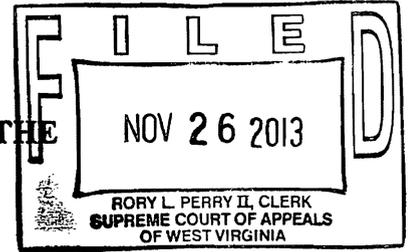


**BEFORE THE SUPREME COURT OF APPEALS OF THE  
STATE OF WEST VIRGINIA**



**IN RE: LOUIS DANTE' DITRAPANO, an  
annulled member of the West Virginia State  
Bar, Petitioner**

**Bar No. 6778  
Supreme Court No.: 12-0677  
I.D. No. : 12-03-323**

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**BRIEF OF THE PETITIONER LOUIS DANTE' DITRAPANO**

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COMES NOW Petitioner LOUIS DANTE' DITRAPANO, by his counsel Robert H. Davis, Jr. and presents his Brief of argument and authority to the Honorable Supreme Court of Appeals of West Virginia as follows:

**I. STATEMENT OF THE CASE**

We are before the Court on a hearing request by the Office of Disciplinary Counsel ["ODC"] following the Hearing Panel Subcommittees["HPS"] Report and Recommendation that Petitioner Louis Dante' DiTrapano ["Mr. DiTrapano"] be reinstated to the practice of law, with conditions, without further petition or hearings, at the conclusion of his supervised release.

This Court annulled the law license of Petitioner DiTrapano on May 10, 2007.

On June 1, 2012, Petitioner filed the "Petition of L. Dante DiTrapano for Readmission to the Practice of Law in West Virginia."

Mr. DiTrapano did not ask for hearing before this Court and was willing to have the case submitted in conference on the recommendations of the HPS. However, since we are now before the Court we hereby ask that this Honorable Court order:

(1) That Petitioner DiTrapano be reinstated immediately, on probation, pursuant to 3.15(1) of The Lawyer Disciplinary Procedure, with the same conditions as the HPS recommended until January 14, 2015, or at the conclusion of his supervised release whichever is sooner or;

(2) Following the recommendations of the Hearing Panel Subcommittee, the reinstatement of Petitioner's license without further petition or hearing at the successful completion of his supervised release with those same conditions. Which are:

a. Petitioner DiTrapano's legal practice be supervised by his employer (or other supervisor) and by the director of the West Virginia Lawyer Assistance Program for two years following his reinstatement pursuant to a written agreement between Mr. DiTrapano, his supervisor, the director, and the ODC.

b. Prior to reinstatement, Petitioner DiTrapano be required to pay his dues to the West Virginia State Bar and complete all required CLE;

c. Petitioner DiTrapano be ordered to reimburse the Lawyer Disciplinary Board the costs of these reinstatement proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

d. Petitioner DiTrapano be ordered to continue his attendance at Alcoholics Anonymous and Narcotics Anonymous meetings 3-4 times a week.

e. Petitioner DiTrapano remain a member of the Lawyer Assistance Program (LAP) for a period of two years from the date of reinstatement and he be available upon request to assist the Board of Directors in speaking to bar members who struggle with alcoholism and/or addiction; and

f. Petitioner DiTrapano, at his expense, give random urine screens to LAP for a period of two years from reinstatement.

### **1. Nature of the Proceedings and Recommendations of the Hearing Panel Subcommittee**

This matter proceeded to hearing in Charleston, West Virginia on March 27, 2013, and on April 17, 2013. The Hearing Panel Subcommittee was comprised of Richard M. Yurko, Jr. Esquire, Chairperson; Charles J. Kaiser, Jr., Esquire; and Frances P. Allen, layperson. The Hearing Panel Subcommittee heard testimony from Stuart Calwell, Harry Deitzler, George Aulenbacher, Rick Wilcox, James Coleman, Louis Prather, George Daugherty, Bobbi Holland, Thomas Flaherty, Matthew Watts, Joey Holland, Mary Lou Newberger, Robert Johnson, Phillip Vanater, Teri DiTrapano, and Petitioner. The HPS also considered 80 exhibits which were marked into evidence that included over 100 letters supporting Petitioner's rehabilitation and/or reinstatement. These letters were from Petitioner DiTrapano's employer, current and former presidents of the West Virginia State Bar, dozens of members of the West Virginia State Bar, psychologists, teachers, police officers, former employees, former partners, co-workers, pastors, community leaders, neighbors, members from the recovery community, people from the community at large, family members, and friends. The ODC did not call any witnesses and received no letters that objected to Petitioners reinstatement in response to their publication in the newspaper.

The ODC has stipulated on the record that Petitioner DiTrapano possesses the legal competence to resume the practice of law. The ODC has also acknowledged, and the HPS has found, that the evidence reflects that Petitioner DiTrapano has demonstrated great remorse for his previous misconduct, has acknowledged the severity of that misconduct, and has accepted full responsibility for his misconduct. The ODC also acknowledges and the HPS has found that

Petitioner DiTrapano has demonstrated a record of honorable behavior since disbarment and presented testimony that reflected he has come to terms with his past wrongdoing and intends to adhere to high moral standards in the future. Additionally, the ODC notes, and the HPS finds by clear and convincing evidence that the Petitioner has presented a record of rehabilitation concerning his drug addiction.

## **2. Findings of Fact by Hearing Panel Subcommittee**

The HPS findings of fact are true, correct, and accurate, were not seriously contested by the Office of Disciplinary Counsel and are recited, in part, below to give this Court a convenient reference for its consideration of Petitioner DiTrapano's reinstatement petition:

Petitioner was born in Charleston, West Virginia on October 23, 1962. Petitioner began experimenting with drugs and alcohol during his teenage years. In late 1988, Petitioner sought in-patient treatment for his addictions at the Charlotte Treatment Center in Charlotte, North Carolina. Petitioner became "clean" on February 22, 1989, and remained drug and alcohol free for a period of approximately fifteen years.

During that time, Petitioner completed college, attended and completed law school, and worked as a successful attorney in his father's law firm in Charleston. Petitioner regularly attended twelve-step meetings and actively focused on his sobriety for the first ten of the fifteen years he was sober. According to Petitioner, he did not regularly attend his meetings or remain focused on his sobriety during the last five years before relapse because he became overconfident in his sobriety.

In 2004, Petitioner developed a cough with chest pain and wheezing. Petitioner was coughing and wheezing while coaching his son's Little League baseball team, when a local doctor, the father of one of the players, suggested that Petitioner come into his office in order to

receive an examination. The doctor did not ask Petitioner about any history of substance abuse, nor did Petitioner volunteer such information. The doctor prescribed Petitioner Tussionex Suspension cough syrup, which contained hydrocodone. Petitioner stated that although he knew he should not have taken this medicine, he did anyway, and quickly became addicted to it.

For the next year, Petitioner abused the cough syrup, which eventually led to Petitioner abusing oxycodone. Additionally, during that time, the six-year old son of one of the Petitioner's friends accidentally drowned in Petitioner's family pool. Petitioner maintained that after the tragedy, he "spun out of control" and began smoking crack cocaine. In early 2006, Petitioner's family and friends intervened, and Petitioner agreed to seek treatment for his drug addiction in Florida.

On March 14, 2006, while in Florida to begin treatment, Petitioner was arrested in St. Petersburg, Florida and charged with possession of cocaine. Petitioner pleaded not guilty to the charges, and was able to post bond with the condition that he report to a treatment facility for his substance abuse. A felony information was subsequently filed in the Pinellas County Court on April 5, 2006.

On April 6, 2006, a federal search warrant was executed for Petitioner's home in Charleston, West Virginia. Among the items seized were several loaded firearms, ammunition, and crack cocaine. The firearms were located in locked safes.

On June 14, 2006, Petitioner was indicted in the United States District Court for the Southern District of West Virginia. Count One of the two-count indictment charged Petitioner with knowingly possessing various firearms in and affecting interstate commerce while being an unlawful user of and addicted to a controlled substance in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(2). Count Two charged Petitioner with knowingly making a false statement and

representation to a licensed dealer of firearms regarding his dependence on a controlled substance in violation of 18 U.S.C. § 924(a)(1)(A).

Petitioner was arrested on June 15, 2006, pursuant to a federal arrest warrant in Charleston, West Virginia. Petitioner appeared before the Honorable Mary E. Stanley, United States Magistrate Judge, was arraigned, and was remanded to the custody of the United States Marshals Service pending his detention hearing. On June 20, 2006, Petitioner again appeared before Judge Stanley for his detention hearing, after which he was ordered detained pending his trial set for August 23, 2006, before Honorable David A. Faber, United States District Judge.

On June 26, 2006, pursuant to Rule 3.27 of the West Virginia Rules of Lawyer Disciplinary Procedure, the Office of Disciplinary Counsel (“ODC”) filed a petition seeking the immediate temporary suspension of Petitioner’s license to practice law in the State of West Virginia, until the pending disciplinary proceedings against him before the Lawyer Disciplinary Board were completed. By order entered the same day, the Supreme Court of Appeals of West Virginia (“Supreme Court”) determined that good cause existed pursuant to Rule 3.27(c), and set the matter for hearing.

On July 26, 2006, Petitioner pled guilty to Count One of the Indictment. Petitioner was released on bond pending sentencing. Additionally, on July 28, 2006, Judge Faber entered an order wherein he ordered Petitioner to report to the Pretera Center (PARCWEST) in Huntington, West Virginia, immediately upon his release so that Petitioner could complete the Center’s twenty-eight day in-house substance abuse treatment program.

On or about August 3, 2006, Petitioner, through Counsel Michael J. DelGuidice, presented to the Supreme Court his brief in opposition to the petition seeking the immediate temporary suspension of Petitioner’s license to practice law in the State of West Virginia.

Thereafter, on August 29, 2006, Petitioner appeared before Judge Stanley upon his arrest on the United States Probation Office's Petition for Action on Conditions of Pretrial Release. The Probation Office's Petition alleged various violations of Petitioner's conditions of home confinement. Accordingly, Petitioner appeared before Judge Faber on September 5, 2006, for a bond revocation hearing.

On September 8, 2006, Judge Faber entered a Memorandum Opinion and Order ordering that Petitioner's pre-sentencing supervised release and bond be revoked, and that Petitioner be remanded to custody of the United States Marshal pending his sentencing. On that same day, ODC filed a supplement to its petition seeking the immediate temporary suspension of Petitioner's license to practice law in the State of West Virginia, then pending before the Supreme Court. The parties appeared before the Supreme Court for oral argument on September 13, 2006, and the Supreme Court granted ODC's petition on September 14, 2006.

Petitioner appeared for his sentencing hearing on October 10, 2006, and was sentenced to a term of imprisonment of six months and a term of three years supervised release. The Court also recommended that Petitioner participate in a substance abuse treatment program.

On January 17, 2007, the Conditions of Probation and Supervised Release were filed. While on supervised release, Petitioner was arrested on April 1, 2007, and charged with simple possession of methamphetamine. Based on Petitioner's arrest, on April 17, 2007, John B. Edgar, Senior United States Probation Officer, petitioned the Court to revoke Petitioner's supervised release. Mr. Edgar filed an amended petition to revoke Petitioner's supervised release, which petition alleged that Petitioner failed to appear for his scheduled urinalysis testing on April 5, 2007, and that Petitioner provided a urine specimen that returned positive for cocaine and morphine on April 10, 2007. A revocation hearing was held on April 18, 2007, and the Court

ordered Petitioner to be imprisoned for twenty-four months without any subsequent supervised release.

On November 16, 2006, ODC filed a “Petition Seeking Annulment of Respondent’s Law License Pursuant to Rule 3.18 of the Rules of Lawyer Disciplinary Procedure.” ODC based its petition on Rule 3.18 of the Rules of Lawyer Disciplinary Procedure, due to Petitioner having entered a guilty plea to a crime involving moral turpitude and professional unfitness based on his conviction in the United States District Court for the Southern District of West Virginia. ODC’s petition also alleged that Petitioner violated Rule 8.4(b) of the Rules of Professional Conduct, which states that it is professional misconduct for a lawyer to “commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.”

On May 10, 2007, the Supreme Court entered an order that granted the Office of Disciplinary Counsel’s “Petition Seeking Annulment of Respondent’s Law License Pursuant to Rule 3.18 of the Rules of Lawyer Disciplinary Procedure,” thereby annulling Petitioner’s license to practice law in the State of West Virginia.

During the time that Petitioner was incarcerated after having his supervised release revoked by the United States District Court for the Southern District of West Virginia, he voluntarily participated in the institution’s nine-month “Residential Drug and Alcohol Assistance Program.” Upon his release from prison, Petitioner completed the six-month aftercare program at the Community Corrections Center, a half-way house located in Rand, West Virginia. Subsequently, Petitioner represents that he has continuously participated in substance abuse and family counseling, has attended Alcoholics Anonymous and Narcotics Anonymous meetings, has been gainfully employed, and has regularly attended church services.

According to Petitioner, in November of 2008, while at the half-way house, Petitioner received a target letter from the United States Attorney's Office for the Southern District of West Virginia. The target letter included a charge that in July, 2005, Petitioner made a false statement to a bank to secure a loan of \$500,000.00 for a strip mall project in the Kanawha County section of Charleston, West Virginia.

On July 17, 2009, the United States Attorney filed Information that charged Petitioner with knowingly making a false statement for the purpose of influencing the actions of United Bank, an institution whose accounts were insured by the Federal Deposit Insurance Corporation, in connection with his application to obtain a \$500,000.00 loan. The Information further charged that Petitioner forged the signature of another individual, yet stated to the bank that the individual had personally signed the relevant documents, all in violation of 18 U.S.C. § 1014. The other individual was a long-time and substantial client of Petitioner DiTrapano.

On August 27, 2009, Petitioner entered a written plea of guilty to the charge, and appeared before the United States District Court for the Southern District of West Virginia for a plea hearing. The Court accepted Petitioner's guilty plea, and released him on bond pending his sentencing hearing, which hearing was scheduled for January 14, 2010.

As part of the written plea, Petitioner and the United States stipulated and agreed to facts that comprised the offense charged. The parties agreed that, in July 2005, Petitioner approached United Bank in order to secure a \$500,000.00 loan for the aforementioned project in which he and another individual intended to invest. Although Petitioner was aware that the other individual wished to invest his portion of the investment, approximately \$225,000.00, from the individual's liquid assets, Petitioner falsely represented to the bank that both he and the individual would execute the loan papers and would be jointly liable for the loan. Based on

Petitioner's representations and the forged loan documents, United Bank issued the loan for \$500,000.00 in the name of Petitioner and the other individual, and Petitioner took a portion of the loan proceeds for himself.

On July 14, 2005, Petitioner caused an account titled in the other individual's name to be opened at United Bank with Petitioner's personal address used as the address on the account. On July 15, 2005, the \$500,000.00 loan proceeds were deposited into the account. The parties further stipulated that while Petitioner used \$435,000.00 of the loan proceeds for loan related purposes, he also deposited \$35,000.00 from the loan into his personal checking account and subsequently used said funds for non-loan related purposes.

Petitioner appeared for his sentencing hearing before United States District Court Judge Thomas E. Johnston on January 14, 2010. Judgment was entered, and, after Judge Johnston reviewed on the record the unusual timing of Petitioner's prosecution, Petitioner was sentenced to a term of imprisonment of one day and a term of five years supervised release, the maximum term to which a criminal defendant in these circumstances may be sentenced. The Court also ordered Petitioner to perform 1,000 hours of community service during his period of supervised release.

On June 1, 2012, and pursuant to Rules 3.30 and 3.33 of the West Virginia Rules of Lawyer Disciplinary Procedure, Petitioner filed the "Petition of L. Dante DiTrapano for Readmission to the Practice of Law in West Virginia" ("Petition for Readmission"). Along with the Petition for Readmission, pursuant to Rules 3.32(a) and 3.33(b) of the West Virginia Rules of Lawyer Disciplinary Procedure, Petitioner filed his "Reinstatement Questionnaire," which included, among other things, twelve letters written in support of his reinstatement. On June 5,

2012, Petitioner filed the “Motion to Allow Filing of Redacted Copy of Petition for Readmission to the West Virginia Bar.”

On August 3, 2012, Petitioner filed a Motion for Early Termination of Supervised release in Federal Court, in which motion he represented that he had been identified by Post-Conviction Risk Assessment as low risk and would have significantly less contact with his probation officer during the remainder of his term of supervised release. Petitioner also noted that he had completed the 1,000 hours of community service, and that he was participating in the West Virginia State Bar Lawyers Assistance Program. Although the Court noted that it did not doubt the Petitioner’s efforts to “right his previous wrongs are sincere and significant,” the Court found that early termination of supervised release was inappropriate. Accordingly, on September 17, 2012, the Court denied Petitioner’s motion.

The Office of Disciplinary Counsel commenced an investigation pursuant to Petitioner’s Petition for Reinstatement. ODC took Petitioner’s sworn statement on August 24, 2012. On September 4, 2012, Petitioner filed a “Motion to Amend Petition of L. Dante DiTrapano for Readmission to the Practice of Law in West Virginia.” (“Motion to Amend Petition”), requesting that the Supreme Court permit him to file documentation in support of his Petition for Reinstatement. On October 24, 2012, the Supreme Court entered an order granting Petitioner’s Motion to Amend Petition.

Petitioner maintains that he has been sober since April 10, 2007, and the Hearing Panel has credited those claims by Petitioner as bolstered by witnesses testifying on that issue. Additionally, since 2007, Petitioner has completed his sentence stemming from the revocation of his supervised release relating to his 2006 conviction in the United States District Court for the Southern District of West Virginia. Moreover, Petitioner has worked hard to rehabilitate himself

by having completed various substance abuse programs, including the program in prison, as well as continuously participating in substance abuse and family counseling, and has attended Alcoholics Anonymous and Narcotics Anonymous meetings. Petitioner states that he has reconnected and made amends with the people he had hurt when he was an addict, including his family, friends, and former colleagues and clients.

Since Petitioner's license to practice law in the State of West Virginia was annulled in 2007, he has been gainfully employed, both as a legal assistant for attorney John Mitchell, Jr. in Charleston, West Virginia from July 1, 2008, through December 31, 2008, and as a legal assistant for attorney Stuart Calwell in Charleston, West Virginia from April, 2009 through the present. Petitioner noted in his Reinstatement Questionnaire that he was unemployed briefly from approximately January, 2009 until April, 2009, when he began working for Mr. Calwell.

Since the 2007 annulment of his license, Petitioner was involved in one criminal case, as noted above, wherein he pled guilty to Information filed by the United States Attorney for the Southern District of West Virginia in 2009. Petitioner is presently serving a five-year term of supervised release, which supervised release is scheduled to terminate on or about January 14, 2015.

### **3. Key Conclusions of Law of the Hearing Panel Subcommittee**

#### **a. Conclusions as to Good Character and Knowledge and Skill in the Law**

The HPS concluded that Petitioner DiTrapano has met his burden pursuant to Lawyer Disciplinary Board v. Hess, 201 W. Va. 195, 495 S. E. 2d 563 (1997), to show his basic good character and knowledge and skill in the law. The HPS correctly found that the evidence shows, and Disciplinary Counsel has candidly conceded, that Petitioner has shown a course of conduct that would enable the Supreme Court to conclude with full confidence that there is little

likelihood that after being readmitted to the practice of law, that he will engage in unprofessional conduct, and has further proven by strong evidence that he possesses the integrity, moral character, and legal competence to assume the practice of law. This moral character and fitness includes un rebutted proofs of a strong, continuing and durable rehabilitation from alcoholism and drug abuse. We encourage the Honorable Court to honor this finding both out of respect for the effort and judgment of the HPS as recorded above and based upon the overwhelming record clearly before it.

**b. Nature of Convictions Leading to Disbarment Do Not Preclude Reinstatement**

The HPS has also properly concluded that Mr. DiTrapano has, by clear and convincing evidence, met his burden on the threshold question presented in In re Brown, 166 W. Va. 226, 240, 273 S. E. 2d 567, 574 (1980) that the nature of the underlying offense leading to disbarment is not such that it precludes reinstatement without further inquiry as to rehabilitation. The convictions of Petitioner DiTrapano do not reflect a record of significant, repeated involvement in government corruption such as is found in In Re Brown, 166 W.Va. 226, 273 S.E.2d 567 (1980) or Lawyer Disciplinary Board v. Arch A. Moore, Jr., 214 W.Va, 789, 591 S.E.2d 338 (2003) and failure to demonstrate remorse for past improper actions, as found in L.D.B v. Moore and In the Matter of: Steven M. Askin, No 30724 (W.Va. May 11, 2006). The addiction-related convictions of Petitioner and the record of the reinstatement also are, upon their facts, significantly different and less serious than seen in In Re Petition for Reinstatement of Thomas E. Esposito, No. 11-0671 (W.Va. June 12, 2013) (denial of petition for reinstatement where the petitioner failed to prove he possessed integrity, moral character and legal competence to resume the practice of law) and In Re: Petition for Reinstatement of Mark O. Hrutkay, No. 11-0136 (W.Va. June 12, 2013) (petition for reinstatement denied as petitioner had failed to prove he

possessed integrity, moral character and legal competence to practice law and where the Supreme Court of Appeals could not conclude that petitioner's reinstatement would not have a justifiable and substantial adverse effect on the public confidence in the administration of justice). Both Hrutkay and Esposito had been involved in significant political corruption in Logan County and had demonstrated no mitigating factors leading to their convictions and disbarments, and there was significant public objection of record to their petitions.

**c. Effect of Immediate Reinstatement on Public's Perception of the Honor, Reliability and the Integrity of the Bench and Bar**

Likewise, addressing an additional element announced in In re Brown, the HPS concluded that the Petitioner DiTrapano has proven a record of rehabilitation by clear and convincing evidence. Additionally, the Panel found as a matter of law that Petitioner DiTrapano's addiction to drugs during his relapse from 2004-2007 was a major mitigating factor in the crimes and unprofessional conduct that resulted in his convictions and disbarment. This undisputed finding by the Hearing Panel in light of the comparatively less-serious crimes of which Petitioner DiTrapano was convicted [illegal possession of firearms while addicted to a controlled substance and forgery of a client's signature to loan documents and use of a small fraction of the proceeds for his own purposes] constitutes a substantial point of differentiation between Petitioner's present effort at rehabilitation and current request for readmission and the situations of others whose petitions were denied.

Additionally, the HPS concluded after hearing testimony from Mary Lou Newberger, Federal Public Defender for the Southern District of West Virginia, reviewing the United States Sentencing Commission Reports, United States District Judge Johnston's sentencing transcript, and the standing federal case law in United States v Pierce, 75 F. 3d 173, 177 (4<sup>th</sup> Cir. 1996), that Petitioner DiTrapano's supervised release was intended to be rehabilitative and not punitive,

bolstering its conclusion that the seriousness of the convictions of Petitioner DiTrapano (as expressed in the terms of his sentence assessed by the Federal Court) were not such as to constitute a bar to his present consideration for admission.

The HPS reported that it could not conclude that reinstating Petitioner DiTrapano while on supervised release would not have a substantial adverse effect on the public's confidence in the administration of justice notwithstanding the overwhelming and uncontested record of rehabilitation of Petitioner. The HPS, nevertheless concluded that once Petitioner DiTrapano successfully completes the supervised release or the supervised release is terminated, he should be reinstated to the practice of law, with conditions, without further petition or hearing. This finding doubtless reflected the HPS' belief of the testimony of the many witnesses called by Petitioner who testified that, given the public's awareness that addiction was a direct cause of Petitioner DiTrapano's legal problems, the public would understand his reinstatement as a demonstration of the bar's commitment to the policy of rehabilitation of its members in proper situations and would, therefore, reflect well on the bar. The testimony clearly showed that the public supports persons who rehabilitate and are given a second chance. It is the position of Petitioner that the very motivations and the strong evidentiary background that prompted the HPS to make its recommendation of conditional reinstatement of Petitioner upon completion or termination of his supervised release justify this Honorable Court's decision to establish the logical, rehabilitative position that immediate reinstatement of Petitioner DiTrapano to practice (subject to the conditions stated by the HPS) will create no danger that the public will not receive skillful, honest, and, most importantly, sober representation and that, as witnesses for Petitioner established, the public will view such reinstatement in a positive, rehabilitative and progressive manner.

As noted, the record of testimony in this matter unanimously establishes Petitioner DiTrapano's integrity, moral character and legal competence to practice. Significantly, all witnesses asked to testify as to expected public reaction and reaction by the bench and bar testified that there would be no justifiable and substantial adverse or detrimental effect on public confidence in the administration of justice. The HPS correctly reported that the ODC acknowledged that this Court has reinstated persons who were convicted felons in the past.

## **II. SUMMARY OF PETITIONERS ARGUMENT**

Petitioner DiTrapano argues here that the findings and recommendations of the HPS ought to be, with two exceptions, accepted by the Court. First, Petitioner respectfully disagrees with the HPS conclusion that Petitioner should not be reinstated while serving the sentence of supervised release. Second, Petitioner asserts that the HPS failed to give appropriate weight to testimony in the record by community leaders and members of the bar that West Virginians support and do not condemn the concept of second chances for persons who have rehabilitated themselves and their lives and that the public, bar and bench would welcome, not criticize, the reinstatement of Petitioner on the specific, unique facts applicable to this proceeding; thus such reinstatement would embarrass neither the bar nor this Honorable Court nor represent any threat to public confidence in the law and courts.

There is now no credible argument on the present record that Petitioner DiTrapano has failed to meet the strong burden of proof as to all elements required of an applicant for readmission. In light of the extremely strong proofs of record here of Petitioner's rehabilitation of character and of his recovery and sobriety, and in light of the fact that this Honorable Court has properly reinstated persons previously convicted of felonies in the past, it is just and proper that this Court exercise its authority under the rules and reinstate Petitioner DiTrapano

immediately on probationary status during the remaining 12 months from this date while he completes his supervised release.

In the alternative, we here ask this Court to affirm the HPS by adopting in total the report and recommendations of the HPS and that it order reinstatement of Petitioner upon the satisfactory completion or termination of his supervised release without further petition or hearing.

### **III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

On October 18, 2013, the HPS by its chairperson Richard M. Yurko Jr., presented to this Honorable Court its report and recommendation that Petitioner L. Dante' DiTrapano be reinstated as an attorney to the West Virginia Bar with conditions, at the satisfactory completion or termination of his supervised release without further petition or hearing. Petitioner DiTrapano did not ask for a hearing.

On October 24, 2013, pursuant to rule 3.32(c) of the Rules of Lawyer Disciplinary Procedure, Rachael Cipoletti, Chief Lawyer of the ODC submitted her written request for a hearing.

By Order entered October 30, 2013, this Honorable Court provided a briefing schedule and set this matter for oral argument on Tuesday, January 28, 2014.

### **IV. ARGUMENT**

#### **a. Standard Applicable to Determinations of Reinstatement**

Petitioner DiTrapano respectfully submits to this Honorable Court that applying the law of West Virginia to the facts in this case compels a finding that he has exceeded the requirements for proof of his fitness for reinstatement to the practice of law and asks the Court to restore his law license immediately, on a probationary status pursuant to 3.15(1) of the Lawyer Disciplinary

Procedure or in the alternative, to adopt the recommendations of the HPS filed with this Honorable Court on October 18, 2013.

“A *de novo* standard applies to a review of the adjudicatory record made before the Committee on Legal Ethics of the West Virginia State Bar as to questions of law, questions of application of the law to the facts, and questions of appropriate sanctions; this Court gives respectful consideration to the Committee’s recommendations while ultimately exercising its own independent judgment. On the other hand, substantial deference is given to the Committee’s finding of fact, unless such findings are not supported by reliable, probative, and substantial evidence on the whole record.” Syl. Pt. 3. Committee on Legal Ethics v. McCorkle, 192 W. Va. 286, 452 S.E.2d 377 (1994).

The list of permissible sanctions under Rule 3.15(1) WVRLDP establish that it is within the authority of this Honorable Court to order that Petitioner DiTrapano be placed on **probation** to practice law for a period of time that the Court deems appropriate. It is Petitioner’s position that being reinstated to practice law during the period of time in which he completes the final months of a five year rehabilitative sentence is consistent with the fundamental policy of rehabilitation established in such Rule and in line with the findings and conclusions of law of the HPS reported to this Court

The list of permissible sanctions under Rule 3.15(1) WVRLDP clearly provide that it is within the authority of this Honorable Court to order that Petitioner DiTrapano be placed on **probation** to practice law for a period of time that the Court deems appropriate. It is Petitioner DiTrapano’s position that his reinstatement to practice law during the period of time in which he completes the final months of a five year rehabilitative sentence is consistent with the

fundamental policy of rehabilitation established in such Rule and in line with the findings and conclusions of law of the HPS reported to this Court.

**b. Evidence of Community Support of Petitioner's Reinstatement is Compelling**

There is no evidence in the "whole record" that supports the finding and recommendation by the HPS that reinstatement would cause any adverse community and bar reaction; indeed, the record overwhelmingly establishes the opposite nor does case law require such a conclusion. All the evidence before the HPS and, now, this Court is positive with respect to the expected public perception of Petitioner DiTrapano's reinstatement while on supervised release, and this Court's review of HPS findings will confirm that it appears to have substantially credited the testimony to that effect. Such evidence arises from the testimony of respected members of the public and the bar and not one word to the contrary is found in the record before this Court. Petitioner carefully examined the issue of the potential public and bar reaction to a prompt reinstatement of Petitioner in its two-day presentation of evidence to the HPS. Additionally, members of the bar and the community wrote letters to this Honorable Court expressing their desire that Petitioner DiTrapano's law license be reinstated. We remind this Court specifically of the location, within the record, and the sources, of this strong body of supporting testimony:

Testimony of Stuart Calwell, Esq. [Vol I., pp. 37-38, 40-42]; Harry Deitzler, Esq. [Vol I. pp. 79-81]; George Aulenbacher [Vol I., p.112]; Lewis Prather [Vol I., p. 189]; George Daugherty, Esq. [Vol I., pp. 212-218, 237-238]; Bobbi Holland [Vol. I., p 262]; Thomas Flaherty, Esq.[Vol I., pp. 272-273, 283]; Rev. Matthew Watts [Vol I., pp. 316-317, 330]; Joey Holland [Vol I., pp. 340, 348]; Mary Newberger Esq.[Vol II, pp. 34-35, 52, 62-64, 75-76, 83]; Bobby Johnson [Vol II,

p. 102]; Gerard Endres, P.E. [Jt. Exh. 78 at 001768 – 01770]; Thomas P. Maroney Esq. [Jt. Exh. 76 at 001715-001716]; Thomas R. Goodwin Esq. [ Jt. Exh. 76 at 001731-001732]; Guy R. Bucci Esq. [Jt. Exh. 76 at 001741-001742]; DiTrapano, Barrett, and Dipiero Firm [Jt. Exh. 76 at 001740]; James Cagle Esq. [Jt. Exh. 76 at 001720-001721]; Mark Atkinson Esq. [Jt. Exh. 76 at 001730]; Scott Partridge Esq. [Jt. Exh. 76 at 001717]; Mellissa Luce Esq. [Jt. Exh. 76 at 001728-001729]; William Alford [Jt. Exh. 78 at 001773-001774]; David Carriger Esq. [Jt. Exh. 78 at 001767]; S. Douglas Adkins Esq. [Jt. Exh. 76 at 001757]; Beth Cinco [Jt. Exh. 76 at 001761]; Luisa DiTrapano [Jt. Exh. 76 at 001752-001753]; Joan Smith [Jt. Exh. 76 at 001750]; Kevin Davis Esq. [ Jt.Exh. 78 at 001766]; Darlene Chapman [Jt. Exh. 76 at 001736-001737]; P. Rodney Jackson Esq. [Jt. Exh. 76 at 001733-001734]; and Sgt. Tim Palmer [Jt. Exh. 78 at 001764-001765].

Although the HPS hesitated to take the next step of recommending immediate reinstatement of Petitioner DiTrapano, it clearly found Petitioner DiTrapano had met all other specific standards for reinstatement, hesitating to reinstate him only because of its view that reinstatement pending his completion of supervised release would have a substantial adverse effect on public confidence in the administration of justice. However, it is also clear that all the evidence before the HPS was positive with respect to the public perception of Petitioner DiTrapano's reinstatement while on supervised release. Therefore, Petitioner asks this Court, based on the overwhelming evidence of his record of rehabilitation, his acceptance of responsibility for his past misconduct, his clear expressions of remorse, his record of honorable behavior since disbarment, his high moral character, his legal competence, and numerous safeguards in place for

the public, to reinstate him immediately on **probation** with the same conditions set forth in the HPS Report and Recommendations.

**c. Petitioner Has Fully Met All Other Elements Justifying Reinstatement**

In this matter the HPS reports and recommends that Petitioner DiTrapano has proven all but one of the requisite elements for successful reinstatement. We believe that there is no basis for any argument to this Honorable Court at this date that Petitioner has not presented compelling proof of his rehabilitation, character, knowledge and skill in the law, community spirit – his overall fitness for reinstatement - as established by existing Rules and case decisions.

A Petition for Reinstatement following annulment of one’s license to practice law is governed by Rule 3.33 of the West Virginia Rules of Lawyer Disciplinary Procedures. Rule 3.33 states in pertinent part, as follows:

“(b) After the expiration of five years from the date of disbarment, a person whose license to practice law has been or shall be annulled in this State and who shall desire reinstatement of such license may file a verified petition in the Supreme Court of Appeals reciting the cause of such annulment and what the person shall have done in satisfaction of requirements as to rehabilitation, restitution, conditions or other acts incident thereto, by reason of which the person should be reinstated as a member of the state bar and his or her license to practice law restored. The petitioner shall also file a completed reinstatement questionnaire provided by the Office of Disciplinary Counsel. At the time of filing the petition and questionnaire with the Clerk of the Supreme Court of appeals, the petitioner shall also file a copy of each with the Office of Disciplinary Counsel, which shall conduct a prompt investigation thereof and shall file a report with a Hearing Panel Subcommittee of the Lawyer Disciplinary Board.”

On June 1, 2012 Petitioner DiTrapano filed his verified petition and completed reinstatement questionnaire with the West Virginia Supreme Court of Appeals and Office of Disciplinary Counsel. The necessary five years of separation from the Bar has clearly run. (Joint Exhibits 60 and 61)

In Syllabus Points 1 and 2 of In re Brown, 166 W Va. 226, 273 S. E. 2d 567(1980), the Court established the factors necessary for readmission to the bar, holding:

1. The general rule for reinstatement is that a disbarred attorney in order to regain admission to the practice of law bears the burden of showing that he presently possesses the integrity, moral character, and legal competence to resume the practice of law. To overcome the adverse effect of the previous disbarment he must demonstrate a record of rehabilitation. In addition, the court must conclude that such reinstatement will not have a justifiable and substantial adverse effect on public confidence in the administration of justice and in this regard the seriousness of the conduct leading to disbarment is an important consideration.

2. Rehabilitation is demonstrated by a course of conduct that enables the court to conclude there is little likelihood that after such rehabilitation is completed and the applicant is readmitted to practice law he will engage in unprofessional conduct.

Applying the factors set forth above, the evidence of record has conclusively established, and the ODC has stipulated to and/or acknowledged that Petitioner DiTrapano has demonstrated to them the integrity, moral character, and legal competence to resume the practice of law. The HPS also has correctly concluded that each of these elements has been proven by “clear and convincing” evidence. Additionally the ODC has properly noted and the HPS has found that Petitioner DiTrapano has shown a “record of rehabilitation” by “clear and convincing” evidence. In order to demonstrate to this Court the immense effort of the Mr. DiTrapano to recover from his addiction and rehabilitate his life we here bring to the attention of the Court some of Petitioner’s history since disbarment for its consideration.

Petitioner DiTrapano’s comprehensive and exhaustive record of rehabilitation began on April 10, 2007, and has successfully continued without any interruption until this present day. While an inmate at the Federal Correctional Institute in Morgantown, Petitioner DiTrapano voluntarily signed up for and entered the 9 month, 500 hour comprehensive Residential Drug and Alcohol Program (RDAP). He did so despite being the only inmate that could not be given the “year off” of his sentence which is the incentive for most all inmates who take this treatment. (M. Newberger: Transcript at Vol. II pg. 40) The RDAP program housed inmates in a separate dorm

from the mainstream and they were required to attend sessions for 3 hours in the morning and 3 hours in the afternoon as well as work, attend AA meetings, and progress through the 12 step program of Alcoholics Anonymous. There were fewer privileges in prison available to RDAP participants and they were scrutinized heavily by the correctional officers and counselors on the compound. (Joint Exhibit 62 at 001472)

Petitioner DiTrapano began his recovery process while in the RDAP program in Morgantown and began to accept responsibility for his conduct which occurred while in the throes of his addiction. He communicated regularly with family members and friends and wrote dozens of letters to those he had harmed apologizing for his actions and offering to make amends to those he had harmed. (Joint Exhibit 62 at 001473-001474) Teri DiTrapano, Petitioner's wife testified,

“Going to prison changed him, yes. The end of that whole process of using and being arrested and going to prison absolutely changed him. He ended up taking responsibility for his life and his actions.”(T. DiTrapano: Transcript at Vol. II pg. 141)

In April 2008, Petitioner DiTrapano successfully completed the 9 month program and was selected by the counselors and his peers to deliver the graduation speech on behalf of the 60 men in his section. He was the only inmate from his class that did not immediately transition to the halfway house because he was not allowed, by law, to get the “time off” for participating in the program. (Joint Exhibit 61 at 001224) (Joint Exhibit 71 at 001668) Petitioner DiTrapano remained in the RDAP UNIT assisting other inmates who were new to the program and chairing an Alcoholics Anonymous Meeting twice a week. He was released from FCI Morgantown on June 30, 2008. (Joint Exhibit 44 at 001006)

Petitioner DiTrapano transferred to the Community Corrections Center (CCC) in Rand, West Virginia for the zero tolerance six (6) month aftercare program. The CCC in Rand is a

Federal facility that houses inmates released from prison who are transitioning back to society. It also has an aftercare program for RDAP graduates which requires each participant to work, attend counseling, attend AA Meetings, and submit to daily breathalyzer tests (BAC) and weekly urinalysis screens.(Joint Exhibit 62 at 001478) Petitioner gained employment, successfully completed his counseling sessions, attended an AA Meeting every day, never failed a BAC test or urine screen, attended church every Sunday, and on December 24, 2008, was discharged from the CCC having successfully completed the RDAP aftercare program and returned to his family's home. (G. Daugherty: Transcript at Vol. I pg. 198)

During the six(6) month stay at the CCC in Rand, WV, Petitioner DiTrapano received a Target Letter from the United States Attorney's Office (USAO) concerning conduct that had occurred in July, 2005, prior to the March, 2006, conduct that was the source of his conviction, imprisonment, and disbarment.(M. Newberger: Transcript at Vol. II pgs. 8, 10, 12, 13) Petitioner DiTrapano was deemed indigent and was appointed an attorney from the Federal Public Defenders Office, Mary Lou Newberger, to defend the charges against him. (M. Newberger: Transcript at Vol. II pgs. 8, 9)

Despite the significant additional pressure represented by the new charges, Petitioner DiTrapano did not revert to substance abuse but, in an exhibition of strength, continued to attend AA/NA Meetings, counseling, church services, and stayed clean and sober throughout the USAO's attempt to again incarcerate him. (T. Flaherty: Transcript at Vol. I pgs. 287, 288)

In April, 2009, Petitioner DiTrapano began working as a legal assistant/paralegal for The Calwell Practice and specifically for attorney W. Stuart Calwell. He informed his employer of his past conviction, incarceration, and current rehabilitation. He also told Mr. Calwell of the pending prosecution and the chance that he once again would be going to prison. (S. Calwell:

Transcript at Vol. I pg. 9) The Calwell Practice and Petitioner DiTrapano took the appropriate steps to insure that co-workers, clients, and outside counsel were aware that he was a disbarred, unlicensed lawyer working as a legal assistant. (Joint Exhibit 62 at 001561) Petitioner DiTrapano continued to follow his program of recovery and was hired as full time employee of The Calwell Practice with benefits in July, 2009. (S. Calwell: Transcript at Vol. I pg. 9)

On August 27, 2009, Petitioner DiTrapano pled guilty to a federal crime in violation of 18 U. S. C. 1014 “providing false information to a bank when obtaining a loan.” The Federal Sentencing Guidelines suggested a sentence of 41-51 months. Sentencing was set for January 14, 2010, before the Honorable Thomas E. Johnston. (M. Newberger: Transcript at Vol. II pg. 14) The United States Attorneys’ Office acknowledged that “all information known to the United States indicates that the defendant was heavily using controlled substances at the time he committed the instant offense.” (Joint Exhibit 41 at 000771-000773)

More than 75 letters from lawyers, community leaders, family members, recovering alcoholics and friends were received by Judge Johnston, each writer expressing their desire that Petitioner DiTrapano not be incarcerated again. Among these letters were representations from the alleged victims of the crime that they did not lose any money, that the project that was the subject of the bank transaction turned out to be profitable, that they were against the prosecution of the case, and that they did not believe that Petitioner DiTrapano should be incarcerated. (Joint Exhibit 44 at 000892-001102)

At the January 14, 2010, sentencing, Petitioner DiTrapano allocuted to the court his remorse, accepted responsibility for his actions, and apologized publicly to his family, extended family, former law partners, friends, and everyone in the community that he had harmed by his

conduct during his relapse. There were over 200 people from the community in the courtroom in support of Petitioner DiTrapano. (S. Calwell: Transcript at Vol. I pgs. 17, 57)

Judge Johnston pronounced sentence from the bench acknowledging that the conduct in 2005 that gave rise to the conviction was part of Petitioner DiTrapano's relapse, that he had never seen such an unusual prosecution in terms of its timing, that the 24 month sentence from Judge Faber set Petitioner DiTrapano on the path of recovery, that all the potential victims of the crime had been made whole and those potential victims have advocated to the Court for a non-incarcerated sentence. Judge Johnston also found, that Petitioner DiTrapano has made,

“extraordinary steps toward rehabilitation, beginning at FCI Morgantown, but continuing to this day, from what I can tell, going to meetings and improving yourself. You appear to be supporting your family, contributing to the community, working and voluntarily continuing to participate in substance abuse treatment. It appears that as of today you have made sincere and significant both in terms of substance and in terms of time of getting yourself back on the right path.” (Joint Exhibit 44 at 000886-000888)

Judge Johnston sentenced Petitioner DiTrapano to 1 day in prison and 5 years supervised release with the special condition that Petitioner DiTrapano perform 1000 hours of Community Service. (Joint Exhibit 44 at 000888-000889)

Petitioner DiTrapano, who was already doing community service work for Pastor Matthew Watts and the Hope Community Development Corporation, continued to assist Matthew Watts by speaking publicly to groups, helping recently released inmates, and assisting men that struggled with substance abuse. He also involved his employer, Stuart Calwell, in a large West Side home renovation project that is part of the revitalization vision Pastor Watts has for this blighted area of Charleston. As part of this project the Calwell Practice, with Petitioner DiTrapano's administrative direction, has assisted in the title search and closing on over 30 homes that were either vacant, abandoned, or in foreclosure as part of this project. This

community service has continued well beyond the Court ordered time that Petitioner DiTrapano had dedicated to that community effort. (Joint Exhibit 62 at 001504-001505)

In the first three years of Petitioner DiTrapano's supervised release, he successfully completed the 1000 hours of community service and continues to assist Pastor Watts in his various programs since satisfying that condition of his sentence. (M. Watts: Transcript at Vol. I pgs. 313, 314) Outside of the court ordered community service, Petitioner DiTrapano has voluntarily helped numerous at risk children and struggling alcoholics and addicts. (M. Watts: Transcript at Vol. I pgs.308, 312) Mr. Gerard G. Endres, P. E., wrote to the Court:

"Few things give me more joy than to watch a person rise up out of desperate situations, make a recovery, be restored and then move forward in life by leading the way for others through mentoring and encouraging others to either avoid life's traps altogether or to reach out and help rescue those who might desperately need their own second chance. Mr. DiTrapano is one such individual. I apologize for the length of this letter but, since I have only known this man for a seemingly short period of time, I wished to explain to you how this man has gone above and beyond any normal professional standards to reach out to us, to serve us and to comfort and assure us in these most painful and trying circumstances. In my opinion, Mr. Dante' DiTrapano has not only learned from his past mistakes but has allowed that experience to help transform him into a better human being during his recovery process. I am convinced that you would be doing our community a great service by restoring him, giving him a second chance so to speak, to serve the public by fully utilizing his talents, training and skills as a reinstated member of the West Virginia State Bar."(Joint Exhibit 78 at 001768-001770).

This and many other statements in the record provide strong and compelling evidence that members of the public who know Petitioner DiTrapano and of his rehabilitation will welcome his reinstatement and that his reinstatement will not create mistrust or disrespect for the bar or the Court which reinstates him.

Petitioner DiTrapano and his family attend church every Sunday and most weeks attend Wednesday and Sunday nights. (B. Holland: Transcript at Vol. I pg. 242) Petitioner DiTrapano attends Alcoholics Anonymous and Narcotics Anonymous meetings 3-4 times per week and has exhibited an excellent recovery program that is recognized by other members with extensive sobriety who testified before the HPS. (G. Daugherty: Transcript at Vol. I pgs. 212, 213) All of Petitioner DiTrapano's relationships in his life have been restored and are thriving today.

Petitioner DiTrapano volunteered and was referred to the West Virginia Lawyers Assistance Program and is mentored by board member Brad Sorrels. (Joint Exhibit 62 at 001463) The Office of Disciplinary Counsel referred Petitioner DiTrapano to Dr. Ralph Smith, a licensed Psychiatrist, for an independent evaluation. Dr. Smith concluded that Petitioner has achieved adequate control of his previous serious substance abuse problems, that he has a stabilized program of recovery, that his cognition is intact, and there is no evidence of psychiatric disorder. Dr. Smith recommended counseling and random urine screens as conditions of reinstatement "over the coming year or two."(Joint Exhibit 69 at 001575-001592)

Additionally, Petitioner DiTrapano was referred to Dr. Jack Stringfellow of Pyramid Counseling by the United States Probation Department. Dr. Stringfellow is a Licensed Professional Counselor, a Certified Rehabilitation Counselor, a Certified Addictions Counselor, an Internationally Certified Advanced Addictions Counselor, and an Internationally Certified Criminal Justice Addictions Professional. He wrote to the Court in December, 2009, that,

"Dante' has been fully engaged as a participant in counseling activity, attending all appointments and being actively present in therapeutic activity." "It is important to note, however, that in relationship to illicit drugs there was relatively little to be accomplished. It is evident to me that Dante' has for a long time been successful in his efforts toward recovery from addiction. I presume that this results from his prior participation in prison treatment programming, as well as active ongoing working of

Alcoholics/Narcotics Anonymous programs. Of course none of this would have had efficacy without his own determination to set his life right.”

“His current relationship to the community, his family, and his profession is revealed to me via his remorse and his acceptance of responsibility for the range of consequences he has experienced and continues to experience. It appears that he has for some time been throwing his energies toward a successful rehabilitation.” (Joint Exhibit 44 at 001054-001055)

Petitioner DiTrapano has tested negative on over 100 urine screens since April 10, 2007, administered by the Federal Bureau of Prisons, United States Probation Department, Pyramid Counseling, and Dr. Ralph Smith. (Joint Exhibit 41 at 00822) (Joint Exhibit 44 at 001071) (Joint Exhibit 73 at 001690-001700) (Joint Exhibit 69 at 001584) Additionally, Petitioner DiTrapano has a close relationship with Reverend Mathew Watts who pastors the Grace Bible Church on Charleston’s west side who provides counseling to him periodically and is available for Petitioner DiTrapano whenever he needs to talk.(M. Watts: Transcript at Vol. I pg. 324) (M. Newberger: Transcript at Vol. II pg. 53) (L. Dante’ DiTrapano: Transcript at Vol. II pgs. 240, 269-270) (Joint Exhibit 62 at 001470) Pastor Watts testified:

“Well, basically what Dante’ shared with me is that, you know, his choices, his decisions, his actions basically created a –like a hurricane in the lives of his wife, his children, his family and the people he loved and he hurt a lot of people and really let them down. And being in prison had broken him to the point where he realized that he really needed a relationship with God if he was going to turn his life around, if he was going to be the husband and father and man he really needed to be. And so, you know, I know Dante’ pretty well and he knows me well enough to know that if you’re not serious, particularly about that subject matter, then I’m not interested in having a conversation for the sake of having a conversation. So I know the sincerity. I could see the brokenness in his eyes, in his face and in his voice and that he was sincere and wanting to rebuild his life one step at a time.” (M. Watts: Transcript Vol. I at pg. 315)

As noted above in this Brief, the HPS found after listening to the testimony and examining sixteen witnesses over two days of hearings, reviewing the extensive exhibits

submitted in this case, and carefully deliberating all the evidence of record that Petitioner DiTrapano had proven a “record of rehabilitation” by clear and convincing evidence as stated in In re: Brown. This finding, based upon overwhelming supportive testimony as noted above, is, we submit, one that the Honorable Court must credit and adopt out of respect for the HPS and for the integrity of the full record now before it.

The remaining consideration under Syllabus Point 1, in In re: Brown, and the only issue upon which the HPS believed the Petitioner had failed to meet his burden, was that they had “serious reservations regarding the reinstatement of Mr. DiTrapano’s law license while he remains on supervised release” and that they could not conclude that such reinstatement would not have, “a substantial adverse effect on the public confidence in the administration of justice.”

Petitioner DiTrapano argues that this conclusion is in error. This Court must correct it by holding that, in making its determination as to whether or not his reinstatement would have an adverse effect on the public confidence in the administration of justice, the Court should look not only at important testimony of record on that issue but also look to its language found at the end of syllabus point 2 in In re: Brown that provides that it ought also confirm that the “seriousness of the underlying conduct is an important consideration”

Petitioner DiTrapano was born with the disease of addiction, a condition for which he had no choice. He began his legal career by successfully treating his addiction but lost focus of the necessary requirements in order to maintain sobriety and suffered a relapse. In Lawyer Disciplinary Board v. Hardison, 205 W.Va.344, 518 S.E.2d 101 (W.Va. 1999) this Court clearly identifies alcoholism and addiction as a disease. Petitioner DiTrapano pled guilty to a federal crime, 18 USC 922(g)(3) “being an addicted person in possession of firearms.” Thus one of the elements of the crime to which Petitioner DiTrapano pled guilty directs the Court to the very

essence of the Hardison case. The other prong of the crime, “being in possession of firearms” while protected by our Second Amendment as a constitutional rights becomes a statutory violation in certain limited situations including when a person is “addicted to controlled substances.” United States District Court Senior Judge David Faber found as a matter of law that the guns of Petitioner DiTrapano the government had confiscated from a locked safe in his home were purchased and owned legally for a time for “sport and collection purposes only” and had never been used in any illegal manner. This fact in the record points to the technical aspect of the conviction and supports an argument that, while admittedly clearly illegal, the actions of Petitioner never put any person in peril and clearly were not owned for a purpose that was ever an actual threat to the public or to the justice system. Thus there is no fair or logical argument that such conviction may fairly be claimed as one that shows deep flaws of character or presents an unforgiveable threat to the public and such argument is plainly wrong in the light of the facts of record here.

While Petitioner DiTrapano clearly accepts responsibility for not staying on the course of his early recovery and setting himself up to relapse, he asserts under syllabus point 2 of In re: Brown that the underlying conduct leading to disbarment is not so serious that reinstatement would cause the public to question this Court’s integrity, the standing of the bar or this Court’s commitment to the administration of justice and full protection of the public.

The only case in the United States our research was able to identify in which a lawyer’s license was in jeopardy of being annulled for possessing a gun while being an unlawful user of a controlled substance in violation of 18 U.S.C.S. 922(g)(3) and 924(a)(2) - the exact crime for which Petitioner DiTrapano was disbarred - was a disciplinary action dismissed by the Iowa Supreme Court because “this crime had no effect on the professional relationships he had with

his clients, fellow lawyers, and judges.” The lawyer was publicly reprimanded for his possession of drugs. Iowa Supreme Court Attorney Disciplinary Board vs. Keele, 795 N.W. 2d 507; 2011 Iowa Sup. LEXIS 16. The Keele case illustrates that, particularly in the facts unique to Petitioner’s disbarment, the conviction and disbarment are not of such seriousness as should cause him never to be eligible for readmission to practice or that his readmission would have a substantial adverse effect on the public’s confidence in the administration of justice. The other crime to which Petitioner DiTrapano pled guilty in 2009 arose from conduct that occurred in 2005 during a relapse in his recovery and predated the conduct and crime for which he was originally convicted and for which he was disbarred. That conduct, as all of Petitioner’s conduct during that time, was behavior associated with his disease of addiction. In the West Virginia case Lawyer Disciplinary Board vs. Vieweg, 194 W. Va. 554. 461 S.E. 2d 60, the petitioner was convicted of “providing false information to a bank when obtaining a loan” in violation of 18 U. S. C. 1014 and was disbarred in 1988. Mr. Vieweg was reinstated with conditions six (6) years later.

Mr. Vieweg’s conduct was more egregious than that of Petitioner in that it involved a pattern and practice of intentionally misrepresenting information when borrowing money from various banks in order to cover payments of loans to banks from which Mr. Vieweg had previously borrowed money. The result was that several banks lost substantial amounts of money. Like Petitioner DiTrapano, Mr. Vieweg suffered from an illness and showed a record of rehabilitation sufficient for this Court to reinstate his law license with conditions. Comparison of the background of the conviction of Mr. Vieweg with that of Petitioner shows that fairness and consistency dictate that Petitioner DiTrapano’s conviction of the same statutory crime, mitigated

by his condition of addiction, should be given the same result - reinstatement with such conditions as this Honorable Court believes necessary.

Petitioner DiTrapano, while categorically wrong in his conduct, jointly borrowed the money with a client from a bank for a legitimate business purpose and there was no money lost by the client or the bank involved in that loan. The other party in interest was made whole by the successful nature of the investment and the bank was fully repaid. As noted in the record here without challenge, the subject transaction occurred less than two weeks after a young child drowned in Petitioner's home swimming pool and at the height of his addiction. According to the United States Attorney's Office, "all the information known to the United States indicates that defendant was heavily using controlled substances at the time he committed the instant offense." (Joint Exhibit 41 at 000771-000773) While Petitioner DiTrapano readily acknowledged that these facts are not an excuse and has taken full responsibility for his actions, the HPS properly found his addiction to be a "major mitigating factor" to his misconduct. "Mitigating factors in a lawyer disciplinary proceeding are any considerations or factors that may justify a reduction in the degree of discipline to be imposed." Syl. Pt. 2, Lawyer Disciplinary Board v. Scott, 213 W. Va. 209, 579 S. E. 2d 550 (2003). Despite Mr. Vieweg's clearly much more extensive criminal conduct, this Court found that his reinstatement would not "have a substantial adverse effect of the public confidence in the administration of justice." Also, in Mr. Vieweg's case, numerous witnesses expressed negative sentiments toward reinstatement and those sentiments were shared by various segments of the public and business community. Nothing could be further from the case before you.

Petitioner DiTrapano has placed in the record now before this Court evidence of overwhelming support from every facet of the community in the form of strongly supportive

testimony to the HPS, letters to the ODC, letters to Federal District Judge Johnston, and letters to this Court. **The ODC did not produce a single witness or letter from the public that constituted a negative reaction to the Petition for Reinstatement, despite their publication in the Charleston Gazette inviting public comment.** The HPS nevertheless expressed serious reservations that reinstating Mr. DiTrapano on supervised release will have the “substantial adverse effect in the public confidence in the administration of justice.” We respectfully disagree. While we here express our genuine gratitude and respect to the HPS, which clearly applied their best efforts and judgment in this proceeding, we also point out to the Court that there is not one scintilla of evidence in the entire record now before this Honorable Court of any public objection to support a conclusion that reinstatement would have a negative effect upon the public’s perception of the integrity of the bar or of the courts and justice system. Upon a fair and respectful review of the record here, apprehension of negative public perception cannot be a basis for refusal or delay of the reinstatement of Petitioner.

Petitioner DiTrapano is currently on supervised release monitored by the United States Probation Office and will discharge that supervision on January 14, 2015. He has thus successfully completed without incident 48 of the 60 months of supervision to which he was sentenced in January, 2010. The HPS found as a conclusion of law that supervised release, according to the case law, federal sentencing guidelines, and the United States Sentencing Commission is for the purpose of rehabilitation and not punishment. (Joint Exhibit 70 at 001597-001598).

Currently, the United States Probation office has no services to provide Petitioner DiTrapano. They are simply collecting reports and have no interaction with him. He is in the low risk category of offenders being monitored and has no special requirements to fulfill while

on the remainder of his supervision. There are no Federal Court restraints that would prevent Petitioner DiTrapano from being reinstated while completing his supervised release. Multiple witnesses for Petitioner DiTrapano have testified that they support his reinstatement despite the fact he will be on supervised release for another 12 months.

Addressing the issue of supervised release specifically in their testimony, witnesses who know both Petitioner DiTrapano and the community mind testified that reinstatement of Petitioner DiTrapano to the practice of law while completing his supervised release will serve as an additional safeguard and motivating factor in his rehabilitation. In fact, the conditions recommended by the HPS demand far more supervision and accountability than that to which Petitioner DiTrapano is currently subject by the United States Probation Department. Immediate reinstatement, then, would establish greater public protection than the minimal protection available if Petitioner merely continues another 12 months of supervised release.

Community leader Rev. Matthew Watts testified when asked his reaction should Petitioner gain immediate reinstatement while still on supervised release:

“It doesn’t change my position because I think that it would actually do—that it actually provides somewhat of a probationary period, if you will, to where he’s actually still under some court supervision and having to be in compliance with that, which meant if he for some reason was not in compliance with that, then the license could be suspended. So in my judgment that it creates a better opportunity for him to demonstrate to this body and the Supreme Court whoever ultimately, you know, makes a decision, his worthiness to have his license to be reinstated under that period of time. I’m very confident, you know, that he’s not going to have any problems and I think that that’s evidenced by what he’s done over the last several years that he really gets it and that he certainly would take very, very seriously the opportunity to be able to practice law again.”(M. Watts: Transcript at Vol. I pgs. 331, 332)

Neither Petitioner DiTrapano nor this Court must look far to determine that the ODC has permitted bar members to practice law while on supervision. In Office of Disciplinary Counsel

vs. John W. Alderman, III, Unreported No. 35705, a March 2012 case, the ODC allowed Mr. Alderman to practice law while serving a sentence of unsupervised probation for various crimes related to possession of narcotics in 2010. Mr. Alderman was initially charged with felony possession with intent to distribute crack cocaine, obstruction of justice, and possession of controlled substances from two separate 2009 arrests but later pled to the misdemeanor of simple possession. While the circumstances of the Alderman conviction and timing of disciplinary action are admittedly not identical to those of Petitioner, the fact remains that the Office of Disciplinary Counsel and this Court, apparently, have accepted the risk of “public reaction” attendant to Mr. Alderman’s practice of law while on probation, serving out his sentence. While we anticipate the possibility that the ODC will attempt to distinguish Federal supervised release from State Court unsupervised probation because of the absence of an assigned probation officer, the conditions to which Attorney Alderman was subject are, as a practical matter, substantially consistent with those to which Petitioner DiTrapano is subject by the United States Probation Department. *See* WV Code 50-2-3a. Attorney Alderman had less than two (2) years sobriety when the Court properly took a chance on him and his recovery and, to his credit; he remained sober and successfully completed his probation. Petitioner DiTrapano has six (6) years of sobriety and has successfully completed 48 of 60 months of his supervision. George Daugherty, the preeminent attorney knowledgeable of recovery in West Virginia testified at both the Alderman and DiTrapano hearings and endorsed both men as excellent candidates to remain on the road to recovery. While the Court properly looks at these matters on a case by case basis, we know that it also endeavors to be consistent in its actions. Reinstatement of Petitioner DiTrapano, on probation, while he continues on federal supervised release is consistent with present case authority and apparent readmission policy and consistent with the fact that such

arrangement presents no credible risk of present or future embarrassment of the bench and bar of West Virginia or any threat to the public.

The polestar guiding the review of petitions for reinstatement is the proposition that the reinstatement rules are “rules of compassion.” Where the petitioner meets his burden, as here, of proving a record of rehabilitation since annulment, and where, as here, there is no risk that reinstatement will endanger the public, a lawyer’s license should be reinstated. As stated by this Court in Syllabus Point 2 of In re: Smith, 214 W.Va. 83, 585 S.E.3d 602 (1980):

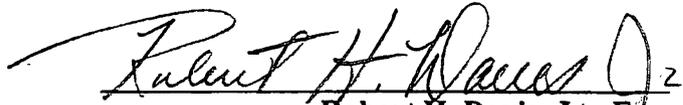
“2. Article VI, Sec. 35, By-Laws, West Virginia State Bar, which provides that an Attorney whose license to practice has been annulled may reapply for admission after Five years is a **rule of compassion**, and absent a showing by the Committee on Legal Ethics that reinstatement will endanger the public, an attorney’s license to practice will be reinstated after five years of good behavior.”

#### **V. CONCLUSION**

The Petitioner, Louis Dante’ DiTrapano, respectfully urges that the full record in this proceeding, the applicable law, the Court’s policies regarding reinstatement of impaired former attorneys and fundamental fairness all strongly support his request that this Honorable Court reinstate his license to practice law in the State of West Virginia on probation for the remaining 12 months of his supervised release under all the conditions recommended by the Hearing Panel Subcommittee in their report filed with this Court on October 18, 2013.

In the alternative, Petitioner DiTrapano requests that this Court adopt the Hearing Panel Subcommittee Report and Recommendation as filed, for the reasons and upon the same facts of record and authorities presented here.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> of November, 2013.



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**BEFORE THE SUPREME COURT OF APPEALS OF THE  
STATE OF WEST VIRGINIA**

**IN RE: LOUIS DANTE' DITRAPANO, an  
annulled member of the West Virginia State  
Bar, Petitioner**

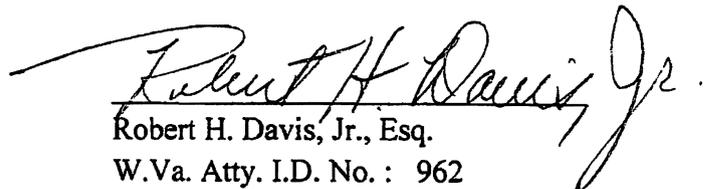
**Bar No. 6778  
Supreme Court No.: 12-0677  
I.D. No. : 12-03-323**

**CERTIFICATE OF SERVICE**

I certify that I, Robert H. Davis, Jr., Esq., as counsel to Petitioner L. Dante' DiTrapano have on the date entered below caused a true and accurate original of the foregoing "BRIEF OF PETITIONER DANTE' LOUIS DITRAPANO," to be served upon the Office of Disciplinary Counsel by personal delivery to the responsible counsel in this matter, Rachael L. Fletcher Cipoletti, Esq. at the following address:

**Rachael L. Fletcher Cipoletti, Esq. Chief Counsel  
Office of Disciplinary Counsel  
City Center East, Suite 1200-C  
4700 MacCorkle Ave., S.E.  
Charleston, West Virginia 25304**

This the 26<sup>th</sup> day of November, 2013.

  
Robert H. Davis, Jr., Esq.  
W.Va. Atty. I.D. No. : 962  
Counsel for Petitioner DiTrapano