

FILE COPY  
DO NOT REMOVE  
FROM FILE

**IN THE SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**



**IN RE:** KEITH L. WHEATON, an annulled member                      Bar No.: 6810  
of the West Virginia State Bar                      Supreme Court No.: 18-0836  
I.D. No.: 18-03-448

## REPORT OF THE HEARING PANEL SUBCOMMITTEE

On or about April 16, 2003, a Statement of Charges containing six counts was filed against Keith L. Wheaton ("Petitioner" herein) charging him with multiple violations of the Rules of Professional conduct. On September 8 and 9, 2003, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board heard evidence on the matter. The Board issued its decision in the matter on My 13, 2004, finding that the evidence established that Petitioner committed thirty-one violations of the Rules of Professional Conduct, to wit: two counts of violations of Rule 1.2(a) (abiding by a client's decision); four counts of violations of Rule 1.3 (diligence); three counts of violations of Rule 1.4(c) (keeping the client informed about the status of a matter); two counts of violations of Rule 1.4(b) (explaining a matter to the extent reasonably necessary for the client to make an informed decision); two counts of violations of Rule 1.5(c) (failure to have a written contingency fee contract and/or an itemized statement); one count of violation of Rule 1.15(a) (keeping client or third person personal property separate from the lawyer's own property); two counts of violations of Rule 1.15(b) (promptly delivering property to a client or third person); four counts of violations of Rule 1.16(d) (failure to return unearned retainers); two counts of violations of Rule 3.2 (expediting litigation); two counts of violations of Rule 8.1(a) (knowingly making a false statement of material fact during the course of investigation of an ethics complaint); five counts of violation of Rule 8.4(c) (engaging in conduct involving

dishonesty, fraud, deceit or misrepresentation); and two counts of violations of Rule 8.4(d) (conduct prejudicial to the administration of justice).

The Hearing Panel, at that time made the following recommendations as sanctions:

1. That Petitioner's law license be annulled.
2. That prior to petitioning for reinstatement of his law license, that Petitioner be order to reimburse:
  - A. Complainant Christensen, \$450.00;
  - B. Complainant Pruden, \$300.00; and
  - C. Complainant Mason, \$500.00 and fully satisfy the judgment assessed against Petitioner by the Bankruptcy Court.
3. That prior to reinstatement that Petitioner be required to demonstrate that he has an understanding of the Rules of Professional Conduct and that he be required to undertake an additional eighteen hours of ethics and office management continuing legal education prior to reinstatement of his law license.
4. That should Petitioner be reinstated to practice law, that consideration be given to requiring the Petitioner to submit to supervised practice for a substantial period to be determined at that time. The Hearing Panel Subcommittee recommended a two year supervisory period.
5. That Petitioner be ordered to reimburse the Lawyer Disciplinary Board the costs of the proceedings before it, pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

The Supreme Court of Appeals of West Virginia adopted the recommendations of the Lawyer Disciplinary Board by Opinion filed November 12, 2004, in *Lawyer Disciplinary Board*

*v. Wheaton*, 216 W.Va. 673, 610 S.E.2<sup>nd</sup> 8 (2004). Petitioner's law license was annulled by Order entered on January 20, 2005.

Petitioner filed his first Petition for Reinstatement on or about January 20, 2010. A hearing was conducted by the Hearing Panel Subcommittee on March 9 and 10, 2011. On or about July 18, 2011, the Hearing Panel Subcommittee filed its Recommended Decision, Findings of Fact and Conclusions of Law with the Court. In its recommendation, the Hearing Panel Subcommittee recommended that the Petition for Reinstatement be denied.

By Memorandum Decision issued November 17, 2011, the Supreme Court denied Petitioner's petition for reinstatement, concluding that Petitioner had failed to satisfy the requirements set forth in *Wheaton*, failed to adequately demonstrate that there was little likelihood that such misconduct would recur, and failed to show that his reinstatement to the practice of law would not have a substantial adverse impact on the public confidence in the administration of justice. *Wheaton v. Lawyer Disciplinary Board*, 2011 WL 8186639, Supreme Court No. 35462.

On or about September, 24, 2018, Petitioner filed his second Petition for Reinstatement. The Office of Lawyer Disciplinary Counsel filed its "Report of the Office of Lawyer Disciplinary Counsel Regarding the Reinstatement Petition of Keith L. Wheaton on or about February 19, 2020.

This matter proceeded to hearing on Petitioner's second Petition for Reinstatement on June 26, 2020 and concluded on September 1, 2020. Said hearing was held before the Hearing Panel Subcommittee, consisting of Charlotte Norris, layperson, Nicole Cofer, Esquire and Suzanne Williams-McAuliffe, Esquire. Ms. Williams-McAuliffe served as the chairperson for the Subcommittee. Petitioner Keith Wheaton appeared in person, *pro se*. Rachael Fletcher,

Chief Lawyer Disciplinary Counsel appeared on behalf of the Office of Lawyer Disciplinary Counsel. The Hearing Panel Subcommittee heard testimony from Paul Taylor, Esquire, Manual Washington, Jay Mullen, and the Petitioner. Further, ODC Exhibits 1-16 were admitted into evidence.

Based on the evidence presented and the record herein, the Hearing Panel Subcommittee makes the following Findings of Fact, Conclusions of Law and Recommendation in the final disposition of this matter.

## **II. FINDINGS OF FACT**

### **A. Petitioner's Background**

Petitioner was born in 1967. He received a Bachelor of Arts Degree in Political Science from Hampton University in Hampton, Virginia in 1989. He graduated from West Virginia University College of Law in 1992 and was admitted to the West Virginia State Bar on May 1, 1995. Initially, Petitioner worked for the West Virginia State Tax Department in the Criminal Investigations Unit. In or about May, 1996, at the encouragement of his friend and mentor, former Justice Frank Cleckley, Petitioner relocated to Martinsburg, West Virginia and established a solo practice. While practicing in Martinsburg, Petitioner handled both civil and criminal matters in federal court and in state courts in Berkeley, Jefferson, Morgan, Hardy and Hampshire counties.

### **B. ORIGINAL STATEMENT OF CHARGES**

#### **Count One – Complaint of Margo Bruce**

Ms. Bruce retained Petitioner in 1999 to represent her in a civil action. She paid an initial fee of \$300.00, then a second fee of \$150.00. A settlement was reached on or about September 21, 2000, for \$15,000.00. Petitioner deposited the settlement check into his business account, as

he did not have an IOLTA account set up at that time. Petitioner wrote a check to Ms. Burce for \$10,000.00 for her portion of the settlement. The check failed to clear because of insufficient funds. Petitioner characterized the situation as a banking error and promised Ms. Bruce prompt payment. When Petitioner failed to pay Ms. Bruce, she contacted local law enforcement and a felony worthless check warrant was issued.

Thereafter, Petitioner obtained a cashier's check for \$10,000.00. Petitioner told the ODC and local law enforcement that Ms. Bruce would receive her money shortly and provided both with copies of the cashier's check as proof of payment. He did not, however, tender the cashier's check to Ms. Bruce but instead deposited the check into his own account and used the money to cover the closing costs of his personal residence.

The Court found that Petitioner violated Rule 1.15 by failing to set up, maintain and/or deposit the settlement check into a proper trust account. The Court found a second violation of Rule 1.15 because Petitioner failed to deliver Ms. Bruce her funds, and additionally, converted the same to his own personal use. As a result of failing to have a written contingency fee agreement and failing to provide an itemized statement, the Court found Petitioner violated Rule 1.5(c). The Court also found Petitioner's intentional conversion of a client's fund for his own use and his misrepresentations to the ODC violated Rule 8.1.

#### **Count Two – Complaint of Pamela Mason**

Ms. Mason retained Petitioner to pursue a discrimination claim in May, 1997. Ms. Mason provided Petitioner with a \$500.00 retainer. After Ms. Mason had tried to contact him many times, Petitioner sent Ms. Mason a letter, dated January 15, 1999, advising her that he had filed suit and enclosed a copy of the signed complaint. Ms. Mason filed for Chapter 7 bankruptcy. In said bankruptcy, Ms. Mason listed her discrimination claim as an asset of the



bankruptcy asset. Petitioner was appointed special counsel in the bankruptcy cause to pursue the discrimination claim on behalf of the bankruptcy trustee for the benefit of the bankruptcy estate. He then filed an affidavit with the bankruptcy court and enclosed a copy of the complaint that he had earlier sent to Ms. Mason. After many attempts to get information from Petitioner, the bankruptcy trustee contacted the circuit court where Ma. Mason's civil action purportedly had been filed. The bankruptcy trustee discovered that, in fact, no civil action had ever been filed, and further, that any would, at that time, be time barred as the applicable statute of limitations had expired. Petitioner then failed to appear at several hearing before the bankruptcy court and failed to respond to the bankruptcy trustee's further requests for information.

On November 26, 2001, an adversary proceeding was filed against Petitioner in bankruptcy court. A partial motion for summary judgment was granted as to liability. A hearing on damages was held on September 12, 2003. By Order entered October 23, 2003, the bankruptcy court entered a judgment against Petitioner for \$45,000.00 payable to Ms. Mason's bankruptcy estate.

### **Count Three – Complaint of Nancy Christensen**

Ms. Christensen retained Petitioner to represent her in a suit against the Veteran Affairs Medical Center in June, 1998. When Petitioner determined that the case would not proceed to mediation as hoped, Ms. Christensen paid Petitioner \$150.00 to cover the costs of filing a civil action. After several attempts to check on the status of her case, Ms. Christensen received a letter from Petitioner stating that he had unilaterally rejected a proposed settlement offer of \$5,000.00. The letter indicated that mediation was the best way to proceed and that the court had removed the case from its docket. After receiving the letter, Ms. Christensen attempted to see Petitioner to discuss her case. When Petitioner failed to appear at his office for a scheduled

meeting, Ms. Christensen called the courthouse and discovered that no civil action had been filed on her behalf against the Veteran Affairs Medical Center.

The Court found that Petitioner violated Rule 1.3 by failing to pursue a matter for which he was retained, by falsely representing that he had filed a civil action when he had not, and by failing to protect his client's claim against the statute of limitations. Petitioner's failure to return Ms. Christensen's calls, failure to provide her with information about her case, and failure to advise her regarding the statute of limitations resulted in a violation of Rule 1.4. Petitioner's unilateral rejection of a proposed settlement offer without advising Ms. Christensen of the same violated Rule 1.2(a). The Court also found that Petitioner violated Rule 3.2 by his dilatory practices and failure to make reasonable efforts consistent with his discussions with Ms. Christensen. The Court also found that Petitioner violated Rule 1.16 by failing to pursue the matter on behalf of Ms. Christensen, by failing to withdraw from representation when he chose not to perform legal services, and by failing to refund the advanced payment of the fee that was not earned. Finally, the Court found that Petitioner violated Rule 8.4 when he falsely represented to Ms. Christensen that he had filed a civil action on her behalf.

**Count Four – Complaints of Keith and Marianne Short, Dr. Lurito, Dr. Gerwin**

The Shorts retained Petitioner to represent them in a personal injury action which was scheduled to go to trial in one month. The Shorts gave Petitioner \$7,500.00 to cover advance payments needed for the expert witnesses who would testify at trial. A jury verdict was awarded in the amount of \$34,726.30, which Petitioner deposited into his IOLTA account. Petitioner then wrote a check to the Shorts for their portion of the award and wrote himself a check for his fee. The check written to the Shorts was returned for insufficient funds. A felony worthless check warrant was issued against Petitioner as a result.

During the course of representing the Shorts, Petitioner hired Dr. Lurito to testify and produce a report regarding future and past economic damages. Dr. Lurito's fee was \$2,500.00. Petitioner paid Dr. Lurito by checks that were returned for insufficient funds. Petitioner also retained a Dr. Gerwin to serve as an expert in the Shorts' case. Petitioner issued for Dr. Gerwin a check for \$2,250.00 that was returned for insufficient funds, as well.

The Court found violations of Rule 1.15(b) by Petitioner's failure to deliver client funds, failure to pay for expert services, and misappropriation of advanced funds and settlement proceeds to his own use. It further found that Petitioner intentionally converted his clients' funds to his own use in violation of Rule 8.4. Finally, the Court found that Petitioner violated Rule 8.1 when he made material misrepresentations to the ODC in connection with the investigation of the ethics complaints, and falsely represented to the ODC that his clients and the retained experts had either been paid in full or would be paid by a certain date.

#### **Count Five – Complaint of Edward K. Pruden, Sr.**

Mr. Pruden retained Petitioner to represent him in a wrongful termination case, paying Petitioner \$150.00. When Petitioner informed Mr. Pruden that negotiations were not going as planned, Mr. Pruden paid Petitioner an additional \$150.00 to cover filing fees. After several failed attempts to contact Petitioner regarding the status of his case, Mr. Pruden received a letter from Petitioner, dated July 3, 2000, stating that he had unilaterally rejected a proposed settlement offer of \$5,000.00. The letter indicated that mediation was the best way to proceed and that the court had removed the case from its docket. After reading an article in the newspaper about Petitioner's problematic representation of another client, Mr. Pruden went to the courthouse and discovered that no civil action had ever been filed on his behalf.



The Court found that Petitioner violated Rule 1.3 by failing to pursue a matter for which he had been retained and by falsely representing that he had filed a civil action when he had not. The Court also found that Petitioner violated Rule 1.4 by failing to return his client's phone calls, failing to provide Mr. Pruden with sufficient information to participate in decisions, failing to advise him that he had not filed a civil action on his behalf, and failing to fulfill reasonable client expectations for information consistent with his client's best interests. Further, the Court found that Petitioner's unilateral rejection of a proposed settlement offer, without advising Mr. Pruden of the same, violated Rule 1.2(a), that his failure to withdraw when it was clear that he could not, or chose not, to perform the legal services for which he had been retained violated Rule 1.16, and that Petitioner violated Rule 8.4 because he misrepresented to his client that a civil action had been filed and that the court had removed the case from its docket.

#### **Count Six – Complaint of Elizabeth Crawford**

In 1999, Ms. Crawford and approximately fifty other people met with Petitioner to discuss a class action lawsuit regarding possible civil rights infringements. Ms. Crawford paid Petitioner \$300.00 to be included in the class and to cover the filing fees. After several failed attempts to contact Petitioner regarding the case, Ms. Crawford discovered that no class action suit had been filed.

The Court found that Petitioner violated Rule 1.3 because he failed to pursue the matter on behalf of Ms. Crawford after she retained his services. The Court also found that Petitioner violated Rule 1.16 because he failed to pursue the matter, failed to withdraw from representation when it was clear that he could not, or chose not, to perform the legal services, and failed to refund the advanced payment of the fee that had not been earned.

### **C. Other Ethics Complaints**

At the time of Petitioner's disbarment, there were fourteen open ethics complaints. Said complaints were closed based on Petitioner's disbarment and ordered to be placed in his reinstatement file for future consideration. Those allegations were summarized by the ODC and proved to the Court in the ODC's initial report.

### **D. Petitioner's 2010 Petition for Reinstatement**

On or about January 20, 2020, Petitioner filed a Petition for Reinstatement. Hearing was held on said Petition on March 9-10, 2011. The Hearing Panel Subcommittee issued its recommendation on July 8, 2011. On November 17, 2011, the West Virginia Supreme Court of Appeals denied Petitioner's Petition.<sup>1</sup>

### **E. Petitioner's Activities Since the Denial of His First Petition for Reinstatement**

Petitioner has had several jobs since the first denial for reinstatement of his license to practice law. He was a program manager for Total action for Progress in Roanoke, Virginia; a corporate trainer for BrownGreer, PLC in Richmond, Virginia; the owner/operator of JBT Media Holdings, Inc.; a document review professional with United Lex in Richmond, Virginia; and held various positions with staffing companies in and around Roanoke, Virginia.

Petitioner also served in a fiduciary capacity as a Trustee of the First Baptist Church of Roanoke, Virginia, from 2013-2015, and as a Sunday School and Bible Study group teacher for that church. Also, during this time, Petitioner cared for his ailing mother, who was diagnosed with leukemia in 2010 and passed away in 2012.

---

<sup>1</sup> See *Wheaton v. Lawyer Disciplinary Board*, 2011 WL 8186639, Supreme Court No. 35462.

In or about October 2018, Petitioner gained employment as a paralegal with the Office of Wage and Hour Department of Employment Services of Washington, DC. He remains in that position at the present time.

Historically, Petitioner has experienced difficulty in meeting his child support obligations to his four children and still working to pay off a child support arrearage. However, Petitioner reports that he is now timely making child support payments, that his employment now is stable and well paying, and that he did not anticipate further difficulty with meeting his child support obligation.

#### **F. Petitioner's Compliance with Terms of Prior Meetings**

In addition to annulling Petitioner's law license, the Court, in its opinion, adopted the other recommendations of the Hearing Panel Subcommittee regarding reinstatement. Pursuant to the Court's order, upon seeking reinstatement, Petitioner is required to: (1) reimburse clients who were injured by Petitioner's misconduct and who he never repaid as follows: Ms. Christensen in the amount of \$450.00, Mr. Pruden in the amount of \$300.00, and Ms. Mason in the amount of \$500.00; (2) fully satisfy the judgment assessed against him by the federal bankruptcy court due to his misconduct in the underlying case of his client, Ms. Mason; (3) demonstrate that he has an understanding of the Rules of Professional Conduct and that he undertake an additional eighteen hours of ethics and office management continuing legal education; (4) submit to supervised practice for a period of at least two years; and (5) reimburse the Board for the costs of the proceedings.

Petitioner has reimbursed Ms. Christensen, Mr. Pruden and Ms. Mason. He has not satisfied the \$45,000.00 judgment, assessed by the federal bankruptcy court in Ms. Mason's matter, but expresses a willingness to execute a payment plan to satisfy the judgment.

As to the costs of the ODC, the ODC certified that the expenditures incurred by the Lawyer Disciplinary Board in the investigation and litigation of the prior proceedings was \$13,353.39. Petitioner has not yet reimbursed the Bard for these costs, as ordered by the Court, but is willing to enter into a payment plan in order to satisfy the Order.

Additionally, the Lawyers' Fund for Client Protection of the West Virginia State Bar received six claims for compensation from clients who alleged that Petitioner had taken their money and not provided legal services. After proper review and investigation by the Board of Trustees and approval by the Board of Governors, the Fund paid out a total of \$12,005.00 to four individuals. Petitioner has not made restitution to date the West Virginia State Bar for the Fund for Client Protection but has contacted the Executive Director and is willing to execute a payment plan to make restitution.

As stated above, Petitioner has made restitution to his former clients, Ms. Christensen, Mr. Pruden and Ms. Mason. Said restitution had not been made as of June 26, 2020, the first day of hearing. Petitioner admitted to the HPS at the June 26, 2020 hearing that he should have made an effort in the past to pay the clients that he had financially damaged, but that his failure to do so was largely based on his financial instability. The June 26, 2020 hearing was continued at Petitioner's request to allow Petitioner to be able to call certain witnesses who were not able to appear on that date due to the COVID-19 pandemic and other difficulties. Prior to the June 26, 2020 hearing's conclusion, Petitioner represented to the HPS that he believed he could make restitution to the three clients after he received a raise in July. Petitioner made the ordered restitution (except for the Mason \$45,000.00 bankruptcy judgment) shortly before the September 1, 2020 hearing.

As to ethics/law office management requirement for reinstatement, Petitioner's MCLE transcript reflects that, during the 2018-2020 reporting year, Petitioner reported taking 34.80 hours of continuing education, including 19.30 hours in the areas of legal ethics, law office management and/or substance abuse.

### **G. Reinstatement Hearing**

The Hearing Panel Subcommittee heard testimony from Paul Taylor, Esquire, Manuel Washington, Jay Mullen and Petitioner. As stated above, the hearing was conducted over the course of two days as witnesses were unavailable for live testimony due to issues related to the COVID-19 pandemic.

#### **1. Paul Taylor, Esquire.**

Mr. Taylor is a licensed member of the West Virginia State Bar who has practiced in and around the Martinsburg, West Virginia area since 1991. Mr. Taylor was admitted to the Bar on November 6, 1991, and is currently in good standing. Mr. Taylor testified that he knew Petitioner when Petitioner was a member of the Bar, and found him to be a competent lawyer. Mr. Taylor intimated that he did not have detailed knowledge about what lead to Petitioner's disbarment, but knew it was about financial issues with clients. Mr. Taylor testified that he was supportive of Petitioner returning to the practice of law because he believed Petitioner could make a contribution to the local Bar. (Transcript, Day 2, pp. 2-7)

#### **2. Manuel Washington**

Mr. Washington is a retired businessman who is a lifelong resident of Martinsburg, West Virginia. Mr. Washington testified that he retired from owning his own business for thirty years and from Potomac Edison Company. Mr. Washington testified that he met Petitioner through a mutual friend and got to know his family over the years. Mr. Washington was vaguely aware of



the circumstances that lead to Petitioner's disbarment, but knew that Petitioner left town after he lost his law license. Mr. Washington stated that even after Petitioner left Martinsburg, Petitioner would contact him, over the years, to check on his welfare.

Mr. Washington testified that he was very active in community and social organizations in the area. He testified that, based on Petitioner's character and personality, he saw no difficulty in Petitioner returning to the community. He testified "whatever the matter was in the past, sometimes we have to learn from our mistakes and I'm sure you have learned quite a bit. And, you have, I feel as though you have redeemed yourself."

Mr. Washington further discussed the importance of individuals seeking role models who have redeemed themselves and testified that Petitioner could share his experience as learning experience to others. Mr. Washington stated he would not be hesitant to invite Petitioner to be involved in any of his organizations. Mr. Washington believes that Petitioner would be a great asset to the community. (Transcript Day 2, pp. 8-16)

### 3. Jay Mullen

Mr. Mullen is a resident of Martinsburg, West Virginia and has lived in the area since 1986. Mr. Mullen is familiar with Petitioner through their children's sports. Mr. Mullen intimated that Petitioner told him he had professional problems and that he was leaving the area to move to North Carolina for an employment opportunity for his then wife. Mr. Mullen stated that he and Petitioner remained in touch over the years and he was aware of Petitioner's recent return to the area. Mr. Mullen stated that he was not opposed to Petitioner having his license reinstated and agreed that there was a need in the area for Petitioner to return to the practice of law. (Transcript Day 2, pp. 16-21)

#### 4. Petitioner

Petitioner stated that, since he was denied reinstatement of his law license, he has worked to better himself. Petitioner stated he hoped that he was reinstated as he believed he had a lot of work left to do to help the people Justice Cleckley sent him to the area to help in 1996.

(Transcript Day 1 at p. 5) Petitioner stated that he was very comfortable with the long-term nature of his current employment with the DC government. He stated that his supervisor was please with his work and had recently given him authority over conciliation agreements. In addition to the continuing legal education, Petitioner testified that his job with the city allowed him to remain close to the law, particularly federal wage law. (Transcript Day 2, at p. 27)

Petitioner stated that he believed he was legally competent to return to the practice of law as he continued to study through his work with the law. (Transcript Day 2, pp. 33-34)

Petitioner stated that during the pandemic, he has been teleworking and this allowed him to return to the Martinsburg area and reconnect with friends. (Transcript Day 2 at p. 23) Because of his reduced transportation costs, he testified that he was able to focus on making restitution. He acknowledged that he did not satisfy the Mason judgment and expressed his desire to do so when he was financially able. In addition to making the restitution, Petitioner wrote letters of apology to Mr. Horner (Mason), Mr. Pruden and Ms. Christensen. (ODC Exhibits 14, 15, and 16) Petitioner read each letter to the HPS and stated that is was important that he write the letters years ago, but he acknowledged that he failed to so. (Transcript Day 2, at p. 43)

Petitioner testified that he “love(d) to practice” law and that he “got off track” and allowed greed to keep him from fulfilling his mission to serve the people. (Transcript Day 1 at p. 16) He candidly testified that money dominated him and he “didn’t have the will within me to

stop myself. I had to be stopped.” (Transcript Day 1 at p. 17) Petitioner stated that he believed that he was rehabilitated, was prepared to make amends to his community, and wanted the opportunity to right his wrongs. Petitioner stated that during the past 15 years, he has learned a lot about himself and how to treat people. Petitioner further testified that he recognized the importance of lawyers being involved in the community because kids look up to lawyers, and aspire to be lawyers. Petitioner reasoned that he wanted to aid students, particularly people of color, to find mentors and resources. (Transcript Day 2 at p. 37) Petitioner testified that having lost his license he now knows about financial, personal, and mental health struggles and believes this would help him better understand clients. (Transcript Day 2, pp. 50-51)

### **III. STANDARD FOR REINSTATEMENT**

Rule 3.30 of the Rules of Lawyer Disciplinary Procedure, entitled “Requirements for reinstatement,” states

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 (h)as elapsed or such other 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 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 on 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).

Further, “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*, (*Brown II*); Syl. Pt. 3, *Sayre*.

The “ultimate question is whether (the attorney seeking reinstatement) possesses the integrity, high moral character and legal competence to justify the reinstatement of his license.” *In re: Brown*, 164 W.Va. 234, 237, 262 S.E.2d 444, 445 (1980) (*Brown I*). Recognizing the five-factor test in evaluating rehabilitation set forth in *In re: Hess*, 368 Mass. 447, 333 N.E.2d 429 (1975), the Supreme Court held

In judging whether a petitioner satisfies these standards and has demonstrated the requisite rehabilitation since disbarment, it is necessary to look to (1) the nature of the original offense for which the petitioner was disbarred, (2) the petitioner’s character, maturity, and experience at the time of the disbarment, (3) the petitioner’s occupations and conduct since his disbarment, (4) the time elapsed since the disbarment, and (5) the petitioner’s present competence in legal skills.

*In re: Smith*, 214 W.Va. 83,85, 585 S.E.2d 602, 604 (1980).

#### **IV. RECOMMENDATION**

Petitioner has been disbarred since the Court issued its Mandate Order making the opinion effective January 20, 2005. Petitioner’s efforts to make amends and make financial restitution to those clients damaged by his downfall are a critical distinction from his first petition for reinstatement. Petitioner’s demeanor is indicative of someone who has been

humbled by his actions and is now fully aware of the havoc he caused to his clients, his community, and to the reputation of lawyers and the legal system. Rehabilitation is a journey, not a final destination.

Accordingly, the Hearing Panel Subcommittee recommends reinstatement with the following requirements:

1. Petitioner must execute payment plans for all outstanding restitution, with the Mason judgment receiving priority, and begin making payments prior to any decision regarding reinstatement; and
2. Petitioner shall be returned to probation with supervised practice and, if in private practice, shall have all accounts associated with his law practice audited by a certified public accountant for a period of two years.



Suzanne Williams-McAuliffe, Esq.  
Hearing Panel Chairperson

**LAWYER DISCIPLINARY BOARD  
HEARING PANEL SUBCOMMITTEE**

---

Nicole Cofer, Esquire

---

Charlotte Norris, Layperson



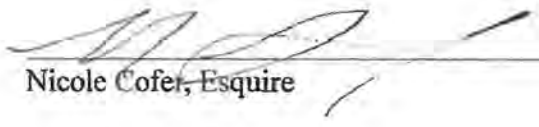
humbled by his actions and is now fully aware of the havoc he caused to his clients, his community, and to the reputation of lawyers and the legal system. Rehabilitation is a journey, not a final destination.

Accordingly, the Hearing Panel Subcommittee recommends reinstatement with the following requirements:

1. Petitioner must execute payment plans for all outstanding restitution, with the Mason judgment receiving priority, and begin making payments prior to any decision regarding reinstatement; and
2. Petitioner shall be returned to probation with supervised practice and, if in private practice, shall have all accounts associated with his law practice audited by a certified public accountant for a period of two years.

**LAWYER DISCIPLINARY BOARD  
HEARING PANEL SUBCOMMITTEE**

\_\_\_\_\_  
Suzanne Williams-McAuliffe, Esq.  
*Hearing Panel Chairperson*

  
\_\_\_\_\_  
Nicole Cofet, Esquire

\_\_\_\_\_  
Charlotte Norris, Layperson

humbled by his actions and is now fully aware of the havoc he caused to his clients, his community, and to the reputation of lawyers and the legal system. Rehabilitation is a journey, not a final destination.

Accordingly, the Hearing Panel Subcommittee recommends reinstatement with the following requirements:

1. Petitioner must execute payment plans for all outstanding restitution, with the Mason judgment receiving priority, and begin making payments prior to any decision regarding reinstatement; and
2. Petitioner shall be returned to probation with supervised practice and, if in private practice, shall have all accounts associated with his law practice audited by a certified public accountant for a period of two years.

**LAWYER DISCIPLINARY BOARD  
HEARING PANEL SUBCOMMITTEE**

---

Suzanne Williams-McAuliffe, Esq.  
*Hearing Panel Chairperson*

---

Nicole Cofer, Esquire



---

Charlotte Norris, Layperson

---

---

**CERTIFICATE OF SERVICE**

---

---

This is to certify that I, Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 26<sup>th</sup> day of January, 2021, served a true copy of the foregoing "**REPORT OF THE HEARING PANEL SUBCOMMITTEE**" upon Petitioner, Keith L. Wheaton, by mailing the same via United States Mail, with sufficient postage, to the following address:

Keith L. Wheaton  
Post Office Box 922  
Laurel, Maryland 20725

**Notice to Respondent:** for the purpose of filing a consent or objection hereto, pursuant to Rule 3.33 of the Rules of Lawyer Disciplinary Procedure, either party shall have ten (10) days from today's date to file the same.

  
\_\_\_\_\_  
Rachael L. Fletcher Cipoletti