

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

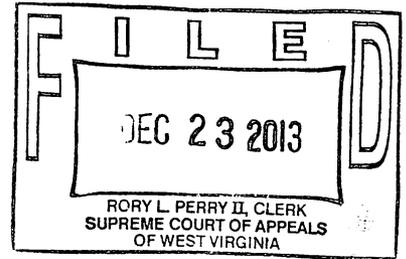
L. DANTE DITRAPANO,

Petitioner,

v.

OFFICE OF DISCIPLINARY COUNSEL

Respondent.



No. 12-0677

BRIEF OF THE OFFICE OF DISCIPLINARY COUNSEL

Rachael L. Fletcher Cipoletti [Bar No. 8806]
Chief Lawyer Disciplinary Counsel
Joanne M. Vella Kirby [Bar No. 9571]
Office of Disciplinary Counsel
City Center East, Suite 1200C
4700 MacCorkle Avenue SE
Charleston, West Virginia 25304
(304) 558-7999
(304) 558-4015 – facsimile

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I. STATEMENT OF THE CASE

A. NATURE OF PROCEEDINGS

The West Virginia Supreme Court of Appeals (hereinafter “Supreme Court”) annulled the law license of L. Dante DiTrapano (hereinafter “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.”

Thereafter, this matter proceeded to hearing in Charleston, West Virginia, on March 27, 2013, and on April 17, 2013. The Hearing Panel Subcommittee (sometimes referred to herein as “the Panel”) was comprised of Richard M. Yurko, Jr., Esquire, Chairperson, Charles J. Kaiser, Jr., Esquire, and Frances P. Allen, layperson. Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, and Joanne M. Vella Kirby, Lawyer Disciplinary Counsel, appeared on behalf of the Office of Disciplinary Counsel. Robert H. Davis, Jr., Esquire, appeared on behalf of Petitioner, who also appeared. On March 27, 2013, 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, and Joey Holland. On April 17, 2013, the Hearing Panel Subcommittee heard testimony from 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.

On or about October 17, 2013, the Hearing Panel Subcommittee issued its recommendation in this matter and on or about October 18, 2013, filed with the Supreme

Court its “Report and Recommendation of the Hearing Panel Subcommittee.” The Office of Disciplinary Counsel disagrees with the Hearing Panel Subcommittee’s recommendation 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.

On or about October 24, 2013, the Office of Disciplinary Counsel requested a hearing on Petitioner’s petition for reinstatement. By Order entered October 29, 2013, this Honorable Court ordered the parties to submit briefs on this matter pursuant to the dates contained therein, and set this case for oral argument pursuant to Rule 19 of the Rules of Appellate Procedure.

B. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner’s History up to his 2007 Disbarment.

Petitioner was born in Charleston, West Virginia on October 23, 1962. (Joint Exhibit 67 at 001569). Petitioner began experimenting with drugs and alcohol during his teenage years. In late 1988, he 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. (Joint Exhibit 62 at 001445-001446).

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 of the aforementioned fifteen 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 the medicine, he did anyway, and quickly became addicted to it. (Joint Exhibit 62 at 001450).

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 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. (Joint Exhibit 62 at 001451-001453). In early 2006, Petitioner's family and friends intervened, and Petitioner agreed to seek treatment for his drug addiction in Florida. (Trans. at Vol. II p. 219-220).

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. (Joint Exhibit 12 at 000034).

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. (Joint Exhibit 2 at 000007). 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. (Joint Exhibit 12 at 000044-000046 and Joint Exhibit 14 at 000116-000123). 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. (Joint Exhibit 18 at 000181-000212).

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). (Joint Exhibit 2 at 000007-000009).

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 Marshal Service pending his detention hearing. (Joint Exhibit 12 at 000081-000083). 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. (Joint Exhibit 12 at 000090-000095).

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. (Joint Exhibit 40 at 000502-000508).

On June 26, 2006, pursuant to Rule 3.27 of the West Virginia Rules of Lawyer Disciplinary Procedure, the undersigned attorney 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. (Exhibit 2 at 000002-000014). 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. (Joint Exhibit 3 at 000015-000016).

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 Prestera 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. (Joint Exhibit 40 at 00545-000553).

On or about August 3, 2006, Petitioner, through counsel Michael J. DelGuidice, presented to the Supreme Court a brief in opposition to the petition seeking the immediate temporary suspension of Petitioner's license to practice law in the State of West Virginia. (Joint Exhibit 9 at 000023-000029). 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. (Joint Exhibit 40 at 000563-000564). 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. (Joint Exhibit 40 at 000572-000573). On that same day, the Office of Disciplinary Counsel filed a supplement to the 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. (Joint Exhibit 12 at 000033-000113). The parties appeared before the Supreme Court for

oral argument on September 13, 2006, and the Supreme Court granted the Office of Disciplinary Counsel's petition on September 14, 2006. (Joint Exhibit 13 at 000114-000115).

Petitioner appeared for his sentencing hearing on October 10, 2006. Petitioner was sentenced to 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. (Joint Exhibit 40 at 000621-000627).

On January 17, 2007, the Conditions of Probation and Supervised Release were filed. (Joint Exhibit 40 at 000643-000645). While on supervised release, Petitioner was arrested on April 1, 2007, and charged with simple possession of methamphetamine. Based on Petitioner's arrest, John B. Edgar, Senior United States Probation Officer, petitioned the Court to revoke Petitioner's supervised release. (Joint Exhibit 40 at 000648-000649). 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. (Joint Exhibit 40 at 000661). 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. (Joint Exhibit 40 at 000664-000666).

On November 16, 2006, the Office of Disciplinary Counsel filed a "Petition Seeking Annulment of Respondent's Law License Pursuant to Rule 3.18 of the Rules of Lawyer Disciplinary Procedure." The Office of Disciplinary Counsel 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. The 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.” (Joint Exhibit 24 at 000242-000348).

On December 12, 2006, Petitioner’s counsel filed a request for a mitigation hearing, which was denied by the Lawyer Disciplinary Board on December 19, 2006. (Joint Exhibit 25 at 000349-000354). 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. (Joint Exhibit 29 at 00364-000370). On March 8, 2007, Petitioner filed “Objections to Ruling Filed Pursuant to Rule 3.18(f) of the Rules of Lawyer Disciplinary Procedure and Response to Petition Seeking Annulment of Respondent’s Law License.” (Joint Exhibit 32 at 000371-000379).

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. (Joint Exhibit 39 at 000393).

2. 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. (Joint Exhibit 62 at 001467-001474).

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 City section of Charleston, West Virginia. (Joint Exhibit 62 at 001524).

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. (Joint Exhibit 41 at 000699). 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 was scheduled for January 14, 2010. (Joint Exhibit 41 at 000709 and 000720-000721).

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. (Joint Exhibit 41 at 000718-000719).

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. (Joint Exhibit 41 at 000718-000719).

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 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. (Joint Exhibit 41 at 000786-000818).

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. (See Reinstatement Questionnaire, Ex. 16(a)-(l)). On June 5, 2012, Petitioner filed the "Motion to Allow Filing of Redacted Copy of Petition for Readmission to the West Virginia Bar." (Joint Exhibit 59 at 001211-001213).

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. (Joint Exhibit 41 at 000821-000846). 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. (Joint Exhibit 41 at 000848-000849).

The Office of Disciplinary Counsel commenced an investigation pursuant to Petitioner's Petition for Reinstatement. The Office of Disciplinary Counsel took Petitioner's sworn statement on August 24, 2012. (Joint Exhibit 62). 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. (Joint Exhibit 66 at 001540-001588). On October 24, 2012, the Supreme Court entered an order granting Petitioner's Motion to Amend Petition. (Joint Exhibit 68 at 001574).

Petitioner maintains that he has been sober since April 10, 2007. [Trans. at Vol. II, 318]. Additionally, since 2007, Petitioner completed his sentence stemming from his 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 to rehabilitate himself by having completed various substance abuse programs, including the program in prison, as well as continuously participated 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. (Joint Exhibit 61 at 001225-001226).

Since the 2007 annulment of his law 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 is scheduled to terminate on or about January 14, 2015. (Joint Exhibit 41 at 000786-000818).

Additionally, 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 diTrapano*, 11-C-237, was dismissed in 2011 by the Honorable Louis H. "Duke" Bloom, Circuit Judge in Kanawha County, West Virginia. (Joint Exhibit 61 at 001228).

Petitioner represents that the case *Calvary SPV LLC v. Louis diTrapano*, 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. (Joint Exhibit 61 at 001228-001229).

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. (Joint Exhibit 62 at 001518). 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. (Joint Exhibit 61 at 001231-001232).

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." (Joint Exhibit 61 at 001237).

3. 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 terms of supervised release in connection with his 2009 felony conviction, and further testified he was aware that Petitioner's former law firm had covered some moneys that were allegedly taken from a client. (Trans. at Vol. I, 7-63).

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 addition. (Trans. at Vol. I, 63-104).

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. (Trans. at Vol. I, 104-119).

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 addition. (Trans. at Vol. I, 119-151).

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 stated 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. (Trans. at Vol. I, 151-178).

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." (Trans. at Vol. I, 178-194).

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 elect to reinstate Petitioner's law license. Mr. Daugherty further testified that he believed 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. (Trans. at Vol. I, 194-239).

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. (Trans. at Vol. I, 240-265).

Thomas Flaherty, Esquire

Mr. Flaherty, an attorney practicing law in Charleston, 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 or her 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. (Trans. at Vol. I, 266-301).

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. (Trans. at Vol. I, 301-334).

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. (Trans. at Vol. I, 334-354).

Mary Lou Newberger, Esquire

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 reenter 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. (Trans. at Vol. II, 6-85).

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. (Trans. at Vol. II, 85-104).

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. (Trans. at Vol. II, 105-125).

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. (Trans. at Vol. II, 125-188).

II. SUMMARY OF ARGUMENT

Petitioner carries a heavy burden of persuading the Court that he presently possesses the 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).

Although there is currently no *per se* bar to the admission or reinstatement of a convicted felon in West Virginia, the Office of Disciplinary Counsel asserts that a felony conviction, let alone two felony convictions, manifestly meets the test in Brown to preclude reinstatement. Indeed, Petitioner is a twice convicted felon, having pled guilty to: (1) 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); and (2) 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, and forging his client's signature, yet stating to the bank that the individual had personally signed the relevant documents, in violation of 18 U.S.C. § 1014.

Moreover, Petitioner is currently serving a term of supervised release, part of his criminal sentence as ordered by a United States District Court Judge for his second felony conviction. At present, Petitioner is still subject to revocation of his supervised release and will be until January 14, 2015. Additionally, Judge Johnston denied Petitioner's request for early termination of his supervised release. The Office of Disciplinary Counsel has grave concerns that the reinstatement of any individual who has been convicted of two felony offenses, and who is currently serving a sentence of federal supervised release, would undermine the public confidence in the legal system. Accordingly, the Office of Disciplinary Counsel cannot recommend reinstatement in this matter.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to Rule 19 of the Rules of Appellate Procedure, this Honorable Court's Order set this matter for oral argument for January 28, 2014.

IV. ARGUMENT

A. 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) (Brown II); 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. (Brown II); Syl. Pt. 3, Sayre, Id.

This Honorable Court has also defined rehabilitation in this context to mean the correction of specific, identifiable vices or illnesses which may have contributed directly to the original disbarment. Where the original disbarment resulted from no identifiable vice or illness, sufficient evidence of rehabilitation is presented by a showing that Petitioner has behaved honorably since his disbarment. In re: Smith, 166 W.Va. 22, 270 S.E.2d 567 (1980).

The fundamental question that must be addressed 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. 195, 495 S.E.2d 563 (1997). Petitioner's prior and subsequent conduct is relevant to the determination. The Office of Disciplinary Counsel asserts that the Petitioner's burden of proof to establish the foregoing is that of clear and convincing evidence. This is the same

standard applied in all lawyer disciplinary cases under Rule 3.7 of the Rules of Lawyer Disciplinary Procedure. This is also the same burden lawyers who have been administratively suspended for a disability must meet pursuant to Rule 3.24(a) of the Rules of Lawyer Disciplinary Procedure.

In lawyer disciplinary matters, a *de novo* standard of review applies to questions of law, questions of application of the law to the facts, and questions of appropriate sanction to be imposed. Roark v. Lawyer Disciplinary Board, 207 W. Va. 181, 495 S.E.2d 552 (1997); Committee on Legal Ethics v. McCorkle, 192 W. Va. 286, 452 S.E.2d 377 (1994). The Supreme Court gives respectful consideration to the Lawyer Disciplinary Board's recommendations as to questions of law and the appropriate sanction, while ultimately exercising its own independent judgment. McCorkle, 192 W. Va. at 290, 452 S.E.2d at 381. Substantial deference is to be given to the Lawyer Disciplinary Board's findings of fact unless the findings are not supported by reliable, probative, and substantial evidence on the whole record. McCorkle, Id.; Lawyer Disciplinary Board v. Cunningham, 195 W. Va. 27, 464 S.E.2d 181 (1995).

B. Reinstating Petitioner's Law License Would Have a Justifiable and Substantial Adverse Effect on the Public Confidence in the Administration of Justice Because Petitioner is a Twice Convicted Felon Currently Serving a Sentence of Supervised Release.

At the outset, it is noted 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, 560, 461 S.E.2d 60 (1995). Instead, Petitioner must have presented a course of conduct that would enable the 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).

1. Petitioner Has Been Convicted of Two Serious Felonies.

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).

Although there is currently no *per se* bar to the admission or reinstatement of a convicted felon in West Virginia, the Office of Disciplinary Counsel asserts that a felony conviction, let alone two felony convictions, manifestly meets the test in Brown to preclude reinstatement. Moreover, on numerous occasions over the past several years, the Supreme Court has denied the petitions for reinstatement of disbarred attorneys who were convicted felons.¹ 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

¹The Office of Disciplinary Counsel acknowledges that, on occasion, the Supreme Court has granted the petitions for reinstatement of disbarred attorneys who were convicted felons.

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 (2003), (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), (denied petition for reinstatement over HPS recommendation).

In this matter, Petitioner's prior criminal conduct for which he was disbarred, which is relevant to the determination, was extremely serious. In 2006, Petitioner pled guilty to 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). Petitioner's conduct undermined the foundations of the administration of justice and was clearly inconsistent with the character expected of an attorney.

Furthermore, in 2009, Petitioner was convicted of 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, and forging his client's signature, yet stating to the bank that the

individual had personally signed the relevant documents, in violation of 18 U.S.C. § 1014. Although the conduct that gave rise to the 2009 prosecution occurred prior to Petitioner's disbarment, the fact remains that Petitioner committed the aforementioned crime and pled guilty to a federal felony.

The Office of Disciplinary Counsel cannot affirm 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. Indeed, the primary purpose of an ethics proceeding "is not punishment but rather the protection of the public and the reassurance of the public as to the reliability and integrity of attorneys." Committee on Legal Ethics v. Pence, 171 W.Va. 68, 74, 297 S.E.2d 843, 849 (1982).

The Office of Disciplinary Counsel 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. Although Petitioner presented testimony of friends and community leaders who opined that they did not think there would not be an adverse impact on public confidence in the administration of justice, several witnesses did not know the actual details of the misconduct which lead to Petitioner's disbarment.

In his brief, Petitioner cited Iowa Sup. Ct. Atty. Disc. Bd. v. Keele, 795 N.W.2d 507 (Iowa 2011) in support of his position that his "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." (Brief of the Pet. Louis Dante' DiTrapano at 32). Respectfully, Petitioner's analysis is inapposite. Petitioner is correct that Keele was also convicted of

being an unlawful user of a controlled substance in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(2). Keele, 795 N.W.2d at 512. However, Keele had previously been disciplined by Iowa for his illegal drug use and possession of drug paraphernalia. Id. at 513. As Iowa could not discipline Keele twice for the same conduct, following his aforementioned felony conviction, the question became whether Keele could be disciplined for his illegal possession of a firearm; that is, whether such illegal possession reflected adversely on his fitness to practice law in violation of Iowa law. Id. The court found that Keele’s illegal possession of a firearm did not relate to his fitness to practice law, and thus, he could not be disciplined for such illegal possession. Id. at 514.

In the instant case, Petitioner has already been disciplined for being an unlawful user of a controlled substance in possession of a firearm. Unlike in Keele, the Supreme Court found that 18 U.S.C. §§ 922(g)(3) and 924(a)(2) were of “such seriousness” to warrant Petitioner’s disbarment. It is Petitioner’s burden to prove that he meets the requisite standards to be reinstated to the practice of law, and not that of the Office of Disciplinary Counsel. Keele does not assist Petitioner.

Additionally, with respect to Petitioner’s 2009 felony conviction, it is of no moment that “[t]he other party in interest [to the bank loan] was made whole by the successful nature of the investment and the bank was fully repaid.” (Brief of the Pet. Louis Dante’ DiTrapano at 33). Although Petitioner acknowledged that he was “categorically wrong in his conduct,” he further asserted that he “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.” Id. Respectfully, Petitioner is sugarcoating the fact, to which he admitted and pled guilty, that he forged his client’s signature as part of the bank loan.

Furthermore, Petitioner’s statement that “[t]he 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 ... that the nature of the underlying offense leading to disbarment is not such that it precludes reinstatement without further inquiry as to rehabilitation” misses the mark. (Brief of the Pet. Louis Dante’ DiTrapano at 13). Rather, in response to Petitioner’s argument 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,” the Hearing Panel Subcommittee noted that “the underlying conduct was egregious - and it includes two felonies, not only the possession of firearms - Petitioner’s addictions were a major mitigating factor.” (Report and Recommendation of the Hearing Panel Subcommittee at 22). Contrary to Petitioner’s assertion, the Hearing Panel Subcommittee clearly did not find that the nature of his underlying offense was not such that it precluded reinstatement without further inquiry as to rehabilitation. The Hearing Panel Subcommittee certainly found Petitioner’s felonies to be serious when it described Petitioner’s conduct as “egregious.” The fact that the Hearing Panel Subcommittee found Petitioner’s addictions to be a major mitigating factor does not, in any manner, detract from the seriousness of the underlying felonious conduct.

2. Petitioner is Presently Serving a Sentence of Supervised Release.

In addition to the fact that Petitioner's underlying offense conduct that lead to his disbarment was extremely serious, Petitioner is currently serving a term of supervised release as part of his sentence from his 2009 federal felony conviction. Moreover, Judge Johnston denied Petitioner's request for early termination of his supervised release. The Office of Disciplinary Counsel has grave concerns that the reinstatement of any individual who is presently serving a criminal sentence will have a justifiable and substantial adverse effect of the public confidence in the administration of justice.

In Connecticut on September 27, 2012, in the matter of In Re: Application of Joseph P. Ganim, Docket No. CV 03 0404638 S, a three judge panel in the Superior Court, Judicial District of Fairfield at Bridgeport denied the petitioner's application for readmission to the bar.² The petitioner, the former mayor of the city of Bridgeport, was a convicted felon who was serving a term of supervised release at the time he filed his petition for readmission to the bar. Although the facts of Ganim are distinguishable from those of the instant matter, it is noteworthy that Ganim's petition for early termination of supervised release, like Petitioner's, was denied by the sentencing court. Ganim's application was denied for several reasons, yet one of the reasons was because Ganim was serving the supervised release portion of his sentence at the time he applied for readmission to the bar. As the Ganim court noted:

The court also believes that any argument by Ganim that sufficient time has passed since his misconduct is somewhat undermined by the circumstances under which that time has

²The aforementioned case is currently on appeal before the Connecticut Supreme Court.

passed. Most of that time has passed while Ganim was incarcerated and, more recently, while he has been under supervised release. It is hard to credit the passage of time as an indication of rehabilitation when it occurs under the watchful eyes of prison guards and a probation officer. A more appropriate barometer will involve an assessment of Ganim's conduct in the years following his discharge from his sentence.

Id. at 33, n.20. Furthermore, the Ganim court noted that “[i]t would be anomalous, to say the least, that Ganim should continue to be supervised in the conduct of his own affairs but entrusted with the affairs of others.” Id. at 34, n.21.

The Supreme Court of Washington has held that a convicted felon could not be reinstated into the bar until he had successfully completed the conditions of his parole and had been finally discharged. In the Matter of the Reinstatement of Gordon L. Walgren, 104 Wash.2d 557, 708 P.2d 380 (1985). Walgren was disbarred from the practice of law after having been convicted for federal crimes pursuant to the “RICO,” mail fraud, and travel acts statutes. Id., 104 Wash.2d at 559-60, 708 P.2d at 382. He was sentenced to five years imprisonment, of which he served two years, but was released on parole thereafter. Id., 104 Wash.2d at 560, 708 P.2d at 382. While on parole, Walgren applied for reinstatement to the bar. Id.

The Walgren court noted that “[a] person on parole does not have the full panoply of rights,” and further, that parole “represents a less restrictive period during which criminals are offered the opportunity to prove they can reintegrate themselves into society without the imposition of the full prison sentence.” Id., 104 Wash.2d at 570, 708 P.2d at 387 (internal citations omitted). Although the court did not go so far as to hold that an individual's restoration of civil rights is a condition precedent to reinstatement, the court held that

“attorneys will not be reinstated into the Bar until they have successfully completed the conditions of their parole and have been finally discharged.” Id., 104 Wash.2d at 571, 708 P.2d at 388.

Similarly, the United States District Court for the Eastern District of Michigan has held that reinstatement to practice before the federal court was not appropriate while an attorney was on parole from a sentence of incarceration, despite the fact that the attorney had been reinstated to practice law by the state’s grievance board. In re W. Otis Culpepper, 770 F.Supp. 366 (E.D.Mich. 1991). Culpepper was suspended from the practice of law by both the Michigan Attorney Discipline Board and the United States District and Bankruptcy Courts for the Eastern District of Michigan after having been convicted of three counts of income tax evasion and failure to file income tax returns in violation of federal law. Id. He was sentenced to three years confinement for two counts of failure to file income tax returns and five years probation commencing upon his release from incarceration for one count of income tax evasion, and ordered to pay a fine. Id. at 366. Upon completion of his two year suspension³ and while on parole, Culpepper applied for reinstatement to the bar. Id. at 366-67. Although he was reinstated to practice law by the Michigan Attorney Discipline Board, the federal district court denied Culpepper’s petition for reinstatement. Id. at 367, 374.

Although the Culpepper court distinguished between parole and probation in that parole is a continuation of a sentence of incarceration and that probation is not a continuation of a sentence of incarceration, the court found that “[n]otwithstanding the distinction between

³Culpepper was released on parole after serving eleven months of his three year sentence. Id. at 367, n.2. The court noted that after serving his parole, Culpepper would continue to serve his sentence of probation, as ordered. Id.

parole and probation, the Court has some serious concerns at this time about the potential adverse effect on the integrity and standing of this Bench and Bar of Mr. Culpepper's readmission to practice before this Court prior to the April 12, 1995 completion of his sentence of probation on Count 1." Id. at 374, n.9. Although the Culpepper court made the aforementioned distinction between parole and probation, it is significant that it described both parole and probation as part of a criminal sentence. That is, the distinction surrounded the incarceration aspect of the sentence, not the sentence itself.

The court found that Culpepper's "testimony and sincerity concerning his contrition and rehabilitation, as well as the testimony of other witnesses at the hearing regarding his competence and learning in the law" were impressive. Id. at 373. Nonetheless, the court found that Culpepper's "resumption to the practice of law before this Court before he has completed his term of parole on the sentence of incarceration on Counts 3 and 4 would be detrimental to the integrity and standing of the Federal Bar." Id. Accordingly, the court denied Culpepper's petition for reinstatement without prejudice "to his right to petition for reinstatement after he has satisfactorily completed his term of parole ..." Id. at 374. See also, Matter of Griffin, 101 N.M. 1, 677 P.2d 614 (1983) (in disbaring an attorney who had been sentenced to a term of probation, the New Mexico Supreme Court held that it was "inconsistent with the practice of law under a license granted by this Court for an attorney to be allowed to practice law while he is on probation for a criminal sentence for a serious crime such as this."); Matter of Levine, 138 A.D.2d 166, 530 N.Y.S.2d 3 (1988) (an attorney who has petitioned for reinstatement while still on probation will not be readmitted to practice law).

In his brief, Petitioner cited Office of Disciplinary Counsel v. John W. Alderman, III, 229 W.Va. 656, 734 S.E.2d 737 (2012) in support of his position that his law license should be reinstated despite the fact that he is presently serving his sentence of supervised release pursuant to his second felony conviction. (Brief of the Pet. Louis Dante' DiTrapano at 35-36). As Petitioner suggested, the Office of Disciplinary Counsel does, in fact, distinguish the facts of Alderman from those in the instant matter. As a result of his convictions, in October of 2010, the Office of Disciplinary Counsel filed a petition seeking Alderman's disbarment. After a mitigation hearing, the Court suspended Alderman for a period of two (2) years as a result of two (2) 2010 misdemeanor pleas in Magistrate Court. Under Roark, Galford and White, a two (2) year suspension as ordered by the Court was the appropriate sanction for the two misdemeanor convictions. See Committee on Legal Ethics v. Roark, 181 W.Va. 260, 382 S.E.2d 313 (1989); Committee on Legal Ethics v. White, 189 W.Va. 135, 428 S.e.2d 556 (1993); Office of Disciplinary Counsel v. Galford, 202 W.Va. 587, 505 S.E.2d 650 (1998). Alderman received a retroactive suspension for a period of one (1) year based upon his voluntary withdrawal from the practice of law for fifteen months from June of 2009 until October of 2010.⁴ The second year of suspension imposed by Mandate Order issued November 19, 2012, is being held in abeyance pending the successful completion of two (2) years of supervised practice with rather stringent conditions imposed by the Court. Alderman was not subject to any term of unsupervised probation at the issuance of the

⁴As noted by the Court, Alderman did not receive credit for the entire fifteen month period in which he removed himself from the practice of law. Only the twelve month period after his second arrest was credited toward his retroactive suspension. Id., 229 W.Va. at 661, 734 S.E.2d at 742.

Court's 2012 suspension Order.⁵ Alderman's convictions or misconduct did not involve his clients. Petitioner's reliance on Alderman is not persuasive.

Although Petitioner argued that the purpose of supervised release is for rehabilitation as opposed to punishment, the simple fact remains that a term of supervised release is part of a criminal defendant's sentence. It is irrelevant whether an individual is serving a term of supervised release, a sentence of probation, or has been paroled. In all of the aforementioned scenarios, the individual remains under the watchful eye of the court until she or he has successfully completed the sentence imposed by the court. Moreover, if one of the purposes of supervised release is to rehabilitate a criminal defendant, if the criminal defendant has not completed the term of supervised release, then there should be a presumption that the criminal defendant is not able to show rehabilitation.

Petitioner is currently serving a term of supervised release, part of his criminal sentence as ordered by a United States District Court Judge for his felony conviction. As previously noted, Judge Johnston denied Petitioner's request for early termination of his supervised release, and, in fact, stated at Petitioner's sentencing that he would have given Petitioner a longer sentence of supervised release if he could have done so. At present, Petitioner is still subject to revocation of his supervised release and will be until January 14, 2015.

⁵Alderman did practice law while he was under a term of unsupervised probation, but that was during the pendency of the disciplinary proceedings and the circumstances in that case did not give rise to the filing of a meritorious extraordinary proceeding pursuant to Rule 3.27 of the Rules of Lawyer Disciplinary Procedure.

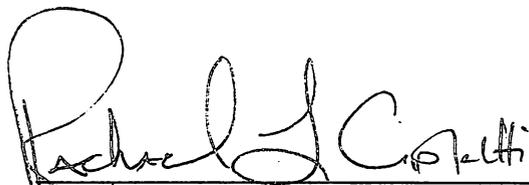
Additionally, although Ms. Newberger testified that Petitioner has been determined to be “low risk” by the United States Probation Office for the Southern District of West Virginia, the fact remains that Petitioner is presently serving his term of supervised release, which is undisputably part of his original sentence. United States v. Evans, 159 F.3d 908, 913 (4th Cir. 1998); see also United States v. Finch, 2012 WL 2047676 *1 (C.A.4 (S.C.)) (“A term of supervised release is part of the sentence and is reviewed for reasonableness, both procedurally and substantively.”). The Office of Disciplinary Counsel maintains that reinstating Petitioner’s law license, while Petitioner is serving his sentence imposed as a result of a felony conviction to which he pled guilty, would have a justifiable and substantial adverse effect on the public confidence in the administration of justice.

V. CONCLUSION

It is this Honorable Court’s inescapable and unenviable duty to protect the public and preserve the integrity of its Courts and our system of justice. Petitioner, a twice convicted felon, has failed to meet his heavy burden of persuasion in order to be reinstated to the practice of law in West Virginia. Although there is currently no *per se* bar to the admission or reinstatement of a convicted felon in West Virginia, the Office of Disciplinary Counsel asserts that Petitioner’s two felony convictions manifestly meet the test in Brown to preclude reinstatement. Moreover, Petitioner should not have his law license reinstated while serving his criminal sentence. The Office of Disciplinary Counsel has grave concerns that the reinstatement of any individual who has been convicted of two felony offenses, and who is currently serving a sentence of federal supervised release, would undermine the public

confidence in the legal system. Accordingly, the Office of Disciplinary Counsel opposes reinstatement in this matter.

Respectfully Submitted,
By Counsel.

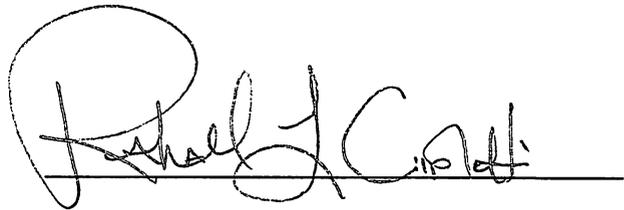


Rachael L. Fletcher Cipoletti [Bar No. 8806]
Chief Lawyer Disciplinary Counsel
Joanne M. Vella Kirby [Bar No. 9571]
City Center East, Suite 1200C
4700 MacCorkle Avenue SE
Charleston, West Virginia 25304
(304) 558-7999
(304) 558-4015 *facsimile*
rfcipoletti@wvdc.org

CERTIFICATE OF SERVICE

This is to certify that I, Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 23rd day of December, 2013, served a true copy of the foregoing "**BRIEF OF THE OFFICE OF DISCIPLINARY COUNSEL**" upon Robert H. Davis, Jr., Esquire, counsel for Petitioner, L. Dante DiTrapano, by mailing the same, United States Mail with sufficient postage, to the following address:

Robert H. Davis, Jr., Esquire
121 Pine Street
Harrisburg, Pennsylvania 17101

A handwritten signature in black ink, appearing to read "Rachael L. Fletcher Cipoletti", written over a horizontal line.

Rachael L. Fletcher Cipoletti