

No. 12-1055 – *State of West Virginia ex rel. Jennifer A. Fillinger, R.N. v. Laura S. Rhodes, Executive Director, the West Virginia Board of Examiners for Registered Professional Nurses, an Administrative Agency of the State of West Virginia*

**FILED**

March 12, 2013  
released at 3:00 p.m.  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

Benjamin, Chief Justice, concurring:

I agree with the Majority’s decision to grant the requested writ of prohibition. I write separately only to emphasize that by repeatedly violating the West Virginia Code, the West Virginia Code of State Rules, and Ms. Fillinger’s due process rights, the West Virginia Board of Examiners for Registered Professional Nurses engaged in excessively vexatious conduct. In past cases, such conduct has warranted awarding attorney fees and costs to the harmed party. *See, e.g., Miller v. Hare*, 227 W. Va. 337, 342, 708 S.E.2d 531, 536 (2011) (“[T]his Court determined that the DMV had improperly delayed the revocation proceeding and . . . that the appropriate sanction for the improper continuance was to require the DMV to pay the substantial expenses and costs incurred by [the petitioner] in connection with the DMV’s improper delay.”); *Trozzi v. Bd. of Review of W. Va. Bureau of Emp’t Programs*, 214 W. Va. 604, 607, 591 S.E.2d 162, 165 (2003) (“[T]his Court recognized that “[t]here is authority in equity to award to the prevailing litigant his or her reasonable attorney’s fees as ‘costs,’ without express statutory authorization, when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” [*Bd. of Review of Bureau of Emp’t Programs v. Gaston*, 210 W.Va. [753,] 755, 559 S.E.2d [899,] 901 (quoting Syl. pt. 3, *Sally-Mike Properties v. Yokum*, 179 W.Va. 48, 365 S.E.2d 246 (1986)).”). In the future, I believe

this Court should pay special attention to such conduct and make such awards of costs and expenses as appropriate to compensate the victims of such conduct and to communicate the message that this Court expects all parties to abide by the Code and by applicable rules.