

BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

In Re: L. Dante DiTrapano, an annulled member
of The West Virginia State Bar

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

REPORT AND RECOMMENDATION OF THE HEARING PANEL SUBCOMMITTEE

I. PROCEDURAL HISTORY

This Court annulled the law license of L. Dante DiTrapano ("Petitioner") 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."

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. Rachel L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, and Joanne M. Vella Kirby, Lawyer Disciplinary Counsel, appeared on behalf of the Office of Disciplinary Counsel. Petitioner appeared personally, and by Robert H. Davis, Jr., Esquire. The Hearing Panel Subcommittee heard testimony from Stuart Calwell, Harry Dietzler, 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. Additionally, Joint Exhibits 1-80 and Respondent's Exhibit 1 were admitted into evidence.

Based upon the testimony and the record, the Hearing Panel Subcommittee submits the following Findings of Fact and Recommendations regarding the final disposition of this matter.

II. STANDARD FOR REINSTATEMENT

Rule 3.30 of the Rules of Lawyer Disciplinary Procedure, entitled "Requirements for reinstatement," reads as follows:

When for any reason, other than for nonpayment of membership fees, the license of any person to practice law has been or shall be suspended or annulled, whether or not for a limited time or until requirements as to restitution, conditions, or some other act shall be satisfied, such person shall not become entitled to engage in the practice of law in this State, whether such time has elapsed or such requirements as to restitution, conditions, or some other act have been satisfied, until such person shall have been restored to good standing as a member of the West Virginia State Bar as provided herein. Any conviction for false swearing, perjury or any other felony, and the person's prior and subsequent conduct, shall be considered in the determination of good moral character and fitness.

The primary authority in West Virginia in the standard for reinstatement of a lawyer whose license was annulled, In re Brown, provides:

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 the public confidence in the administration of justice and in this regard the seriousness of the conduct leading to disbarment is an important consideration.

Syl. Pt. 1, In re Brown, 166 W. Va. 226, 273, S.E.2d 567 (1980). Syl. Pt. 2, Lawyer Disciplinary Board v. Sayre, 207 W. Va. 654, 535, S.E.2d 719 (2000).

Furthermore,

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 the practice of law he will engage in unprofessional conduct.

Syl. Pt. 2, In re Brown, Id.; Syl Pt. 3, Sayre, Id.

The fundamental question is whether the attorney seeking reinstatement has shown that he presently possesses the integrity, moral character and legal competence to assume the practice of law. Lawyer Disciplinary Board v. Hess, 201 W. Va. 192, 194, 495 S.E.2d 563, 565 (1997). Petitioner's prior and subsequent conduct is relevant to the determination. The burden of proof for an attorney seeking reinstatement is the same standard applied in all lawyer disciplinary cases under Rule 3.7 of the Rules of Lawyer Disciplinary Procedure – clear and convincing evidence.

III. PROPOSED FINDINGS OF FACT

A. Petitioner's History up to his 2007 Disbarment

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 that he was sober. According to Petitioner, he did not regularly attend his meetings or remain focused on his sobriety during the last five years 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 April 24, 2006, Petitioner was arrested in Dekalb County, Georgia, and charged with driving on a suspended license and possession of cocaine. He posted bond and was released. Petitioner was again arrested on June 11, 2006 in South Charleston, West Virginia for driving on a suspended license, no insurance, expired registration, and expired inspection sticker. Petitioner posted bond that day and was released.

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 again 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 the Honorable David A. Faber, United States District Judge.

On June 23, 2006, Petitioner filed "Defendant's Second Motion for Bond," which the District Court construed as a motion for review of Judge Stanley's detention order, pursuant to 18 U.S.C. § 3145(b). The District Court scheduled the motion for hearing on June 27, 2006.

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. Petitioner 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 December 12, 2006, Petitioner's counsel filed a request for a mitigation hearing, which request was denied by the Lawyer Disciplinary Board on December 19, 2006. The Lawyer Disciplinary Board determined that a mitigation hearing was not warranted, as Petitioner had been clearly convicted of a crime involving moral turpitude and clearly violated Rule 8.4(b)

of the Rules of Professional Conduct. On March 8, 2007, Petitioner filed "Objections to Ruling Filed Pursuant to 3.18(f) of the Rules of Lawyer Disciplinary Procedure and Response to Petition Seeking Annulment of Respondent's Law License."

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.

B. Petitioner's History Since His 2007 Disbarment

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 an 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 individual was Petitioner's client.

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 proceeds 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 which 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 that 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. Additionally, ~~since 2007, Petitioner completed his sentence stemming from the revocation of his supervised~~ release related 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 an 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.

Since 2007, Petitioner represented that he has been a party to four civil matters, two of which remained pending as of the date Petitioner filed his Reinstatement Questionnaire. Petitioner represents that both of the cases that were dismissed were actions for deficiencies on the foreclosure of Petitioner's homes on Johnson Road and Kanawha Avenue, both located in Charleston, West Virginia. According to Petitioner, the first action, *Morgan Stanley v. Louis diTrapano, 07-C-796*, was dismissed in 2009 by the Honorable Charles E. King, Circuit Judge in Kanawha County, West Virginia, whereas the second action, *BB&T v. Louis deTrapano, 11-C-237*, was dismissed in 2011 by the Honorable Louis H. "Duke" Bloom, Circuit Judge in Kanawha County, West Virginia.

Petitioner represents that the case *Calvary SPV LLC v. Louis deTrapano, 09-C-1651*, is presently pending before the Honorable James C. Stucky, Circuit Judge in Kanawha County, West Virginia. This action concerns Petitioner's unpaid credit card debt. Petitioner further represents that the case *Louise Wood v. diTrapano, Barrett and Dipiero and Louis diTrapano, 08-C-13-2*, is also presently pending in the Circuit Court of Kanawha County, West Virginia. According to Petitioner, this matter alleged professional liability against Petitioner and his former law firm. Petitioner further states that attorney Lonnie Simmons of DiTrapano, Barrett, and Dipiero has represented to Petitioner that he believes that the case lacks merit, and that he

intended to prepare a motion for summary judgment.

In his sworn statement, Petitioner noted that although he is financially eligible to file for bankruptcy, he refuses to do so because he intends to pay off all of his outstanding debt, which includes tax, credit card, and other debt. At present, the Internal Revenue Service has accepted Petitioner's offer in compromise on his past federal tax obligations in which Petitioner paid \$24,106.00 in satisfaction of approximately \$900,000.00 of outstanding tax debt. Additionally, the West Virginia Department of Revenue has accepted Petitioner's offer in compromise on his past state tax obligations in which Petitioner paid \$10,000.00 in satisfaction of approximately \$225,000.00 of outstanding tax debt. Additionally, Petitioner noted that his remaining outstanding financial debt surrounds medical bills incurred as a result of his wife's hysterectomy and his daughter's automobile accident in 2011.

During the time that Petitioner was incarcerated in relation to his 2006 conviction, his former law partners paid one of his clients approximately \$1.4 million dollars that Petitioner had misappropriated. In his Reinstatement Questionnaire, Petitioner stated "[a] large part of this money was used for the client but during my relapse, I was too close to this client and did not act professionally in my handling of his Brokerage accounts." Petitioner further notes that "[a]lthough there are explanations for some of this conduct, I was categorically wrong in my actions, have taken responsibility for them, and have been punished severely."

C. Reinstatement Hearing

On March 27, 2013 and April 17, 2013, a Reinstatement Hearing was held in this matter in Charleston, West Virginia. In addition to taking into evidence Joint Exhibits 1-80 and Respondent's Exhibit 1, the Hearing Panel Subcommittee heard testimony from sixteen (16) witnesses, including Petitioner. The witness testimony is briefly summarized below.

Stuart Calwell, Esquire

Mr. Calwell, an attorney and Petitioner's employer, testified to Petitioner's character and legal competence to resume the practice of law. Mr. Calwell testified concerning Petitioner's work for him as a paralegal, and further testified that he believes that Petitioner has the requisite knowledge and skill of the law to successfully practice, should his law license be reinstated. Mr. Calwell additionally testified that he is willing to supervise Petitioner, and that Petitioner would have a place at his firm as an associate lawyer. Mr. Calwell stated that he has heard positive comments from the community regarding the possibility of Petitioner having his law license reinstated, and that he does not believe that it would be "a stain on the bar" if ~~Petitioner were to be reinstated. Mr. Calwell also testified that he was aware that Petitioner is still~~ serving his term of supervised release in connection with his 2009 felony conviction, and further testified that he was aware that Petitioner's former law firm had covered some monies that were allegedly taken from a client.

Harry Deitzler, Esquire

Mr. Deitzler, the president of the West Virginia State Bar, testified that he became friendly with Petitioner through the youth sports community in Charleston, but that he also tried a case with Petitioner. Mr. Deitzler testified that although he is now aware that Petitioner experienced serious legal troubles in 2005-2006, he was not aware of those troubles at the time. Mr. Deitzler further testified that Petitioner possesses very good knowledge of the law, that "his character before and after the fall from grace was above reproach," and that his reinstatement would not cause embarrassment for the bar. Mr. Deitzler stated that he did not remember the events surrounding Petitioner's 2009 felony conviction, and that he was not aware of Petitioner's

prior struggles with drug and alcohol addiction.

George Aulenbacher

Mr. Aulenbacher, the principal of George Washington High School in Charleston, testified that he met Petitioner in August of 2011 at a football practice for the high school's team. Mr. Aulenbacher testified as to Petitioner's involvement with his own children and other students in the high school. Mr. Aulenbacher stated that it would not bother him if Petitioner's law license was reinstated. Mr. Aulenbacher further testified that he was not aware of Petitioner's 2009 felony conviction, nor was he aware of Petitioner's prior struggles with addiction.

Rick Wilcox

Mr. Wilcox also testified on Petitioner's behalf. Mr. Wilcox met Petitioner through Alcoholics Anonymous. ~~Mr. Wilcox testified as to Petitioner's rehabilitation efforts regarding his drug and alcohol addiction.~~

James Coleman, Esquire

Mr. Coleman, a retired attorney, is a recovering alcoholic who has been sober since 1976. Mr. Coleman, who is Petitioner's father-in-law, testified as to Petitioner's character, rehabilitation efforts regarding his drug and alcohol addiction, and his legal competence to resume the practice of law. Mr. Coleman testified that reinstating an attorney who is a convicted felon shouldn't have any effect on the administration of justice. Mr. Coleman further testified that he believed Petitioner lost his law license because he was "hoodwinked" by the federal government, and that the Supreme Court should have suspended Petitioner's law license, as opposed to having annulled it.

Louis Prather

Mr. Prather, Petitioner's neighbor, testified that he believes that Petitioner is a good

neighbor and that he deserves another chance. Mr. Prather further testified that he believes that once a lawyer has paid his or her penalty for committing a felony, "once you have served that sentence," the lawyer is "clear."

George Daugherty, Esquire

Mr. Daugherty, a Charleston attorney, testified on Petitioner's behalf as to his rehabilitation efforts regarding his drug and alcohol addiction and to Petitioner's legal competence to resume the practice of law. Mr. Daugherty also testified that he would be willing to participate in monitoring Petitioner, should the Supreme Court decide to reinstate Petitioner. Mr. Daugherty further testified that he believes that disbarment from the practice of law was an adequate and appropriate punishment for Petitioner, but that the 2009 prosecution of Petitioner was "unfair."

~~Mr. Daugherty stated that he was not aware of other criminal conduct that occurred with which~~
Petitioner was not charged.

Bobbi Holland

Ms. Holland, Petitioner's sister-in-law, testified as to Petitioner's rehabilitation efforts regarding his drug and alcohol addiction and to the family support Petitioner receives in that regard. Ms. Holland testified that she was aware of Petitioner's struggles with addiction, both prior to 1984 and his more recent struggles, and that she believes that those with an addiction are responsible for what they do while they are impaired. Ms. Holland further testified that she does not believe there would be any negative reaction in the community or negative impact if Petitioner's law license was reinstated while he was still serving his supervised release.

Thomas Flaherty, Esquire

Mr. Flaherty, an attorney practicing law in Charleston, and a past President of the West Virginia State Bar, testified as to Petitioner's present legal knowledge and law skills. Mr.

Flaherty testified that he was aware of Petitioner's felony convictions, and that an alcoholic should be held accountable for his actions while under the influence of alcohol. Mr. Flaherty stated that he believes that members of the bar would respond positively should Petitioner's law license be reinstated. Mr. Flaherty further testified that he was not aware that Petitioner is currently serving the supervised release portion of his sentence.

Reverend Matthew Watts

Reverend Watts, Petitioner's friend, testified as to the community service work that Petitioner performed as part of his sentence following his 2009 conviction. Reverend Watts testified that he was aware of both Petitioner's two felony convictions, and Petitioner's struggles with addiction. Reverend Watts further testified that he believes that the people he knows and serves would respond with jubilation should Petitioner's law license be reinstated.

Joey Holland

Mr. Holland, Petitioner's brother-in-law, testified as to Petitioner's character, his rehabilitation efforts regarding his drug and alcohol addiction, and to the family support Petitioner receives in that regard. Mr. Holland testified that he was aware of Petitioner's struggles with addiction, both prior to 1984 and his more recent struggles, and that he believes that those with an addiction are responsible for what they do while they are impaired.

Mary Lou Newberger

Ms. Newberger, the Federal Public Defender for the Southern District of West Virginia, testified to her representation of Petitioner during his 2009 prosecution, to Petitioner's 2010 sentencing, and to questions concerning the federal sentencing guidelines and federal supervised release. Ms. Newberger testified that the goal of supervised release is to assist criminal defendants as they re-enter the community. Ms. Newberger further testified that

supervised release is part of a defendant's court-imposed sentence, and that in Petitioner's case, probation was not an option for Petitioner due to the nature of the crime to which he pled guilty.

Ms. Newberger also testified that Petitioner's motion for early termination of his supervised release was denied by Judge Johnston, and that Petitioner's period of supervised release is scheduled to terminate in January, 2015. Ms. Newberger testified that Judge Johnston noted, at Petitioner's sentencing, that restitution was not an issue as a result of the subject investment being successful, and further, that Judge Johnston stated that he would have given Petitioner a longer sentence of supervised release if he could have "because [Petitioner] maintained sobriety for 15 years before, before relapsing, but I only have it within my grasp to give you five years and that's what I'm going to do."

~~When questioned as to whether she believes reinstating a convicted felon's law~~
license would have any adverse effect on the bar, Ms. Newberger testified that she believes the process should be subject to great scrutiny, and that she supports Petitioner's reinstatement. Ms. Newberger stated that Petitioner's civil rights are restricted due to the fact that he is currently serving his sentence imposed by the Court, including his right to vote, to hold elected office, and to serve on a jury. Ms. Newberger further testified that although Petitioner's right to vote and to hold elected office will be restored upon completion of his term of supervised release, Petitioner, as a convicted felon, will never again be able to serve on a felony jury.

Robert Johnson

Mr. Johnson, Petitioner's friend, testified as to his friendship with Petitioner and to Petitioner's character. Mr. Johnson testified that he was aware of Petitioner's two felony convictions, and additionally, that he was aware of Petitioner's struggles with addiction. Mr. Johnson further testified that, if the Supreme Court were to reinstate Petitioner's law license, he

does not believe that such reinstatement would have a negative impact on the way the community generally views attorneys.

Phillip Vanater

Mr. Vanater, Petitioner's friend, testified as to his friendship with Petitioner, Petitioner's rehabilitation efforts regarding his drug and alcohol addiction, and to the family support Petitioner receives in that regard.

Teri DiTrapano

Ms. DiTrapano, Petitioner's wife, testified as to his character, his rehabilitation efforts regarding his drug and alcohol addiction, and to the family support Petitioner receives in that regard. Ms. DiTrapano further testified to her own struggles with addiction and how her ~~family's relationship with one another has changed for the better as a result of the work she and~~ Petitioner have done to become, and remain, sober.

IV. DISCUSSION AND RECOMMENDATION

At the outset, the Hearing Panel Subcommittee understands that "general statements and letters from attorneys, friends, and community leaders on behalf of a petitioner are of little evidentiary value." Lawyer Disciplinary Board v. Vieweg, 194 W. Va. 554, 559, 461 S.E.2d 60, 65 (1995). Instead, Petitioner must present a course of conduct that would enable the Supreme Court to conclude that there is little likelihood that after he is readmitted to the practice of law that he will engage in unprofessional conduct, along with addressing the fundamental question of whether Petitioner has shown that he presently possesses the integrity, moral character and legal competence to assume the practice of law. Lawyer Disciplinary Board v. Hess, 201 W. Va. 195, 495 S.E.2d 563 (1997).

Petitioner has presented an impressive array of witnesses who testified at the

hearing, and individuals who provided letters in support. These statements and letters come from his employer, current and past bar presidents, members of the bar, members of the community, and Petitioner's support system, and they clearly support Petitioner's reinstatement.

Petitioner carries a heavy burden of persuading the Court that he presently possesses integrity, moral character and legal competence to resume the practice of law. Indeed, the more serious the nature of the underlying offense(s), the more difficult the task becomes for Petitioner to show a basis for reinstatement. The Supreme Court has also recognized that "the seriousness of the underlying offense leading to the disbarment may, as a threshold matter, preclude reinstatement such that further inquiry as to rehabilitation is not warranted." In re Brown, 166 W. Va. 226, 240, 273 S.E.2d 567, 574 (1980).

~~The ODC has argued that although there is currently no *per se* bar to the admission~~
or reinstatement of a convicted felon in West Virginia, a felony conviction, let alone two felony convictions, manifestly meets the test in Brown to preclude reinstatement. ODC cites cases in which the Supreme Court has denied the petitions for reinstatement of disbarred attorneys who were convicted felons. See In Re Petition for Reinstatement of Thomas E. Esposito, No. 11-0671 (W. Va. June 12, 2013) (denying petition for reinstatement where the petitioner failed to demonstrate that he possesses the integrity, moral character and legal competence to resume the practice of law); In Re: Petition for Reinstatement of Mark O. Hrutkay, No. 11-0136 (W. Va. June 12, 2013) (denying petition for reinstatement where the petitioner failed to demonstrate that he possesses the integrity, moral character and legal competence to resume the practice of law, and where the Supreme Court cannot conclude that reinstatement of the petitioner will not have a justifiable and substantial adverse effect on the public confidence in the administration of justice); Lawyer Disciplinary Board v. Arch A. Moore, Jr., 214 W. Va., 780, 591 S.E.2d 338 (2203),

(denying petition for reinstatement where the petitioner did not express remorse for his conduct that led to his disbarment); and In the Matter of: Steven M. Askin, a former member of The West Virginia Bar, No. 30724 (W. Va. May 11, 2006). ODC does concede that, on occasion, the Supreme Court has reinstated disbarred attorneys who were convicted felons.

Petitioner argues that pursuant to the standards in In re Brown, the Supreme Court has reinstated a number of lawyers after periods of annulment or suspension. *See, e.g., Lawyer Disciplinary Bd. v. Albers*, 219 W. Va. 704, 639 S.E.2d 796 (W. Va. 2006) (reinstatement of lawyer's license was appropriate, after nearly three years' suspension, given mitigating factors); Lawyer Disciplinary Bd. v. Simmons, 202 W. Va. 654, 505 S.E.2d 717 (W. Va. 1998) (reinstatement of lawyer's license was appropriate subject to certain terms and conditions); ~~Lawyer Disciplinary Bd. v. Vieweg, 194 W. Va. 554, 461 S.E.2d 60 (W. Va. 1995) (reinstatement~~ of lawyer's license was appropriate subject to certain terms and conditions); Syl. pt. 2, In re Smith, 214 W. Va. 83, 585 S.E.2d 602 (1980) (reinstatement of disbarred lawyer's license was appropriate; "unless the Court concludes that the underlying offense which caused the original disbarment is so serious that the Court cannot be satisfied that the public will be allegedly protected, a lawyer's license to practice law will ordinarily be reinstated after five years of satisfactory behavior.") Id.

The Office of Disciplinary Counsel stipulates that Petitioner possesses the legal competence to resume the practice of law. The Office of Disciplinary Counsel acknowledges that the evidence reflects that Petitioner has demonstrated great remorse for his previous misconduct, has acknowledged the severity of that misconduct, and appears to accept full responsibility for his misconduct. The Office of Disciplinary Counsel also acknowledges that Petitioner has demonstrated a record of honorable behavior since disbarment and presented testimony that

reflected that he has come to terms with his past wrongdoing and intends to adhere to high moral standards in the future. Moreover, the Office of Disciplinary Counsel notes that Petitioner has presented a record of rehabilitation concerning his drug and alcohol addiction.

Despite its stipulation and acknowledgements, ODC does not believe that Petitioner has proven that his reinstatement will not have a justifiable and substantial adverse effect of the public confidence in the administration of justice. Moreover, ODC has grave concerns that the reinstatement of any individual who has been convicted of two felony offenses would undermine the public confidence in the legal system, and believes that because Petitioner is currently serving a sentence imposed by a federal district court judge who denied Petitioner's request for early termination of his supervised release, Petitioner's license should not be reinstated.

Petitioner argues that he has met the standards for reinstatement. Petitioner further argues that the conduct for which he was disbarred, "being an unlawful user of controlled substances in possession of firearms," is not as serious as might seem because the federal district judge found that Petitioner's guns were for "sport and collection purposes only" and had never been used in any illegal manner. Moreover, Petitioner argues that a major factor in the conduct which led to disbarment was that Petitioner was then an addict which the Supreme Court clearly recognizes as a disease. Lawyer Disciplinary Board v. Hardison, 205 W. Va. 344, 518 S.E.2d 101 (1999). The Hearing Panel Subcommittee agrees that while the underlying conduct was egregious – and it includes two felonies, not only the possession of firearms – Petitioner's addictions were a major mitigating factor.

The Hearing Panel Subcommittee believes that Petitioner has proved a record of rehabilitation by clear and convincing evidence. The Hearing Panel Subcommittee, however, also

notes that Petitioner had a 15-year period of sobriety before the relapse that contributed to his legal problems. Because relapse is understood to be a not uncommon feature of alcoholism and drug addiction, and because relapse following reinstatement could create a substantial adverse effect on the public's confidence in the administration of justice and its perception of the bar, we recommend strong support and monitoring to be included in any conditions for reinstatement.

Additionally, the Hearing Panel Subcommittee has serious reservations regarding the reinstatement of Petitioner's law license while Petitioner remains on supervised release, particularly because Petitioner's request for early termination of supervised release was denied by Judge Johnston. Accordingly, the Hearing Panel Subcommittee cannot conclude that the reinstatement of Petitioner's law license will not have a substantial adverse effect on the public in ~~the administration of justice so long as Petitioner is serving his sentence of supervised release.~~

Because of the statements of Judge Johnston at Petitioner's sentencing hearing and Petitioner's remorseful acceptance of responsibility for his actions, the Hearing Panel Subcommittee concludes that Petitioner's long period of supervised release was intended to be rehabilitative rather than punitive. Thus, the Hearing Panel Subcommittee concludes and recommends that Petitioner's law license be reinstated without further petition or hearings beginning at the end of Petitioner's satisfactory completion and termination of his sentence of supervised release, with the following conditions:

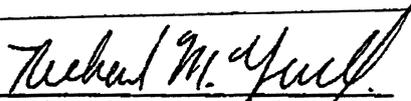
1. Petitioner's legal practice be supervised by his employer (or other supervisor) and by the director of the West Virginia Lawyer Assistance Program for two years following his reinstatement pursuant to a written agreement between Petitioner, his supervisor, the director, and the Office of Disciplinary Counsel.
2. Prior to reinstatement, Petitioner be required to pay his dues to the West Virginia State Bar and complete all required CLE's;
3. Petitioner 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.

4. Petitioner be ordered to continue his attendance at Alcoholic Anonymous and Narcotics Anonymous meetings 3-4 times a week.
5. Petitioner 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
6. Petitioner, at his expense, give random urine screens to the LAP for a period of two years from reinstatement.

Dated October 17, 2013.

OFFICE OF DISCIPLINARY COUNSEL
By Counsel


Richard M. Yurko, Jr., Esquire
Chair


Frances P. Allen, Layperson


Charles J. Kaiser, Jr., Esquire