 24 hours later and offered a urine specimen that was negative for substances of abuse. Given the rapid metabolism of some substances this negative result is a relevant data point but does not conclusively prove that Mr. Dean is free from all forms of substance abuse.

7. Mr. Dean's personal history is reflective of a personality style of acting without thorough consideration of the consequences of his actions.

8. Mr. Dean's report that he required four attempts to pass the Bar is consistent with untreated Adult ADD.  
(December 8, 2009, Dr. Miller Report, pp.2-3).

Additionally, Dr. Miller offered the following opinions regarding Mr. Dean:

1. Mr. Dean presently possesses the intellectual and psychological capacities to practice law in the State of West Virginia.

2. Mr. Dean met DSM-IV criteria for Stimulant Abuse (cocaine) in sustained remission.

3. It is likely that Mr. Dean's description of favorable effects from cocaine is related to his untreated Adult Attention Deficit Disorder (ADD).

4. Treatment (optional) of his ADD would be predicted to reduce his risk of stimulant abuse relapse.  
(December 8, 2009, Dr. Miller Report, p. 1).

By letter dated January 20, 2010, the Board informed Mr. Dean that it would recommend his admission to the practice of law subject to the following conditions:

During a two-year conditional period, a Board approved attorney will supervise your employment and send quarterly reports to the Bar Admissions office regarding your status and job performance;

Continuous treatment of your adult ADD with a licensed psychiatrist or psychologist with quarterly reports for the two-year period;

Random drug screens set up through the psychiatrist or psychologist; and

Continuous participation in AA or NA meetings on at least a weekly basis for the two-year period with self-certification to supervising attorney of participation.

(Board letter to Mr. Dean, dated January 20, 2010).

On February 22, 2010, this Court notified the Board that it was deferring its ruling on Mr. Dean's admission, because additional information was needed regarding the 2005 battery charge and the 2008 brandishing charge. Mr. Dean submitted a letter to this Court and the Board on or about March 4, 2010, further explaining the bases for these two charges. He also provided court records related to each case. Subsequently, this Court recommended the Board conduct a second interview with Mr. Dean to gather additional information about these two criminal charges.

Mr. Dean's second personal interview with the Board took place on May 4, 2010. During this interview, much of the Board questioning centered upon the discrepancies

between Mr. Dean's chronology of cocaine use given to the Board during the November 11, 2009 Board meeting and the different chronology Mr. Dean provided to Dr. Miller less than three weeks later. Specifically, the Board questioned Mr. Dean about why he told the Board of three occasions of cocaine use or possession, ending with the "hard lesson learned" when he was arrested. (November 11, 2009, Board Interview Trans., p. 10). But the accounting of cocaine use that he provided to Dr. Miller indicated two occasions of post-arrest use of the drug. (December 8, 2009, Dr. Miller Report, p. 2); (May 4, 2010, Board Interview Trans., pp. 52-64).

Following the May 4, 2010 interview, the Board reconsidered its earlier recommendation of conditional admission. The Board then, by unanimous vote, denied Mr. Dean's application for admission. By letter dated May 18, 2010, the Board informed Mr. Dean that it was denying his admission to the practice of law. The denial was without prejudice and with leave to reapply after one year. During that one-year period, the Board indicated Mr. Dean should comply with the recommendations contained in Dr. Miller's earlier report, and submit to random drug screening by his treating physician. (Board letter to Mr. Dean dated May 18, 2010). At Mr. Dean's subsequent request, the Board further elaborated on the basis for the denial of his application, stating that the Board's determination that Mr. Dean did not possess the requisite character and fitness for the practice of law was based upon the findings of his lack of candor, particularly regarding his history of drug usage. (Board letter to Mr. Dean dated June 10, 2010).

In accordance with Rule 6.0(a) of the Rules for Admission to the Practice of Law in West Virginia, by letter dated May 20, 2010, Mr. Dean requested an administrative hearing regarding the Board's decision to deny his admission. The first of two

administrative hearings was held on June 15, 2010, and Mr. Dean appeared *pro se* at this hearing. He testified on his own behalf, and no other witnesses were presented. Mr. Dean's testimony at this hearing was not persuasive on the Board's concern that his varied and stifled accounting of certain events demonstrated he was not candid about his post-arrest drug use.

For instance, when questioned about why he did not disclose his post-arrest cocaine use to the Board, Mr. Dean testified that: "it slipped my mind." (June 15, 2010, Administrative Hearing Trans., p. 27). Further, he appeared to claim that the more relaxed atmosphere in Dr. Miller's office made it easier to be forthright. Next, when queried about why he did not disclose his August 2006 arrest for assault and battery to the WVDE, Mr. Dean once again claimed he had a defective memory. Incidentally, the memory lapse appears to have been cured by a FBI background check, as the following line of questioning reveals:

MR. HEDGES: -- but apparently, according to the Department, did not disclose that you had been arrested for assault on a family member, your former wife --

MR. DEAN: Right.

MR. HEDGES: -- in Buckhannon County, Virginia in 2006.

MR. DEAN: Yes.

MR. HEDGES: And apparently they learned of that through a FBI fingerprint check --

MR. DEAN: Yes, I do --

MR. HEDGES: -- is that accurate?

MR. DEAN: Yes, it is accurate. I overlooked that, but I did, subsequent to that, when they brought that to my attention, I sent them that information.

MR. HEDGES: Okay.

MR. DEAN: A copy of the record -- of the Order from the Judge, and yeah, I simply overlooked that one. I just forgot. I mean I made a mistake, you know.

(June 15, 2010, Administrative Hearing Trans., pp. 42-43).

At Mr. Dean's request, a second administrative hearing was held on August 18, 2010. Mr. Dean was represented by counsel at this hearing, and he again testified on his own behalf. With the assistance of counsel, Mr. Dean provided a more detailed accounting of his criminal record, and he attempted to explain the discrepancies in his reporting regarding his post-arrest cocaine use and his failure to report the 2006 assault and battery charge to the WVDE.

On November 30, 2010, the hearing examiner issued his Recommended Decision, finding Mr. Dean had demonstrated his good moral character. He recommended that Mr. Dean be granted conditional admission to the practice of law with the conditions previously set by the Board.

Following the second administrative hearing, and after receiving the hearing examiner's decision, the Board considered all of the evidence relating to this matter and unanimously concluding that he had failed to demonstrate his good moral character. By letter dated February 2, 2011, the Board informed Mr. Dean that his request for admission to the practice of law was being denied without prejudice, and that he could reapply after one year.<sup>5</sup> Mr. Dean now appeals this decision.

### III. STANDARD OF REVIEW

This Court has established a two-part standard of review of decisions of the Board of Law Examiners which either recommend admission or denial of admission to the practice of law in West Virginia. This standard of review provides:

This Court reviews *de novo* the adjudicatory record made before the West Virginia Board of Law Examiners with regard to questions of law, questions of application of the

---

<sup>5</sup> The Board later clarified to Mr. Dean that the one-year period to reapply began on May 18, 2010, the date of its first denial letter.

law to the facts, and questions of whether an applicant should or should not be admitted to the practice of law. Although this Court gives respectful consideration to the Board of Law Examiners' recommendations, it ultimately exercises its own independent judgment. On the other hand, this Court gives substantial deference to the Board of Law Examiners' findings of fact, unless such findings are not supported by reliable, probative, and substantial evidence on the whole record. Syl. Pt. 2, *In the Matter of Dortch*, 199 W. Va. 571, 486 S.E.2d 311 (1997).

As demonstrated in the record and described herein, the Board's factual findings are supported by reliable, probative, and substantial evidence. Further, the Board's conclusions of law are well founded in view of the evidence.

#### IV. ARGUMENT OF LAW

**The West Virginia Board of Law Examiners Correctly Concluded that the Applicant, Woodie Kevin Dean, Failed to Demonstrate He Possesses the Good Moral Character Necessary for Admission to the Practice of Law.**

Rule 5.0 of the Rules for Admission to the Practice of Law in the State of West Virginia states in relevant part:

No person shall be admitted to the practice of law in the State of West Virginia, either by examination or on motion without examination, unless such person demonstrates to the Board, either directly or through the applicable District Character Committee, that he or she is possessed of good moral character.

While it is not the sole consideration, this Court has consistently emphasized the significance of the requirement that bar applicants demonstrate they possess good moral character, stating: "Good moral conduct has always been considered a qualification essential to admission to the Bar." *In re Eary*, 134 W. Va. 204, 207-08, 58 S.E.2d 647, 650 (1950). In consideration of the crucial role the evaluation of an applicant's character plays in the admission process, this Court has found that it is

important to "carefully scrutinize the qualifications of all persons who seek admission to the bar." *In the Matter of Dortch*, 199 W. Va. 571, 577-78, 486 S.E.2d 311, 317-18 (1997). Indeed an intense level of vigilance and scrutiny of an applicant's "moral qualifications" are required by this Court and the Board to protect the public interest and the integrity of the legal system. *Id.*

The United States Supreme Court has held that there is no constitutional infirmity in requiring a person seeking admission to the Bar to possess the "character and fitness requisite for an attorney and counsellor-at-law." *Law Students Civil Rights Research Council, Inc. v. Wadmond*, 401 U.S. 154, 159, 91 S. Ct. 720, 724, 27 L. Ed. 2d 749, 756 (1971). In *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957), the Supreme Court held that, consistent with due process, bar admission authorities in the various states may require bar applicants to demonstrate good moral character to qualify for admission to the Bar. The requirement that an applicant demonstrate he or she has good moral character derives from the unique standing of the legal profession in our society. As Justice Frankfurter stated:

[A]ll the interests of man that are comprised under the constitutional guarantees given to "life, liberty and property" are in the professional keeping of lawyers. . . . From a profession charged with such responsibilities, there must be exacted those qualities of truth-speaking, of a high sense of honor, or granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as "moral character." *Schwartz v. Board of Bar Examiners*, 353 U.S. at 247, 77 S. Ct. at 760-61, 1 L. Ed. 2d at 806.

This Court has recognized, "'good moral character' can be defined in an almost unlimited number of ways." *Frasher v. West Virginia Bd. of Law Examiners*, 185 W. Va. 725, 731, 408 S.E.2d 675, 681 (1991) (quoting *Konisberg v. State Bar of California*, 353

U.S. 252, 262-63, 77 S. Ct. 722, 727-28 (1957)). To be certain, the inquiry into an applicant's good moral character is not limited to whether he or she has committed a crime or engaged in some conduct that evinces moral turpitude. *Id.* Despite a fixed standard, some universal tenets have been recognized as fundamental for admission to the practice of law. As this Court has explained: "The inquiry into good moral character which emphasizes honesty, fairness, and respect for the rights of others and for the laws of this state and nation is a proper and suitable standard for those who desire to be an integral part of the administration of justice in the courts of this state." *Frasher*, 185 W. Va. at 731, 408 S.E.2d at 681 (quoting *Florida Bd. of Bar Examiners v. G.W.L.*, 364 So.2d 454, 458 (Fla. 1978)).

In the instant matter, Mr. Dean's past criminal history was certainly enough to give the Board pause for deeper inquiry. But it is his failure to be fully candid about this conduct, except when presented with the inconsistencies and short-comings in his reporting, that ultimately led the Board to conclude that he does not presently possess the requisite good moral character necessary for admission to the West Virginia Bar.

**1. Mr. Dean Was Not Candid with the Board Regarding His Post-Arrest Use of Cocaine.**

In the years between his initial application in March 2002, and his successful completion of the bar examination in February 2009, Mr. Dean acquired a varied personal history -- a history that was unfortunately tainted with several criminal charges and one conviction. Understandably, given Mr. Dean's admitted substance abuse and criminal history, the Board determined that he was an applicant that needed to have a personal interview before a decision could be made regarding his eligibility for admission. Mr. Dean's first interview with the Board was held on November 11, 2009.

This meeting was his opportunity to be frank with the Board and to make unreserved disclosures regarding his previous drug use.

Regrettably, it appears that Mr. Dean did not take full advantage of this opportunity. The record in this matter shows that Mr. Dean gave varied accounts of his drug use -- giving the Board one version and providing Dr. Miller with another. Particularly, Mr. Dean told the Board that he did not engage in any illegal drug use after his April 2004 arrest. He stated that the arrest was "a hard lesson learned." (November 11, 2009, Board Interview Trans., p. 10). He left the Board with the distinct impression that he never possessed or used cocaine after that time. Inexplicably, just 2 1/2 weeks later, Mr. Dean told Dr. Miller that he used cocaine at least two additional times after his April 2004 arrest. (December 8, 2009, Dr. Miller Report, p. 2).

During the administrative hearings, Mr. Dean acknowledged that he engaged in the use of cocaine after his April 2004 arrest in Cabell County. (June 15, 2010, Hearing Trans., p. 32-35); (August 18, 2010, Hearing Trans., p. 41). His best explanation for that admitted misrepresentation to the Board was just that "it slipped my mind." (June 15, 2010, Hearing Trans., p. 27). Or that it "was a mistake in the chronology." (August 18, 2010, Hearing Trans., p. 72). Further he claimed that being questioned by seven lawyers at one time placed him under immense strain. In contrast, he stated Dr. Miller's office was a relaxed environment in which he could openly discuss his drug use. According to Mr. Dean, the varied circumstances in which he was questioned may have led to this inconsistent reporting. (August 18, 2010, Administrative Hearing Trans., pp. 41-42).

Certainly, it is understandable that Mr. Dean felt considerable pressure when being questioned by the seven-member Board. But it is beyond reasonable understanding to accept that something as significant as the post-arrest use of cocaine would simply slip one's mind. Complete honesty and candor, even when under substantial pressure such as when being questioned by a court during contentious litigation, is a character trait of utmost importance to the profession of law. Mr. Dean unfortunately failed to demonstrate that vital trait when he chose to reconstruct the facts before the Board -- under pressure or not. This particular failure may not be as flagrant or deceptive as misrepresentations presented to the Board in other cases, but it cannot be ignored or explained as mere memory lapse or confusion in chronology. It was a lapse of good judgment and character.

In his petition for appeal, Mr. Dean now appears to claim that he did not provide two different chronologies regarding his post-arrest use of cocaine. (Petition for Appeal, p. 8). He argues that the reference to a "lesson learned" was about the death of the confidential informant who he purchased cocaine from in 2004. Not only does this explanation come rather late in the day, it is not compatible with Mr. Dean's testimony regarding his inconsistent reporting. (August 18, 2010, Administrative Hearing Trans., pp. 40-41). He has admitted he used cocaine after his arrest for possession of a controlled substance. More importantly, he admitted that he offered two different chronologies of his post-arrest drug use. (June 10, 2010, Administrative Hearing Trans., pp. 32-35).

**2. Mr. Dean's Failure to Disclose His 2006 Arrest for Domestic Assault and Battery to the WVDE Exacerbated the Board's Concern that He was Not Being Candid About His Past Conduct.**

On or about March 4, 2008, Mr. Dean applied for a long-term substitute teaching license with the WVDE. The WVDE's application is comprehensive, and it requires applicants to answer a battery of questions. Understandably, some of the questions seek to discern whether the applicant has ever engaged in criminal conduct.

Particularly, with regard to the instant matter, Question 6 on the application reads: "Have you ever been charged with or convicted of a misdemeanor?" As stated above, when he answered this question, Mr. Dean disclosed his 2004 arrest and conviction for possession of a controlled substance in Cabell County. However, he did not disclose that he had been arrested and charged with domestic assault and battery in Buchanan County, Virginia. The WVDE learned of this charge when it was disclosed in a FBI background check. According to Mr. Dean, when the WVDE asked him about this charge, he provided them with the appropriate court records, though that hardly explains why he did not disclose it in the first instance.

When questioned about his failure to report this charge to the WVDE at his first personal interview with the Board, Mr. Dean claimed it was an "oversight." (November 11, 2009, Board Interview Trans., pp. 37-38). Similarly, when questioned at the administrative hearing in June 2010, Mr. Dean claimed he "overlooked" this charge, or he "just forgot" about it. (June 15, 2010, Admin. Hearing Trans., pp. 42-43). At the second administrative hearing held on August 18, 2010, Mr. Dean appears to claim that this assault charge was not disclosed because the case was ultimately dismissed. (Aug. 18, 2010, Admin. Hearing Trans., pp. 44-45).

Unfortunately, Mr. Dean's claims of forgetfulness and his insistence that disclosure was not paramount because the charge was dismissed, offered little comfort to the Board. The fact remains that Mr. Dean had an obligation to disclose this charge when asked about it. Obviously, it is not only the charge itself, but Mr. Dean's failure to be candid about it that now concerns the Board. For it was only when he was pressed about it that Mr. Dean disclosed the 2006 assault charge to the WVDE. Moreover, this charge was not dismissed because it was groundless as Mr. Dean implied during his testimony. Rather, the presiding judicial officer found that there were sufficient facts for a conviction, but as a first-time offender under Virginia law, judgment against Mr. Dean was deferred for one year. The charge was dismissed because Mr. Dean did not commit any additional violations of the law during that period.

Mr. Dean's failure to be fully candid with the WVDE about this criminal charge cannot be simply overlooked or discounted as forgetfulness. Frankly, it is difficult to believe that one just forgets being arrested. Thus, this incident came into consideration regarding the Board's opinion of Mr. Dean's character. The importance of candor for one seeking admission to the practice of law cannot be overstated.

Indeed, when an applicant has a criminal record, candor regarding the conduct and the charges is of the utmost importance. *Matter of Dortch*, 199 W. Va. 571, 486 S.E.2d 311 (1997); *In re McMillian's Eligibility for Conditional Admission to the Practice of Law*, 210 W. Va. 265, 557 S.E.2d 319 (2005). Mr. Dean's failure to disclose his arrest for domestic assault and battery to another licensing authority demonstrated a lack of candor. Given this incident, and his lack of candor to the Board regarding his

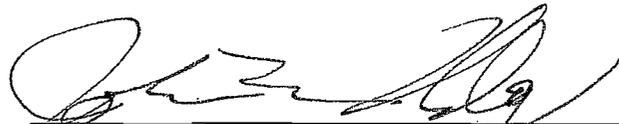
post-arrest cocaine use, the Board correctly concluded that he does not presently possess the requisite good moral character for admission to the practice of law.

#### **V. CONCLUSION**

The West Virginia Board of Law Examiners unanimously concluded that the Applicant, Woodie Kevin Dean, failed to demonstrate he currently possesses the requisite good moral character necessary for admission to the practice of law in West Virginia. Mr. Dean failed to be completely candid with the Board regarding his post-arrest use of cocaine. And he failed to accurately report his criminal history on an application submitted to the WVDE. It was only when pressed on these matters, or when the discrepancies in his reporting were brought to light that he was totally candid. Candor is a quality of paramount importance for a member of the Bar, because it bears upon his conduct in court, his interactions with other attorneys, and with his relationship with clients. Thus, the Board correctly determined that Mr. Dean did not carry his burden of establishing his good moral character and his petition for appeal should be denied.

WEST VIRGINIA BOARD OF  
LAW EXAMINERS  
Respondent

By Counsel



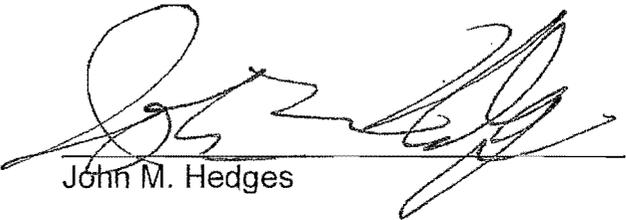
John M. Hedges (WV Bar ID 1662)  
Stephanie J. Shepherd (WV Bar ID 9716)  
HEDGES LYONS & SHEPHERD, PLLC  
141 Walnut Street  
Morgantown, WV 26505  
(304) 296-0123

Counsel for Respondent West Virginia Board of Law Examiners

**CERTIFICATE OF SERVICE**

I, John M. Hedges, do hereby certify that I served a true and correct copy of the foregoing *Response Brief on Behalf of the West Virginia Board of Law Examiners* upon the following by U.S. mail, postage prepaid, and via electronic e-mail, this 4<sup>th</sup> day of April 2011:

James M. Cagle  
1200 Boulevard Tower  
1018 Kanawha Boulevard, East  
Charleston, WV 25301



John M. Hedges