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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, J., dissenting:

Mr. Wheaton is a young African American attorney who was urged by my friend, the distinguished former Justice of this Court, Franklin Cleckley, to move to the Eastern Panhandle of West Virginia and establish a solo practice there – to help meet the under-served needs of that area’s large African American community. This was an important mission, and a challenging one.

Mr. Wheaton, inexperienced and on his own in a new area, got in way over his head, and made some serious errors of judgment. The majority details Mr. Wheaton’s errors in several cases; but it does not discuss the many legal matters that Mr. Wheaton did handle properly; nor does it take into serious consideration how his work did bring an important degree of racial diversity to the legal community in the Eastern Panhandle.

Mr. Wheaton’s attorney before this Court, Ms. Katherine Dooley, ably argued that this Court should weigh in the balance the importance of encouraging diversity in the practice of law. I thoroughly concur in this argument.

I agree that Mr. Wheaton’s conduct has been such that he should, at this time, be suspended from practicing law for some period of time. I part company from the majority on the degree of sanction that he should receive, and the burden that Mr. Wheaton should

have in seeking reinstatement.

Generally speaking, a “full annulment” sanction places a different burden on the person seeking reinstatement than does a “suspension” sanction. See generally *Lawyer Disciplinary Bd. v. Moore*, 214 W.Va. 780, 591 S.E.2d 338 (2003).

Mr. Wheaton is a young man who made some grievous errors. Because I fully support the effort that former Justice Cleckley began when he urged Mr. Wheaton to begin a solo practice in the Eastern Panhandle, I would like to see Mr. Wheaton return to the bar – if and only if he demonstrates his fitness to do so. To make such a demonstration much more realistically feasible, while still fully protecting the public interest, I would impose a three-year suspension with strict reinstatement conditions, including full restitution.

Accordingly, I dissent.

I am authorized to state that Justice McGraw joins in this dissent.