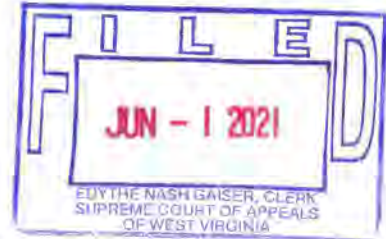


**IN THE SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA**

In Re: **DAVID D. PERRY**, a suspended member of
The West Virginia State Bar

Bar No.: 7881
Supreme Ct No.: 19-1180
I.D. No.: 19-03-543

PETITIONER'S BRIEF



Now comes the Petitioner, David D. Perry, proceeding Pro Se, as a suspended member of the West Virginia State Bar, and hereby submits the following for consideration of this Honorable Court in the above-styled case.

Procedural History

Formal charges in this matter were filed against Petitioner with the Clerk of the Supreme Court of Appeals of West Virginia on or about December 3, 2010, and served upon him by legal noticed published in West Virginia and Nevada for three (3) consecutive weeks during the month of March 2011. The Statement of charges alleged violations of Rules 1.7(b), 1.16(d), 3.5 (c), 8.1(a), 8.4(c), and 8.4(d).

On or about May 19, 2011, the matter proceeded to hearing in Williamson, West Virginia before a Hearing Panel Subcommittee. Petitioner did not appear. During the hearing complainant Christina Cline offered false testimony under oath, failed to disclose that she had been directed by the Williamson Police Department and West Virginia State Police to lie, and did not disclose that the two law enforcement agencies had provided her (complainant) with a recording device and tapes for the purpose of recording petitioner. Office of Disciplinary Counsel attorney Jessica Donahue was 100% aware of these facts but did not illicit or introduce into evidence via questioning of complainant under oath.

On or about August 25, 2011, the Hearing Panel Subcommittee issued its recommendation in the matter and filed with the Supreme Court of Appeals of West Virginia a

“Report of the Hearing Panel Subcommittee.” The Court concurred with the findings of the Hearing Panel Subcommittee that Petitioner had violated Rules 1.7(b), 1.16(d), 3.5 (c), 8.1(a), 8.4(c), and 8.4(d).

On or about December 1, 2011, the West Virginia Court of Appeals adopted the recommendation of the Hearing Panel Subcommittee (HPS) in the above-referenced matter, holding that: (1) Petitioner’s law license be suspended indefinitely; (2) Petitioner be required to petition for reinstatement pursuant to Rule 3.32. of the Rules of Lawyer Disciplinary Procedure; (3) Petitioner not be permitted to seek reinstatement to the practice of law for a period of three years; (4) upon reinstatement, Petitioner’s practice be supervised for a period of two years by an attorney agreed upon between the Office of Disciplinary Counsel (*hereinafter referred to as* “ODC”) and Petitioner; (5) prior to petitioning for reinstatement, Petitioner is required to undergo an independent psychiatric evaluation to determine fitness to practice law and be required to comply with any stated treatment protocol stated by the evaluator; and (6) Petitioner be ordered to reimburse the Lawyer Disciplinary Board the cost of the proceedings.

On or about September 15, 2014, Petitioner repaid in full the Lawyer Disciplinary Board for the costs of the investigation and all proceedings related to suspension the petitioner’s license to practice law, prior to petitioning the Court for reinstatement.

On or about December 21, 2015, Petitioner filed his first Verified Petition for reinstatement. The matter proceeded to hearing on March 6, 2017. Petitioner was represented by attorney Richard Weston. Multiple exhibits were admitted into evidence and the Hearing Panel Subcommittee heard testimony from Judge Jay Hoke, Judge David Pancake, community leader and businessman Chris Miller, as well as the Petitioner. The Office of Disciplinary called neither Dr. Bobby Miller nor any witness. After thoughtful consideration, the Hearing Panel Subcommittee found that based upon the evidence presented that Petitioner had met his burden of proving he presently possessed the integrity, moral character and legal competence to resume the practice of law. Accordingly, the HPS recommended Petitioner’s Verified Petition for Reinstatement to the practice of law be granted. Office of Disciplinary Counsel Attorney Jessica Donahue subsequently submitted a report to the Court also recommending Petitioner’s reinstatement, in fact rendering her opinion that Petitioner was highly remorseful and totally

rehabilitated. Neither Petitioner's counsel nor the Office of Disciplinary Counsel objected to the recommendation of the Hearing Panel Subcommittee that Petitioner be reinstated.

On or about August 30, 2017, the Supreme Court of Appeals of West Virginia entered an Order, absent opinion or reason, stating it did not agree with the recommendation of the Hearing Panel Subcommittee, thus denying Petitioner's first Verified Petition for Reinstatement to resume the practice of law.

On or about October 2, 2017, now without counsel and proceeding pro se, Petitioner filed a Petition for reconsideration.

On or about October 3, 2017, the Deputy Clerk of the Supreme Court of Appeals advised the Petitioner in writing that neither the Rules of Appellate Procedure, nor the Rules of Lawyer Disciplinary procedure, permit the filing of any request for reconsideration and that the Clerk's office considered the matter closed.

On or about December 27, 2019, Petitioner filed his second Verified Petition for Reinstatement to Practice Law in West Virginia with the Clerk of the West Virginia Supreme Court of Appeals. Prior to filing said document Petitioner either provided or directed current employment and income documentation to the Office of Disciplinary Counsel, as well as updated FBI and Nevada State Department of Public Safety background checks.

On or about June 18, 2020, after flying from Nevada two days prior, Petitioner sat for a sworn statement, conducted by Office of Disciplinary Chief Counsel Rachael Cipoletti, at the ODC office in Charleston, West Virginia. The parties had previously scheduled said sworn statement for March, April, and May, 2020, but rescheduled each time due to pandemic restrictions in Nevada and West Virginia.

On or about September 14, 2020, Petitioner filed "MOTION TO SEAL ATTACHED INDEPENDENT PSYCHOLOGICAL EVALUATION" of Dr. David Frederick, with the Clerk of the Court.

On or about September 18, 2020, Chief Lawyer Disciplinary Counsel responded to the above-referenced filing, stating no objection to Petitioner's "MOTION TO SEAL ATTACHED INDEPENDENT PSYCHOLOGICAL EVALUATION" of Dr. David Frederick, with the Clerk of the Court.

On or about September 22, 2020, Chief ODC Counsel Cipoletti filed "REPORT OF THE OFFICE OF DISCIPLINARY COUNSEL REGARDING THE SECOND REINSTATEMENT PETITION OF DAVID D. PERRY" with the Clerk of the West Virginia Supreme Court of Appeals. Within said "REPORT", by way of footnote (*REPORT, pg 11, footnote 5*) for the first time the Office of Disciplinary Counsel gave notice to Petitioner of impending objection to the validity of the independent Psychological Evaluation conducted by licensed psychologist Dr. David Fredericks, Ph.D. In said report the ODC recommended appointment of a Hearing Panel Sub-Committee to conduct a hearing within 60 days for Petitioner to present evidence on the record.

On or about September 23, 2020, the Court granted the Motion at bar and the document was entered under **SEAL**.

On or about November 16, 2020, a six hour proceeding was conducted before a Hearing Panel Subcommittee of the Lawyer Disciplinary Board, chaired by Gail T. Henderson Staples, Esq, at the Cabell County Courthouse, in Huntington. (*Transcript of proceeding submitted to Hearing Panel Subcommittee by Office of Disciplinary Counsel on or about December 21, 2020. Petitioner has never read nor received copy of said transcript.*)

On or about December 21, 2020, Chief Counsel of the Office of Disciplinary Counsel submitted "**Chief Lawyer Disciplinary Counsel's Proposed Finding of Fact, Conclusions of Law and Recommendation**" to the Hearing Panel Subcommittee for consideration. Within Chief Disciplinary Counsel's "Conclusions and Recommendation" she stated "*ODC does not believe that Dr. Frederick's evaluation complies with the 2011 Order*" but shortly thereafter expressly opining that "*Petitioner has met his burden of proof to be reinstated to the practice of law. In short, Petitioner has met the burden to have the opportunity to seek redemption.*"

On or about January 28, 2021, Chief Counsel of the Office of Disciplinary Counsel submitted **"REPORT OF THE HEARING PANEL SUBCOMMITTEE"** to the Clerk of the Court for filing and entry into the record. The Hearing Panel Subcommittee, just as was the case in 2017, recommends Petitioner's reinstatement to the practice of law in West Virginia. Within the "REPORT" the Hearing Panel Subcommittee reasoned that *"...evidence presented reflects that Petitioner has demonstrated great remorse for his previous misconduct, has acknowledged the severity of such, and appears to accept full responsibility thereof. Further, Petitioner has demonstrated a record of honorable behavior since his suspension started and gave testimony which reflected that he had come to terms with his past wrongdoing and intends to adhere to high moral standards in the future. The evidence presented by Petitioner reflects a course of conduct that would enable the Court to conclude there is little likelihood that after he is readmitted to the practice of law that he will engage in unprofessional conduct."* **Lawyer Disciplinary Board v. Hess**, 201 W.Va. 195, 495 S.E.2d 563 (1997).

The Hearing Panel Subcommittee then concluded: *"Thus, based upon the underlying conduct that led to Petitioner's suspension, the witness testimony discussed herein, and the clear and convincing evidence, Petitioner has demonstrated the requisite integrity and moral character to be reinstated to the practice of law. The evidence is void of any reason the public confidence in the administration of justice would be adversely affected by the reinstatement of Mr. Perry's law license. 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 vs. Pence**, 171 W.Va. 68, 74, 297 S.E.2d 843, 849 (1982).

On or about February 8, 2021, the Office of Disciplinary Counsel filed its consent to the recommendation of the Hearing Panel Subcommittee.

On or about February, 22, 2021 Petitioner filed **"PETITIONER'S CONDITIONAL MOTION TO WITHDRAW REQUEST FOR HEARING"** and written consent to the recommendation of reinstatement by the Hearing Panel Subcommittee, with the Clerk of the Supreme Court.

On or about February 24, 2021, Chief Disciplinary Counsel of the Office of Disciplinary Counsel filed a motion to supplement the record in the case at bar, and a motion to seal, along with a sealed supplement. Within the sealed supplement was a report documenting results of an independent psychiatric evaluation conducted by Dr. Timothy Thistlewaite, as well as another independent psychological evaluation, this one conducted by Dr. Rosemary Smith. Said evaluations took place on January 11, 2021, in Charleston, and were facilitated, scheduled, and paid for, by the Office of Disciplinary Counsel.

On or about April 15, 2021, at a regular term of the Supreme Court of Appeals, the Court issued an Order granting the ODC motion to supplement the record and the motion to seal. Thus the supplement received on February 24, 2021 was filed under SEAL.

On or about April 15, 2021, at a regular term of the Supreme Court of Appeals, the Court issued an Order setting this matter for oral argument, despite no existing dispute between the Petitioner and the Office of Disciplinary Counsel, for a to be determined time on September 28, 2021.

APPLICABLE RULES AND LAW

Rule 3.30. of the Rules of Lawyer Disciplinary Procedure, subtitled **Requirements for reinstatement**, states in whole; 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 other requirements as to restitution, conditions, or some other act has been satisfied, such person shall not become entitled to engage in the practice of law in this State, whether such time has 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 character and fitness.

Rule 3.32, of the Rules of Lawyer Disciplinary Procedure, subtitled **Reinstatement procedure following suspension**, states in pertinent part (a) A person whose license to practice law has been or shall be suspended in this State for a period of more than three months and who shall desire reinstatement of such license, shall file a verified petition in the Supreme Court of Appeals reciting what he or she shall have done in satisfaction of requirements as to restitution, conditions, or other acts incident to the suspension, by reason of which the lawyer believes he or she should be reinstated as a member of the state bar and should have his or her license to practice law restored.

The general rule for reinstatement is that an attorney whose license is suspended or annulled carries the burden of proving he or she is fit to again commence the practice of law, and that includes a showing he or she possess the integrity, moral character, and legal competence to do so. This Court has further held that the nature of the original offense for which the Petitioner's license was suspended or annulled should also be considered in evaluating a Petition for Reinstatement. Accordingly, Petitioner must demonstrate a record of rehabilitation.

This Court holds that "[r]ehabilitation 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**, 166 W.Va. 226, 273 S.E.2d 567. This Court has further defined rehabilitation via incorporation of a five-pronged test outlined in **In re Smith**, 214 W.Va. 83, 85, 585 S.E. 2d 602, 604 (1980). Specifically, the Court will consider when determining rehabilitation: (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 his disbarment, (3) the petitioner's occupation and conduct in the time since his disbarment, (4) the time elapsed since the disbarment, and (5) the petitioner's present competence in legal skills.

DISCUSSION

In preparing for oral argument, in all candor, Petitioner must examine why this Honorable Court desires to conduct said proceeding. From one respect, an argument could be made that no argument exists, at least between the parties. Simply put, in the last four years six (6) members of two separate Hearing Panel Subcommittees, four (4) separate doctors, and two (2) different attorneys with prosecutorial authority from the Office of Disciplinary Counsel, have all either recommended petitioner's reinstatement or declared him fit for duty. But yet, here we are.

At what point do the professionals enacted with the responsibility of determining Petitioner's integrity, moral character, and competence to practice law receive any deference whatsoever for their educated opinions. Moreover, if the system is designed to summarily dismiss recommendations of the Office of Disciplinary Counsel, Multiple Hearing Subcommittees, and medical professionals, who are effectively in the trenches of the work at hand, then what real purpose do they serve?

From another respect, Petitioner has engaged the possibility that the record in this case is so voluminous, and such an extended period of time has elapsed since his suspension, that the very real possibility exists that this Honorable Court has important questions that need answered, and/or issues that need clarified. In that light, to appear before the Court seems logical and Petitioner welcomes such opportunity. Having said that, Petitioner will properly defer to the extensive record in this case, as necessity may dictate, during examination by the Court.

One area of possible question for the Court may possibly involve a former discrepancy between the Petitioner and Office of Disciplinary Counsel regarding "independent psychiatric examination" vs. "independent psychological evaluation." In that regard, the following breakdown is a chronological description of events between the parties related to such:

On or about June 18, 2020, immediately prior to going on the record for above-referenced sworn statement, Office of Disciplinary Chief Counsel Rachael Cipoletti first informed Petitioner that she would not submit petition for consideration until Petitioner received an updated independent psychological evaluation.

On or about June 18, 2020, immediately following completion of the above-referenced sworn statement, by Office of Disciplinary Chief Counsel Rachael Cipoletti suggested that her office could possibly arrange an evaluation with Forensic Psychologist Dr. David Clayman, Ph.D., in Charleston, before Petitioner returned to Nevada after Christmas. Calls to Dr. Clayman's office by ODC support staff that day went unreturned. Petitioner objected on multiple grounds, including, but not limited to, costs involved. Office of Disciplinary Chief Counsel Rachael Cipoletti suggested her office would absorb the costs involved and Petitioner would repay the ODC upon reinstatement.

On or about June 29, 2020, at 1:23 PST/4:23 EST, Petitioner received a telephone call from the office of Forensic Psychologist Dr. David Clayman, Ph.D., advising the Office of Disciplinary Counsel had been in touch regarding a psychological evaluation. Dr. Clayman's support staff member Ashley advised she would call Petitioner back soon to schedule appointment for the evaluation.

On or about June 29, 2020 at 1:29 PST/4:29 EST, Petitioner contacted the Office of Disciplinary Counsel by phone, again speaking with support staff, to confirm being contacted by the office of Forensic Psychologist Dr. David Clayman's office and the plan to schedule a date and time for a psychological evaluation.

On or about June 30, 2020, Petitioner forwarded correspondence to Chief Disciplinary Counsel Rachel Cipoletti, Re: INDEPENDENT Psychological Evaluation, effectively memorializing the content of the telephone conversation with ODC staff the day prior. Petitioner also took a position within the letter that if Dr. Clayman's psychological evaluation were to in fact be independent, and the prior written evaluation from Dr. Bobby Miller were inadmissible as Chief Counsel Cipoletti claimed, then submitting said prior report to Dr. David Clayman in advance of an evaluation was illogical and defeated the concept of the evaluation actually being independent.

On or about July 27 through July 30, 2020, Petitioner rented a mini-van and drove from Nevada to reside in West Virginia for what he hoped to be the duration of the reinstatement proceeding currently before the Court.

On or about August 3, 2020, Petitioner contacted the Office of Disciplinary Counsel for an update regarding the aforementioned evaluation with Forensic Psychologist Dr. David Clayman and to confirm return to the State. Petitioner was advised by ODC support staff appointment with Forensic Psychologist Dr. Clayman would be scheduled forthwith.

On or about August 10, 2020, Petitioner again contacted the Office of Disciplinary Counsel, having yet to hear from Forensic Psychologist Dr. Clayman, Ph.D., office since last contact with the ODC one week prior. Petitioner's inquiry regarding appointment with Forensic Psychologist Dr. Clayman, Ph.D., for evaluation was answered by support staff with "I'll get on that today."

On or about August 14, 2020, Petitioner contacted the office of Forensic Psychologist Dr. David Clayman, Ph.D., in Charleston, West Virginia, explained the situation, and was advised that both Dr. Clayman and his scheduling clerk/assistant were out of the office. The receptionist took my phone number and promised the scheduling clerk would contact me the next day.

On or about August 27, 2020, Chief Disciplinary Counsel forwarded a letter in response to Petitioner's prior correspondence. The letter was addressed to the Petitioner at an old Post Office Box in Huntington, later ascertained he rented thru 2015, and headed ***Re: Psychological Evaluation***. The content of the letter confirmed Chief Counsel Cipoletti's intent, "as is customary" to forward a copy of the prior written evaluation of Dr. Bobby Miller to Dr. David Clayman, in advance of the independent psychological evaluation despite Petitioner's prior stated position in opposition of such. The letter indicates, at the very least, that on the date the letter was written the ODC had still planned for their preferred Forensic Psychologist David Clayman, Ph. D., to conduct an evaluation of the Petitioner

On or about August 28, 2020, Petitioner again attempted unsuccessfully to contact Forensic Psychologist Dr. David Clayman, the man referred by the Office of Disciplinary Counsel to complete an independent psychological evaluation.

On or about September 1, 2020, Petitioner sat for an independent psychological evaluation with licensed Forensic Psychologist Dr. David Frederick, Ph.D., at his office in Huntington, West Virginia. Prior to the evaluation Petitioner provided to Dr. Frederick a copy of the Verified Petition for Reinstatement, including all exhibits, pending before the Court. (*117 pages in total*). Subsequent to the aforementioned independent psychological evaluation, in accordance with general industry procedure, Dr. Frederick produced a written report of his findings.

On or about September 14, 2020, Petitioner filed “MOTION TO SEAL ATTACHED INDEPENDENT PSYCHOLOGICAL EVALUATION” of Dr. David Frederick, with the Clerk of the Court.

On or about September 18, 2020, Chief Lawyer Disciplinary Counsel responded to the above-referenced filing, stating no objection to Petitioner’s “MOTION TO SEAL ATTACHED INDEPENDENT PSYCHOLOGICAL EVALUATION” of Dr. David Frederick, with the Clerk of the Court.

On or about September 22, 2020, Chief ODC Counsel Cipoletti filed “REPORT OF THE OFFICE OF DISCIPLINARY COUNSEL REGARDING THE SECOND REINSTATEMENT PETITION OF DAVID D. PERRY” with the Clerk of the West Virginia Supreme Court of Appeals. Within said “REPORT”, by way of footnote (*REPORT, pg 11, footnote 5*) for the first time the Office of Disciplinary Counsel gave notice to Petitioner of impending objection to the validity of the independent Psychological Evaluation conducted by licensed psychologist Dr. David Fredericks, Ph.D.

On or about December 21, 2020, Chief Counsel of the Office of Disciplinary Counsel submitted “**Chief Lawyer Disciplinary Counsel’s Proposed Finding of Fact, Conclusions of**

Law and Recommendation” to the Hearing Panel Subcommittee for consideration. Within Chief Disciplinary Counsel’s “Conclusions and Recommendation” she stated “*ODC does not believe that Dr. Frederick’s evaluation complies with the 2011 Order*” but shortly thereafter expressly opining that “*Petitioner has met his burden of proof to be reinstated to the practice of law. In short, Petitioner has met the burden to have the opportunity to seek redemption.*”

On or about January 11, 2021, Petitioner was evaluated by Dr. Thistlewaite at the request of ODC Chief Counsel, after she agreed to pay all fees involved. Chief Counsel advised she was not planning to request any costs from the Court for the current reinstatement proceeding.

On or about January 11, 2021, Petitioner was evaluated by licensed psychologist Rosemary Smith at the request of ODC Chief Counsel, after she agreed to pay all fees involved. Chief Counsel advised she was not planning to request any costs from the Court for the current reinstatement proceeding.

On or about February 24, 2021, Chief Disciplinary Counsel of the Office of Disciplinary Counsel filed a motion to supplement the record in the case at bar, and a motion to seal, along with a sealed supplement. Within the sealed supplement was a report documenting results of an independent psychiatric evaluation conducted by Dr. Timothy Thistlewaite, as well as another independent psychological evaluation, conducted by Licensed Psychologist Rosemary Smith.

SUMMARY OF THREE (3) INDEPENDENT Psychiatric & Psychological Evaluation(s)

Dr. Timothy Thistlewaite, M.D. (eval date Jan 11, 2021)

The following assessment and opinion is taken from the report submitted in its entirety to supplement the court record in this case by the ODC Under Seal, on February 24, 2021:

“ASSESSMENT AND OPINION OF FITNESS FOR DUTY: *It is my opinion, with a reasonable degree of medical certainty, that Mr. David Perry is currently fit for duty as an attorney. Mr. Perry does not currently present any significant evidence of any ongoing psychiatric symptomatology that would interfere with his ability to function as an attorney in the State of West Virginia. It appears that Mr. Perry has made his own efforts to gain insight and*

learn from his experience in the remote past when his behavior was judged to be inappropriate and his license was revoked. It appears Mr. Perry is taking full responsibility for his actions and has made significant strides through his own efforts to change his behaviors. He has engaged in other types of employment and interaction with others in Nevada that appears to show that he is able to control his behaviors appropriately. There is some evidence to suggest he has an ongoing personality disorder, but this does not meet the criteria for a specific diagnosis beyond that given above. It is my opinion that the symptoms would not interfere with his ability to function as an attorney and therefore I do opine at this time that Mr. Perry is fit for duty as an attorney in the State of West Virginia at this time."

It is worthy to note that Dr. Thistlewaite unequivocally recommends reinstatement. It is also worthy to note that Dr. Thistlewaite makes absolutely no recommendation for Petitioner needing follow-up evaluations, ongoing treatment, or any requiring any psychotherapy sessions in the future whatsoever. Finally, Petitioner is compelled to reiterate the appointment with Dr. Thistlewaite was initiated, scheduled, and paid for by the Office of Disciplinary Counsel.

Dr. Rosemary L. Smith, Psy. D. Licensed Psychologist (eval date Jan 11, 2021)

Petitioner was evaluated by Licensed Psychologist Rosemary L. Smith remotely at the office of Dr. Timothy Thistlewaite, at the direction and request of ODC Chief Counsel. The evaluation occurred as a preliminary event to the above-referenced evaluation by Dr. Thistlewaite, on January 11, 2021. The following are excerpts taken from the report submitted in its entirety to supplement the court record in this case by the ODC Under Seal, on February 24, 2021:

Self-Concept...*The self concept of Mr. Perry appears to involve a generally stable self-evaluation and he does describe approaching life with a clear sense of purpose and distinct convictions."*

"Clinical Features...*The PAI clinical profile reveals no elevations that should be considered to indicate the presence of clinical psychopathology. The pattern suggests a person who is experiencing some turmoil in his life that might be the source of some stress for him, but*

not to the point where prominent symptoms are observed. He may feel unhappy or tense at times, but, in general, his self-esteem is intact and he reports the stress is having little impact on his ability to function."

"COCLUSIONS FROM PSYCHOLOGICAL TESTING: *Mr. Perry appears to be functioning overall intellectually in the Average range and reading recognition in the Very Superior range. He is currently showing no significant emotional distress. Personality dysfunction traits were suggested on test protocol. Anxiety was not present in test results. Depression was not evident in the test protocol. A formal thought disturbance was not present. He was normal in energy level. He demonstrated adequate concentration ability. Anger was not a significant test finding. Based on the assessment material, suicidal or self-destructive ideation did not appear to be present. He is realistic in self-concept..."*

Dr. David Fredrick, PhD., Licensed Psychologist (eval date Sept 1, 2020)

Petitioner was evaluated by Licensed Psychologist Dr. David Fredrick, at his office with Argus Psychological Services, in Huntington. Petitioner received referral to Dr. Fredrick from a professional acquaintance and subsequently paid for the evaluation and court appearance fee in full. The following are excerpts taken from Dr. Fredrick's report, filed with the Clerk of the Court in its entirety, under seal, by the petitioner on or about September 14, 2020.

OBJECTIVE FINDINGS: *"In this session, he interrupted the undersigned from time to time, got very loud at times and repeatedly asserted his accomplishments and capabilities. His behaviors – in the experience of the undersigned – were typical of defense attorneys and GALs observed in local courts and the current POTUS."*

"On the whole, however, Mr. Perry was polite, respectful, and cooperated very fully throughout it. His mood was observed to be within normal limits and his affect was broad and mildly labile."

"He appeared to be functioning at the above average level of intellectual functioning."

"Judgment and concentration were both assessed WNL."

CHARACTER, INTEGRITY, AND COMPETENCE TO PRACTICE LAW IN WV:

"The flaws in Mr. Perry's character do not impair his ability to practice law; his extensive range of friendships and coaching work reflects well on him."

"His high integrity was manifested to the undersigned in the making of arrangements and payment terms for this psychological evaluation, in his behavior during this evaluation, and MMPI-2 responses."

"His prior court work and behaviors throughout his pre-, during and post-psychological evaluation actions manifest high competency. Consequently, Mr. Perry is deemed to be fully fit to practice law in West Virginia."

TREATMENT RECOMMENDATIONS: *"It is recommended he be seen for weekly psychotherapy to include psychotherapeutic homework between sessions for 10 week to deal with social anxiety, issues of mistrust, improve communication skills and self-esteem issues, and his narcissistic traits."*

SUMMARY OF WITNESS TESTIMONY BEFORE HEARING PANEL SUB-COMMITTEE

1. **Chris Miller**, President and CEO of Dutch Miller Automotive Group, appeared voluntarily. Mr. Miller testified affirmatively pertaining to Petitioner's integrity and moral character. Specifically, Mr. Miller explained that he met Petitioner in Huntington in approximately 2008. They initially became involved together with various charitable beneficiaries, such as Huntington YMCA Buddy Basketball, First United Methodist Church Youth Group, Hovah Horvath Underwood Children's Home, Boys & Girls Club, and the Marshall University Volleyball program, thru Petitioner's annual charity golf tournament.

Mr. Miller testified he has knowledge of the reasons Petitioner lost his law license. After Petitioner's suspension Mr. Miller testified he has since entrusted Petitioner with sensitive employment issues such as mystery shopping, consulting matters, potential location acquisition,

employee evaluations, vehicle exchanges, customer feedback, etc., beginning in 2012. . Further, Mr. Miller testified that Petitioner has also done work for him personally at his home, where he worked in immediate proximity with his wife and children. Mr. Miller gave testimony about Petitioner anonymously donating athletic shoes for his youth basketball players in West Virginia and Nevada.

Mr. Miller testified on cross-examination that were Petitioner unable to pass a background check he would not be covered when driving company owned vehicles. Mr. Miller provided personal definitions of integrity and moral character and specifically testified that Petitioner possessed both. Mr. Miller also testified he does not become involved either personally or professionally with employees, prospective employees, vendors, or friends lacking in integrity or moral character. Finally, upon inquiry by the Hearing Panel Sub-Committee Mr. Miller testified in the affirmative when ask if he would hire the Petitioner as his attorney.

2. **David Ross**, President and Founder of Kids Golf Association, Las Vegas, Nevada testified electronically via Microsoft Teams. Mr. Ross, appeared voluntarily and testified affirmatively pertaining to Petitioner's integrity and moral character. Mr. Ross is one of Petitioner's most current employers. Mr. Ross also provided personal definitions of integrity and moral character and specifically testified that Petitioner possessed both. Mr. Ross testified that he was aware of Petitioner's law license suspension prior to hiring him in 2018. Following a standard criminal background check that showed nothing, Mr. Ross testified he googled Petitioner's name and read about the situation in West Virginia online.

Mr. Ross testified that Petitioner's efforts on behalf of his business extended beyond the boundaries of coaching. Mr. Ross testified that Petitioner served as Tournament Director for the Kids Golf Association Tournament Fundraiser in June of 2020 and was responsible for all aspects of the event, from securing the venue, acquiring community sponsorships, recruiting a local celebrity to be honorary starter, gift bags, format rules, registration, etc. Mr. Ross testified that the net proceeds to the kids for the one day tournament were approximately \$3,500.

Mr. Ross testified Petitioner instructs after-school golf at Cashman Middle School, Tarkanian Middle School, Sherkenbach Elementary School, in Las Vegas, and sometimes filled in at other schools for coaches out sick or for other reasons, between 3-4 days per week prior to

the pandemic. Mr. Ross testified Petitioner is one of his best employees and often helps the other coaches on staff. Mr. Ross testified that Petitioner's students are drawn to him and potentially attributed this to Petitioner's deep voice. Mr. Ross testified he would not place his trust in Petitioner to instruct children and represent his business if he did not believe Petitioner possessed integrity and moral character.

Mr. Ross also testified that currently all school classes and instruction in Clark County Nevada are being conducted remotely due to the pandemic, and no after-school or extracurricular activities may occur. Accordingly, his business is currently suspended until the resumption of in-person learning. In that regard, Mr. Ross testified at his request Petitioner authored and developed a 21-point detailed plan designed to integrate pandemic protection as applied to Kids Golf Association classes resuming on-site when the schools reopen. The plan is titled *Prepare, Protect, & Inform* and was submitted by the witness to Clark County School District officials. Finally, Mr. Ross testified he offered Petitioner compensation for his work but Petitioner refused.

3. **The Honorable David M. Pancake**, Retired Cabell County Circuit Court Judge, appeared pursuant to subpoena issued by Petitioner. Judge Pancake testified affirmatively at length in support of Petitioner's integrity, moral character and legal competence. Judge Pancake testified that Petitioner appeared in his Court and was always well prepared. Judge Pancake testified that since his suspension Petitioner and he have maintained contact and that Petitioner occasionally sought his counsel both while in practice and since. Judge Pancake testified he was aware of the reasons Petitioner's license to practice law was suspended and was disappointed in him. Judge Pancake further testified that as an attorney the Petitioner was very thorough, and a zealous advocate for his clients. Judge Pancake testified that Petitioner was without question competent to resume the practice of law. Judge Pancake also provided personal definitions of integrity and moral character and specifically testified that Petitioner possessed both. Judge Pancake testified that Petitioner's reinstatement would enhance the legal system and administration of justice.

4. **Dr. David Frederick**, sole proprietor Argus Psychological Services, Huntington, West Virginia, appeared pursuant to subpoena issued by Petitioner. Dr. Frederick testified he was compensated by Petitioner to appear.

Dr. Frederick's Curriculum Vitae and detailed Psychological Evaluation were presented as Exhibits to the Hearing Panel Sub-Committee.

5. **The Honorable Jay M. Hoke**, Lincoln County Circuit Court Judge, appeared electronically via Microsoft Teams, pursuant to subpoena issued by the Petitioner. Judge Hoke testified affirmatively in support of Petitioner's integrity, moral character and legal competence. Judge Hoke testified his impressions were drawn primarily from his experience presiding over a six week first degree murder trial many years ago, involving two mistrials and ultimate jury conviction for 2nd degree murder by a jury bused in daily from Boone County. The defendant was a well known-public figure in Lincoln County. Judge Hoke testified that Petitioner did not begin the proceedings as lead counsel, but rather second chair. However, Petitioner's role ultimately evolved to the point where, at the request of the defendant, Petitioner served as de-facto lead counsel at every point of the final jury trial, including, but not limited to, opening statement, closing statement, as well as all direct and cross examinations. Judge Hoke also testified he was surprised when he learned that the case at issue was Petitioner's first jury trial since beginning the practice of law only months before. Judge Hoke testified that Petitioner's legal skills were always above average when appearing in his Court, was always well prepared, and is competent to resume the practice of law. Judge Hoke also provided personal definitions of integrity and moral character and specifically testified that Petitioner possessed both. Judge Hoke further testified that Petitioner's reinstatement to the practice of law would not have an adverse impact on public perception of attorneys nor hinder the fair administration of justice.

6. **The Honorable Jara Howard**, Cabell County Family Court Judge, appeared pursuant to subpoena issued by Petitioner. Prior to her tenure on the bench Judge Howard was an assistant prosecuting attorney in Cabell County, and testified that she routinely encountered Petitioner in his former capacity as a criminal defense attorney in both Magistrate and Circuit Courts from 1999-2010.

Judge Howard testified that from approximately 1999-2001 she avoided being around Petitioner because he was flamboyant, loud, and more focused on himself than the needs of his clients. Judge Howard further testified to Petitioner's evolution, beginning sometime in 2001, not only as defense attorney, but as a person of character, charitable intent, and heart. Judge Howard

testified about a specific event, the 2014 DPI Charity Golf Tournament where she served as volunteer, and was in proximity to Petitioner for the day. The event was directed by Petitioner and raised money for the Hovah Horvath Underwood Children's Home in Ona, West Virginia, and occurred nearly three years after Petitioner's law license was suspended and he'd relocated to Nevada. Judge Howard testified that she later learned Petitioner had spent time, effort, and money from his pocket to ensure the event was successful. Judge Howard also testified in the last few years Petitioner has occasionally sought telephone counsel regarding his dog.

Judge Howard testified that Petitioner's legal skills were always above average when appearing in court, he was always well prepared, and is competent to resume the practice of law. Judge Howard also provided personal definitions of integrity and moral character and specifically testified that Petitioner possessed both. Judge Howard further testified that Petitioner's reinstatement to the practice of law would not have an adverse impact on public perception of attorneys, hinder the fair administration of justice, nor would she have any problem if Petitioner were to appear as counsel of record in her Court. In fact, Judge Howard testified she would likely enjoy Petitioner appearing before her Court, now that she has a gavel.

7. **Petitioner, David D. Perry**, appeared and testified in person. On direct examination Petitioner took ownership of his transgression, expressed apology for letting down a litany of persons specifically, and the legal institution in general. Petitioner testified candidly and without apparent reservation about the past, present and future, should his license to practice law in the State of West Virginia be reinstated. Petitioner testified that the happiest day of his life would not be the day he was fortunate to be reinstated, but the days thereafter when he and his dog loaded up and drove home to Nevada. Petitioner testified that now that his parents were in a Columbus assisted living facility he had zero intention of ever opening another law office in West Virginia. Petitioner also testified that he was fighting for his license now because he deserved reinstatement based on the evidence on the record in 2017, and presently, he wanted to clean up his own mess, and wanted to repay those he owed.

Petitioner acknowledged before the Hearing Panel Sub-Committee his residential status in the State of Nevada, presented evidence of charitable efforts in West Virginia before and after suspension of his law license, evidence of youth golf and basketball coaching, and continued employment with Kids Golf Association in Las Vegas in conjunction with the School District of

Clark County, Nevada. On cross examination Petitioner also testified about his consulting efforts and income received from Dutch Miller Automotive Group.

SUMMARY and CONCLUSION

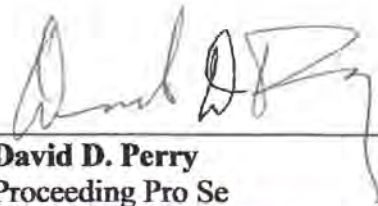
Petitioner carries a heavy burden of persuading the Court, by clear and convincing evidence, that he presently possesses the integrity, moral character, and legal competence to resume the practice of law. This burden requires Petitioner to present evidence demonstrating a course of conduct that shows there is small chance that, if readmitted, the attorney will engage in the unprofessional conduct again. The “essence of the issue is whether or not attorney has been rehabilitated.” **Lawyer Disciplinary Board v. Hess**, 201 W.Va. 194, 495 S.E.2d 563 (1997). More specifically, the Court has held that “rehabilitation is demonstrated by a course of conduct that enables the court to conclude there is little likelihood after such rehabilitation is completed and the applicant is readmitted to the practice of law he will engage in unprofessional conduct.” Syllabus Point 2, **In Re Brown**, 166 W.Va. 226, 273 S.E.2d. 567 (1980). The Court has further defined rehabilitation via incorporation of a five-pronged test outlined in **In re Smith**, 214 W.Va. 83, 85, 585 S.E. 2d 602, 604 (1980). Specifically, the Court shall consider when determining rehabilitation: (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 his disbarment, (3) the petitioner’s occupation and conduct in the time since his disbarment, (4) the time elapsed since the disbarment, and (5) the petitioner’s present competence in legal skills.

In this case, the record reflects that Petitioner has demonstrated great remorse for his previous misconduct, has acknowledged the severity of such, and appears to take full responsibility thereof. The evidence also clearly proves a record of honorable behavior since suspension of his law license and his personal testimony indicates he has come to terms with his past wrongdoing and will adhere to high moral standards in the future. The record shows that Petitioner has demonstrated full rehabilitation.

Petitioner’s license to practice law was suspended in December 2011. Petitioner presented evidence at hearing reflecting nearly a decade of community involvement, including

charitable contribution, and working for years with Nevada youth as a basketball coach and golf instructor. Petitioner has proven that his reinstatement will not have a justifiable and substantial adverse effect of public confidence in the administration of justice. This is especially pertinent because 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 evidence as a whole clearly supports a conclusion that Petitioner does in fact currently possesses the integrity, moral character, and legal competence to resume the practice of law, and has proven so by clear and convincing evidence. An impartial review of the record in this case would likely lead no rational arbiter of fact to any other conclusion. Accordingly, as a matter of law, Petitioner's Verified Petition for Reinstatement to Practice Law in West Virginia must be granted.

A handwritten signature in black ink, appearing to read "David D. Perry", is written over a horizontal line.

David D. Perry
Proceeding Pro Se

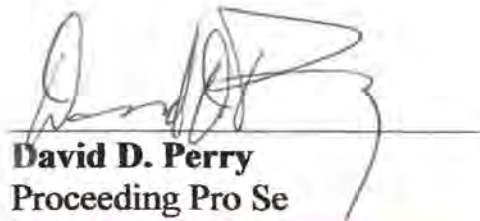
ddpproductions@vmail.com

702-787-7656

CERTIFICATE OF SERVICE

This is to certify that David D. Perry, a Suspended Member of the West Virginia State Bar, has on or about this 1st day of June, 2021, served a true copy of the foregoing **"PETITIONER'S BRIEF"** by USPS First-class mail, upon the following:

Office of Disciplinary Counsel
City Center East, Suite 1200C
4700 MacCorkle Avenue SE
Charleston, West Virginia 25304



David D. Perry
Proceeding Pro Se

ddpproductions@ymail.com

702-787-7656