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

LAWYER DISCIPLINARY BOARD,

Petitioner,

vs.

PATRICK DOHENY, a member of the West Virginia State Bar,

Respondent.

Supreme Court No.: 18-0363

I.D. No. 17-01-439

Bar No.: 8799

BRIEF AND CROSS-ASSIGNMENT OF ERROR OF THE RESPONDENT

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I. CROSS-ASSIGNMENT OF ERROR

Respondent submits that the Hearing Panel Subcommittee ("HPS") in its July 24, 2023 Recommended Report (hereinafter "the Second HPS Recommendation," a copy of which is appended hereto as Appendix "A"), and the Supreme Court of Appeals in *Lawyer Disciplinary Board v. Patrick Doheny*, 247 W.Va. 53, 875 S.E.2d 191 (2022) ("*Doheny I*"), erred in failing to apply the longstanding and controlling precedents set forth in the HPS's original Recommended Decision of October 4, 2021 in these proceedings, where it set forth as follows:

> "'Where the language of a statute is plain and unambiguous, there is no basis for application of rules of statutory construction; but courts must apply the statute according to the legislative intent plainly expressed therein.' Syllabus Point 1, *Dunlap v. State Compensation Director*, 149 W. Va. 266, 140 S.E.2d 448 (1965)." Syl. Pt. 7, *State v. Mills*, 243 W. Va. 328, 844 S.E.2d 99 (2020)." Syllabus Point 3, ***State ex rel Phalen v. Roberts***, No. 20-1023, January 2021 Term, Filed June 16, 2021."'Where the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation.' Syllabus Point 2, *Crockett v. Andrews*, 153 W. Va. 714, 172 S.E.2d 384 (1970)." Syllabus Point 4, ***Phalen***, Id. "'It is not for this Court arbitrarily to read into a statute that which it does not say. *Just as courts are not to eliminate through judicial interpretation words that were purposely included*, we are obliged not to add to statutes something the Legislature purposely omitted.' Syl. Pt. 11, *Brooke B. v. Ray C.*, 230 W.Va. 355, 738 S.E.2d 21 (2013)." Syllabus Point 5, ***Phalen***, Id (emphasis added).

HPS's October 4, 2021 Recommended Decision of the Hearing Penal Subcommittee of the West Virginia Lawyer Disciplinary Board Findings of Fact, Conclusions of Law and Recommended Decision (hereinafter the "First HPS Recommendation"), pp. 6 of 12 through 7 of 12 (emphasis in original). By failing to acknowledge and apply this controlling precedent in its Second Recommendation, the HPS erred by not recommending that the Supreme Court of Appeals rescind and withdraw its decision and opinions in *Doheny I*; dismiss these Rule 3.20 reciprocal disciplinary proceedings for lack of subject matter jurisdiction; seal the record of these proceedings; and notify any and all applicable Case Reporters (including but not limited to West Publishing – Southeastern Reporter, WestLaw and LexisNexis) that *Doheny I* was improvidently published.

II. STATEMENT OF THE CASE

These lawyer disciplinary proceedings arose out of a "Notice of Reciprocal Disciplinary Action Pursuant to Rule 3.20 of the Rules of Lawyer Disciplinary Procedure" filed by West Virginia's Office of Lawyer Disciplinary Counsel ("the ODC") on or about April 24, 2018 (hereinafter "the Notice"). Pursuant to the April 24, 2018 Notice, the ODC seeks to have purportedly "reciprocal discipline" imposed upon Respondent in the form of a "reprimand," based upon a photocopy of a document labelled a "PRIVATE REPRIMAND," purportedly issued to Respondent by the Disciplinary Board of the Supreme Court of Pennsylvania on January 5, 2017 (hereinafter "the Misappropriated Document"). (ODC's September 11, 2020 *Motion for Reciprocal Discipline*, p. 6, ¶ 16). There is no disputed issue of fact in these proceedings that Respondent has never been issued any "public" form of attorney discipline; be it in West Virginia, Pennsylvania, or any other foreign jurisdiction.

On October 4, 2021, the HPS, the Members of which consisted of Kelly D. Ambrose, Esquire (Chair – Attorney Member), Henry W. Morrow, Jr., Esquire (Attorney Member) and Dr. K. Edward Grose (Lay Member), issued its First Recommendation (Appendix "B"). In its First Recommendation, the HPS unanimously held as follows:

> The express language of Rules 3.20(b) and 3.20(c), West Virginia Rules of Lawyer Disciplinary Procedure, require that a lawyer be publicly disciplined in the foreign jurisdiction in order for proceedings to be instituted under Rule 3.20, RLDP. Inasmuch as Respondent's discipline was a private reprimand and not subject to public disclosure under Pennsylvania law, it is the opinion of the Hearing Panel Subcommittee that the Panel and the West Virginia Supreme Court of Appeals are without subject-matter jurisdiction to hear this matter. Therefore, we recommend that this action be dismissed for lack of subject-matter jurisdiction.
>
> Furthermore, since the record of Respondent's discipline in Pennsylvania is a private sanction, not subject to public disclosure, and, since in our opinion private discipline fails to meet the requirements within the clear dictates of Rule 3.20, RLDP, we recommend Respondent's Motion to Seal the Record in this matter be granted.

(*First HPS Recommendation*, Appendix "B," p. 11 of 12).

As noted by the HPS, pursuant to Pennsylvania's Disciplinary Rules, a private reprimand is not public information subject to disclosure except in certain limited circumstances enumerated in Pennsylvania Rule of Disciplinary Enforcement 402, none of which are applicable here. *Id.* However, West Virginia's Rules of Lawyer Disciplinary Procedure not provide for the same sanction for Respondent's alleged misconduct as does the Commonwealth of Pennsylvania. (Appendix "B," p. 5 of 12). Moreover, W.Va. R.L.D.P. 3.20(b) and (c) specifically *limit* the imposition of "reciprocal discipline" against respondent attorneys to cases where said respondent attorney has been issued "***public*** discipline" in another jurisdiction. *Id.* (quoting W.Va. R.L.D.P. 3.20(b)-(c)) (emphasis by the HPS).

In response to the ODC's request that the HPS impose an "admonishment" as a permissible sanction against Respondent in this matter pursuant to W.Va. R.L.D.P. 3.15, the HPA disagreed and initially refused to do so; noting that the ODC had ignored "the plain language of Rule 3.20(e) and the holding in Syllabus Point 5, *Committee on Legal Ethics of the West Virginia State Bar v. Battistelli* 185 W.Va. 109, 405 S.E.2d 242 (1991)." (Appendix "B," pp. 5 through 6 of 12). Syllabus Point 5 of this Court's decision in *Battistelli* provides:

> Article VI, Section 28-A(e) of the By-Laws of the West Virginia State Bar [since superseded by Rule 3.20 of the West Virginia Rules of Lawyer Disciplinary Procedure] requires imposition of the identical sanction imposed by a foreign jurisdiction in the absence of one of the enumerated exceptions contained in subsections (1) through (4). If the Committee believes one of these exceptions is applicable, it must make appropriate findings.

Committee on Legal Ethics of the West Virginia State Bar v. Battistelli 185 W.Va. 109, 405 S.E.2d 242 (1991), Syllabus Point 5 (bracketed text added). As this matter is governed by W.Va. R.L.D.P. 3.20, and not by other Rules posited by the ODC, the HPS concluded that "the resolution to this

case is simple, clear and straightforward": the Notice of Reciprocal Discipline must be dismissed for lack of subject matter jurisdiction. (Appendix "B," p. 6 of 12).

The HPS initially found the language of W.Va. R.L.D.P. 3.20 to be "crystal clear," and that Rule 3.20 "is a Rule which confers subject-matter jurisdiction and which is not ambiguous or otherwise open to interpretation beyond its plain meaning by the Hearing Panel Subcommittee or the Supreme Court of Appeals." *Id.* In so finding, the HPS further reasoned:

> Rule 3.20(b), RLDP, clearly and without any ambiguity, states that only lawyers that have been publicly disciplined in another jurisdiction are required to self-report the action and discipline from the other jurisdiction. Similarly, Rule 3.20(c), RLDP, requires that Disciplinary Counsel act only when it receives notice that a lawyer has been publicly disciplined. Thus, in the very first instance, the Respondent in this case was **not** required to report the private reprimand he received from Pennsylvania and ODC was not authorized to act because it had not received a notice of public discipline imposed by Pennsylvania against Respondent. The Rule, in our opinion, is clear and we do not find the other arguments presented by the parties applicable for our limited jurisdictional analysis.

(Appendix "B," p. 7 of 12) (emphasis in original).

The HPS also rejected, in its First Recommendation, the ODC's contention that subject matter jurisdiction exists by virtue of "the general powers vested in ODC and the Supreme Court to investigate and regulate attorney conduct;" noting that the "general powers" of the ODC cannot supersede "a specific, definite and unambiguous Rule" such as Rule 3.20. (Appendix "B," p. 8 of 12) (quoting *State ex rel. Myers v. Wood*, 154 W.Va. 431, 175 S.E.2d 637 (W. Va. 1970), Syllabus Point 2) (it is axiomatic that "[a] specific section of a statute controls over a general section of the statute."). The HPS also rejected, as being misplaced, the ODC's reliance upon certain disciplinary rules and an unpublished, nonprecedential decision of the Illinois Supreme Court, finding that West Virginia Rule 3.20 and the Illinois disciplinary rule concerning "reciprocal discipline" against respondent attorneys "are simply not the same," and that West Virginia has "no comparable rule" to the Illinois reciprocal disciplinary rule. (Appendix "B," pp. 8 through 9 of 12) (citing *In*

re: Hittinger, M.R. 20212, 05 RC 1515 (September 26, 2005) (unreported), and Illinois Supreme Court Rule 763 ("Reciprocal Disciplinary Action")). Unlike Illinois' disciplinary system, West Virginia's disciplinary rules "[do] not have the same flexibility with respect to jurisdiction and sanctions in [reciprocal disciplinary] cases...absent one of the four qualifiers set forth in Rule 3.20(e), RLDP." (Appendix "B," p. 9 of 12). The HPS therefore found that the legal authority from Illinois relied upon by the ODC was distinguishable from West Virginia law, and did not support the ODC's position. (Appendix "B," p. 10 of 12). Furthermore, the HPS found "that none of the four exceptions [to W.Va. R.L.D.P. 3.20(e)] apply in this case," and that therefore, no jurisdictional basis to proceed with reciprocal discipline against Respondent existed. (Appendix "A," p. 10 of 12).

The Hearing Panel Subcommittee concluded its analysis of West Virginia's reciprocal disciplinary rules in its First Recommendation as follows:

> Finally, one cannot escape the fact that in considering this matter we are left with the simple words of Rule 3.20, RLDP, and whether the Court, in adopting the Rule, intentionally included the word "public" as a limit to the jurisdiction the Court could exercise over an attorney who has been privately reprimanded. If so, the Rule established in Syllabus Point 5, ***Phalen***, cited supra, applies and the Court cannot remove a word intentionally placed in its Rule just as it could not remove a word intentionally placed by the Legislature in a statute. In our opinion, the word "public" was intentionally placed in this Rule. We believe the fact that West Virginia can only engage in public discipline as decided in the ***Dailey Gazette*** opinion, cited supra, coupled with the fact that West Virginia does not recognize a "private" reprimand among its permissible sanctions for attorney misconduct, notwithstanding the fact that such discipline likely existed in other jurisdictions prior to our adoption of the Rules, these factors, taken together, evidence an intentional choice of the Court to avoid any involvement in "private" discipline, either in our state or by dealing with any private discipline from any other state or jurisdiction. Certainly, the Court has the authority to change the Rule and to follow the path set by Illinois. Be that as it may, for today, and in our opinion, the rule is clear.

(Appendix "B," p. 10 through 11 of 12).

The ODC filed its objection to the HPS's First Recommendation on November 2, 2021, and the parties thereafter briefed and argued their positions to the Supreme Court of Appeals. Significantly, the ODC, in its Brief to this Court filed on December 20 2021, twice conceded that the HPS's initial finding of lack of subject matter jurisdiction, based upon the clear and unambiguous language of W.Va. R.L.D.P. 3.20, "may, in the end, be the correct outcome." (*ODC's December 20, 2021 Brief*, pp. 10, 11).

On June 10, 2022, the Supreme Court of Appeals issued *Doheny I*, in which a majority of four of the five Justices rejected the First HPS Recommendation that the Supreme Court of Appeals lacked subject matter jurisdiction to impose reciprocal discipline, and remanded the case for further proceedings before the HPS. *Doheny I*, 875 S.E.2d at 191. The Court's majority opinion in *Doheny I*, authored by the Honorable Justice Tim Armstead, found as follows:

> Pursuant to Rule 3.20(a) of the Rules of LDP "[a] final adjudication in another jurisdiction ... of misconduct constituting grounds for discipline of a lawyer ... conclusively establish[es] such conduct" for any proceedings under "these rules." Rule 3.20(a) does not simply authorize reciprocal discipline under the restrictions of the remaining subsections of Rule 3.20, but instead authorizes such discipline under the broader term of "these rules." As more fully set forth below, "these rules," namely the Rules of LDP, provide the HPS and this Court broad authority to impose discipline on attorneys licensed to practice in West Virginia. Mr. Doheny's Private Reprimand is a final adjudication in another jurisdiction of misconduct constituting grounds for discipline, and pursuant to Rule 3.20(a) of the Rules of LDP, that final adjudication conclusively establishes such conduct.

Doheny I, 875 S.E.2d at 198. The Supreme Court of Appeals also rejected Respondent's request to seal the record of these proceedings in *Doheny I*, on the stated basis that the Court had previously denied two (2) such requests, and because Respondent "has provided no authority or justification to warrant a different decision at this stage of the proceedings." *Id.* at 200.

In a dissenting opinion authored in *Doheny I*, the Honorable Justice William R. Wooten opined that the Supreme Court of Appeals should have adopted the First Recommendation of the HPS and dismissed these proceedings for lack of subject matter jurisdiction, reasoning as follows:

> Because West Virginia has no disciplinary measure "identical" to the private reprimand issued by the Pennsylvania Disciplinary Board, it cannot effectuate reciprocal discipline pursuant to and as authorized by our Rules of Disciplinary Procedure. The proper mechanism was the one chosen and then abandoned by Office of Disciplinary Counsel: Rule 3.19. It is simply unnecessary to torturously read our own Rules of Disciplinary Procedure in order to hold respondent to account in West Virginia.

Doheny I, 875 S.E.2d at 206. In his dissent, Justice Wooten notes that the ODC could have properly proceeded years ago against Respondent with a Rule 3.19 convictions proceeding, but instead improperly instituted a reciprocal disciplinary proceeding, in the absence of any public discipline that West Virginia was capable of even "reciprocating," while simultaneously compounding the impropriety by relegating the matter "to the construct and limitations placed upon that truncated disciplinary process" of Rule 3.20 proceedings. *Id.* at 204. Justice Wooten further noted that the ODC again "effectively conceded" at oral argument that Rule 3.20 proceedings require "public" discipline from a foreign jurisdiction, and that said proceedings could not proceed against a Respondent "privately" disciplined in another jurisdiction. *Id.* Accordingly, the majority's ruling in *Doheny I* "runs afoul of any reasonable concepts of construction" because "[t]he rule concerning construction of statutory provisions *in pari materia* applies with at least as much force to subsections of one section as it does to more than one section of statutory provisions. *Id.* (citing *Courtney v. State Dept. of Health of W. Va.*, 388 S.E.2d 491, 496 n.6 (W.Va. 1989)).

Moreover, the requirement that reciprocal discipline be strictly limited to public discipline elsewhere "is a simple matter of practicality" because rendering "reciprocal" discipline in West Virginia, which does not recognize private discipline, "is an impossibility." *Id.* at 205. However,

in order to reach this otherwise impossible result, the majority in *Doheny I* "misreads [Rule 3.20] altogether" by: (1) "untethering" each of the various subsections of Rule 3.20 from each other; (2) misreading subsection 3.20(a) (which is a mere "evidentiary allowance" provision that contains no "public" disciplinary restriction) as being the "enabling provision for reciprocal discipline," as opposed to subsection 3.20(c), the actual "enabling provision for reciprocal discipline" this is strictly limited to cases of "public" foreign discipline; then (3) extending subsection 3.20(a) far "beyond the context of reciprocal proceedings." *Id.* at 205, n.3.

On July 24, 2023, the HPS issued its second "Recommended Report of the Hearing Panel Subcommittee" (the Second HPS Recommendation"), in which the HPS, pursuant to *Doheny I*, reversed the careful and considered analysis and findings of its First Recommendation (Appendix "B"), regurgitated the dictates of the majority opinion in *Doheny I* (*Second HPS Recommendation*, Appendix "A," pp. 5-14), and recommended to the Supreme Court of Appeals that Respondent be "admonished," as well as recommending the imposition of costs against Respondent. (Appendix "A," p.14). Also on July 24, 2023, HPS Member Henry W. Morrow, Jr., Esquire, joined by layperson Member Dr. K. Edward Gross, issued a "Concurring Opinion" that, while being labelled as "concurring" in nature, was in substance anything but, and which can only be fairly characterized as extraordinary. In this Concurring Opinion (Appendix "B," pp. 1 of 10 through 10 of 10), HPS Members Morrow and Gross, while "reluctantly" concurring in the result of the Second HPS Recommendation, emphasized "the need for the Court to revisit and reconsider its prior rulings" in *Doheny I*, and expressed and explained their "profound disagreement" with its majority opinion, as well as "the Pandora's Box it has opened with the precedent it has set." (*Second HPS Recommendation*, "Concurring Opinion," Appendix "A," p. 1 of 10).

The Concurring Opinion begins with its complete concurrence in validity of the six (6) points of law set forth in the Syllabus to *Doheny I*; however, it is "the application of those settled principles" to the case at bar "that is of serious concern and consequence." *Id.* As noted in Justice Wooten's dissent in *Doheny I*, the "tortuously" read interpretation of Rule 3.20 set forth in the majority and now Chief Justice Walker's concurring opinions "goes much further than simply holding the respondent to account." (Concurring Opinion, Appendix "A," p. 2 of 10). Rather, these opinions "both ignore the simple, plain, understandable and practical rules of law which should have governed the decision in this case." *Id.*

The Concurring Opinion quotes longstanding legal precedent, cited in the First HPS Recommendation (Appendix "B," pp. 6-7) but inexplicably ignored by the majority in *Doheny I*, requiring courts to accept and apply the plain meaning of unambiguous statutory language and not arbitrarily read into a statute that which it does not say. (Concurring Opinion, Appendix "A," pp. 2 of 10 through 3 of 10). The concurring Members further note that since *Doheny I* was decided, as recently as March 27, 2023, the Supreme Court of Appeals again held that: "[a] statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given ***full force and effect.***" (Appendix "A," pp. 3 of 10 through 4 of 10) (quoting *War Memorial Hosp., Inc. v. W. Va. Health Care Auth.*, 887 S.E.2d 34, Syllabus Point 4 (W.Va. 2023)). As noted by the Concurring Opinion:

> These longstanding precedents should have controlled the outcome in ***Doheny***, but they didn't. In fact, these cases were not even discussed or distinguished by the Majority at all in ***Doheny***. Simply put, the majority overlooks the plain meaning of Rule 3.20, as well as the apparent meaning when the rule is read *in pari materia* with the whole of Rule 3.20, and simply holds that the rule doesn't mean what it clearly says.
>
> The fallacy of this argument lies in the **repeated use** of the word "public" together with a recognition that inasmuch as West Virginia has no private discipline, only public discipline would be required in Rule 3.20 and private reprimands would be exempted. The Majority's argument would be strengthened

> if, in fact, when these rules were first adopted, there was no such concept as "private" discipline existing in other jurisdictions. Clearly, our Court at the time, decided that private discipline would remain just that, private, between the attorney and the jurisdiction imposing the private discipline. This was the clear scheme adopted by this Court and clearly evident by its language when the Rules of Lawyer Disciplinary Procedure were instituted; but more than this, the Rule is explicit, plain and clear.

(Concurring Opinion, Appendix "A," pp. 4 of 10 through 5 of 10). The question then, since the decision in *Doheny I*, becomes: "what other [West Virginia] rules contain words without meaning that can be cast aside through judicial opinion instead of by express amendment and how do we interpret them as we go forward?" *Id.*, p. 5 of 10.

In the view of HPS Members Morrow and Gross, the Supreme Court of Appeals, in "its rush to assert its jurisdiction it has ignored and cast aside settled legal principles and created far more serious problems and repercussions not only for ODC and the Lawyer Disciplinary Hearing Panel Subcommittees, but for attorneys and judges in other matters since this ruling could seriously impact decisions in other cases not even remotely related to lawyer discipline." *Id.*, pp. 5 of 10 through 6 of 10. For example, now that the Supreme Court of Appeals has completely untethered Rule 3.20 proceedings from the textual requirement that the reciprocal discipline being sought actually be "reciprocal," there is nothing to stop the ODC from seeking public suspension or annulment of an attorney's law license, even without the minimum due process of a hearing, on the basis of purely private admonishments and reprimands from other jurisdictions. *Id.*, p. 6 of 10. Moreover, now that the ODC is able to seek and obtain (capriciously, arbitrarily, and without even a hearing in Rule 3.20 proceedings) "aggravated" discipline more severe than that issued in a foreign jurisdiction, it appears that respondent attorneys will not even be afforded the minimum due process of a "mitigation" hearing (no such hearing is even contemplated by the text of Rule 3.20). *Id.* "When Rule 3.20 was originally written, it was fashioned to harmonize its varying

provisions with each other and with existing West Virginia Law. Now, those same provisions exist but due to the opinion in ***Doheny*** are no longer in harmony with themselves or existing West Virginia law." *Id.* Furthermore, it is now impossible for West Virginia attorneys to know, going forward, whether they are now required to report purely private discipline issued in other jurisdictions (the text of the Rules themselves in no way requires it), and whether their failure to report otherwise non-reportable private discipline in other jurisdictions is now grounds for additional aggravated discipline under Rule 3.14 as a result of *Doheny I*. *Id.*

As for "the broader implications of the impact upon the legal community," decades of longstanding precedent concerning statutory construction is now imperiled, and possibly rendered meaningless, as *Doheny I* operates to overrule them *sub silento*. *Id.*, p. 7 of 10. It is now virtually impossible for West Virginia attorneys to advise their clients competently as to what a statute or court rule might mean, or for HPS members to perform their duties and make reasonable and correct recommendations in the absence of any reliable textual guidance ("it means what it says" no longer holds; as the new rule appears to be "it means what it says, until it doesn't"). *Id.* "When the Court deviates from the clear, reasonable, sensible and protective meaning of a rule or standard and applies a standard no one could reasonably anticipate, an atmosphere of uncertainty, distrust and chaos results." *Id.* Even worse, based on the concurring opinion of now Chief Justice Walker in *Doheny I*, which "takes the HPS to task at length" for finding that subsections (b) and (c) are "jurisdictional" limits ("[i]f [they] do not represent subject matter jurisdictional parameters, then what do they represent?" – *id.*), the power of the ODC and Supreme Court of Appeals over attorney discipline may now be so "unlimited" and untethered from anything resembling actual rules as to be Godlike, and the Lawyer Disciplinary Board should just be disbanded as irrelevant. *Id.* at 7 of 10 through 8 of 10.

If a majority of the Supreme Court of Appeal wishes to amend Rule 3.20 in a manner, similar to that of the state of Illinois, that might allow for the imposition of public reciprocal discipline in West Virginia based upon private discipline elsewhere, the Court "has the unquestioned authority to do so;" however, to do so by interpreting the present Rule 3.20 "in a published opinion without public comment and without reconciling its various provisions" can only lead to "unintended consequences and needless litigation on down the road." *Id.* at 8 of 10. The Concurring Opinion of HPS Members Morrow and Gross concluded with the following prescient considerations:

> This case has its problems and some may believe that it is relatively unimportant. [Our] concern and reason for penning this lengthy concurrence stems from the obvious abandonment of the rule of law in deciding this case by the Majority of the Supreme Court and the effects of doing so on future cases coming before the Lawyer Disciplinary Board and the Court in this and other areas. We are now in an era where the Rule of Law is being questioned at every turn all across this country with not an insignificant segment of our society advocating open rebellion and civil war. Public confidence in the judiciary appears to be at an all time low. But for a few procedural words, The Vice President of the United States could have overturned an election, thwarted the will of the people and effectively ended our experiment in democracy (or plunged us into a civil war). Aside from the Civil War, there has never been another time in our history when the Rule of Law has taken on such urgency and importance. While this case may seem unimportant to most, the clear implications, in today's jurisprudence, are immense and should not be discounted.
>
> For the foregoing reasons [we] respectfully but reluctantly concur in the recommendation of the [HPS] but also must state that [we] respectfully disagree with the majority opinion of the Court and concurring opinion of [now Chief] Justice Walker in ***Doheny*** and respectfully request that the Court review and revisit the decision handed down for the various reasons stated herein.

Id. at 9 of 10 through 10 of 10.

III. SUMMARY OF THE ARGUMENT

The Supreme Court of Appeals should reconsider, vacate and rescind *Doheny I* on the basis that it constitutes a wholesale abandonment of the Rule of Law. As set forth in the First HPS Recommendation (Appendix "B") and the Concurring Opinion of Second HPS Recommendation,

the express language of Rules 3.20(b) and 3.20(c) of the Rules of Lawyer Disciplinary Procedure require that an attorney be issued "public" discipline in a foreign jurisdiction before the ODC may seek "reciprocal" discipline against an attorney licensed in West Virginia. Consistent with Supreme Court of Appeals case law addressing statutory interpretation and subject matter jurisdiction, the subsections (b) and (c) of Rule 3.20 of the Rules of Lawyer Disciplinary Procedure constitute "jurisdictional" rules, and the ODC's failure and inability to satisfy the prerequisite jurisdictional elements of these Rules deprives the HPS and the Supreme Court of Appeals of jurisdiction to proceed in this matter. The Court should also seal the entire record of these proceedings, and direct the relevant Case Reporters to withdraw publication of *Doheny I* on the basis that it was improvidently decided, in order to protect the protected privacy rights of Respondent under Pennsylvania law.

Additionally, policy considerations extraneous to the issues currently before this Honorable Court warrant that the Court reconsider, vacate and rescind *Doheny I.* By reaching across state lines to extort and extract from Respondent photocopies of highly sensitive and confidential documents generated in Pennsylvania, then misappropriating them by illegally publishing them on a public docket, West Virginia's disciplinary counsel committed multiple acts of fraud and criminal falsity against Respondent. Moreover, in the event Respondent does not prevail in these proceedings, the criminal malfeasance committed by West Virginia's disciplinary counsel across state lines has vested Respondent, after he has exhausted his administrative remedies, with standing to pursue a civil rights action against West Virginia's disciplinary authorities in federal court in Pennsylvania (including but not limited to actions based on their advocacy for and/or benefiting from the application of *ex post facto* law; violations of the due process and equal protection clauses of the Fourteenth Amendment to the United States

Constitution; and violations of Respondent's protected confidentiality and reputational rights under Pennsylvania law).

IV. STATEMENT REGARDING ORAL ARGUMENT

This Honorable Court's Order of August 23, 2023 has already stated that "[t]he Clerk of Court will, on a later date, provide the parties with a Notice of Argument under Rule 19(b) containing further information on the date and time of oral argument."

V. ARGUMENT

A. The Court should reconsider, vacate and rescind *Doheny I*, dismiss the ODC's Notice of Reciprocal Discipline with prejudice, and seal the record of these proceedings because the HPS correctly determined in its First Recommendation that the ODC lacked subject matter jurisdiction to seek "reciprocal discipline" against Respondent because Respondent has never been subject to "public discipline" in any foreign jurisdiction.

The Concurring Opinion of the Second HPS Determination (Appendix "A," pp. 1 of 10 through 10 of 10) accurately and cogently sets forth more than sufficient grounds for the Supreme Court of Appeals to reconsider, vacate and rescind its majority opinion in *Doheny I*, and Respondent incorporates herein and relies upon the opinion and findings of HPS Members Morrow and Gross in their entirety.[1] The majority and concurring opinions in *Doheny I* constitute an extraordinary and unprecedented assault on the Rule of Law itself that, if not reconsidered and

[1] It must be noted that the HPS's Chairperson, Kelly D. Ambrose, Esquire, originally "led the charge" to have these proceedings dismissed for lack of subject matter jurisdiction, and upon information and belief, drafted the First HPS Recommendation of October 4, 2021 (Appendix "B" hereto) on behalf of the HPS. While Chairperson Ambrose did not join her HPS colleagues Morrow and Gross in their Concurring Opinion to the Second HPS Recommendation (Appendix "A"), apparently having been cowed by the dictates set forth in *Doheny I* into simply rubber-stamping the manifestly egregious actions of the ODC, all three (3) Members of the HPS have been unanimous and in lockstep, since at least 2021, in their view that the clear and unambiguous language of the Rules of Lawyer Disciplinary Procedure simply does not allow the ODC to proceed against Respondent in a Rule 3.20 proceeding, and that this matter must therefore be dismissed for lack of subject matter jurisdiction.

withdrawn, will have far-reaching and possibly devastating (even if unintended) consequences in any case in which the reading of an otherwise clear and unambiguous statutory provision or court rule is at issue. The rulings set forth in *Doheny I*, if not vacated and rescinded, are a virtual recipe for future, systemic, and ever-increasing corruption and fraud that is certain to be perpetrated by West Virginia's disciplinary counsel (and possibly by other attorneys, in other cases, arising out of contexts other than reciprocal disciplinary proceedings).[2] For these reasons and the reasons set forth in the Concurring Opinion to the Second HPS Recommendation (Appendix "A," pp. 1 of 10 through 10 of 10), the Supreme Court of Appeals should reconsider, vacate and rescind *Doheny I*, and dismiss these proceedings for lack of subject matter jurisdiction.

When the ODC filed its Notice that instituted the present reciprocal disciplinary proceedings, it referenced, on a public docket, that Respondent had purportedly been issued a "Private Reprimand" in Pennsylvania (*ODC's Notice*, ¶¶ 2-3), and attached, as Exhibits to their Notice, unauthenticated photocopies of the Misappropriated Document that would have been generated during, and made a part of the record of, disciplinary proceedings in Pennsylvania. (*ODC's Rule 3.20 Notice*, Attachments "A" and "B"). The very fact that Pennsylvania's Disciplinary Board may have issued a Private Reprimand to Respondent, as well as the records of any such proceedings (including but not limited to the Private Reprimand itself, and the Report of Findings of the Hearing Committee), are protected confidential information under Pennsylvania law, which are not available to the public. *See* Pennsylvania Rule of Disciplinary Enforcement

[2] In both of its Briefs to this Court filed on December 10, 2021 and October 10, 2023, the ODC has characterized the positions it has taken in this matter as "a matter of first impression." In doing so, the lawyers of the ODC have telegraphed to the world that if they ultimately succeed in perpetrating their corrupt schemes against the Respondent in this case, it is a metaphysical certainty that they will continue to perpetrate these corrupt schemes against additional respondents in future cases.

402(k); §93.108 of the Pennsylvania Disciplinary Board Rules and Procedures, "Restoration of confidentiality" (while the record of disciplinary proceedings in Pennsylvania remain opened from the time formal charges are filed, once the proceedings conclude with the imposition of private discipline, the confidentiality of respondent's disciplinary proceedings is fully restored).

In this case, when Respondent provided the ODC with a photocopy of this Misappropriated Document, he did so pursuant to his reporting and cooperation requirements under W.Va. R.L.D.P. 3.19, with the reasonable expectation and understanding that said disclosures were made pursuant to the ODC's Conviction Investigation concerning Respondent's DUI-related convictions, and that the "details" of said investigation (including and especially the Misappropriated Document) was required to remain "confidential" in West Virginia pursuant to the text W.Va. R.L.D.P. 2.6 ("Confidentiality"). However, the ODC, notwithstanding the provisions of Pennsylvania law and W.Va. R.L.D.P. 2.6, and without notifying Respondent that it was doing so (as also required by Rule 2.6), arbitrarily changed the Conviction Investigation (I.D. No. 13-01-081) into a Reciprocity Investigation (I.D. No. 17-01-439) behind the scenes, then filed copies of the Misappropriated Document on the public docket of these proceedings, without ever requesting and obtaining a waiver from Respondent of the confidentiality of any Pennsylvania proceedings and related documents.

In doing so, the ODC has remained in systemic and ongoing violation of both W.Va. R.L.D.P. 2.6 (mandating the confidentiality of "details" of disciplinary investigations), and the Pennsylvania disciplinary system's confidentiality protections afforded to respondent attorneys who are not publicly disciplined. (*see* Pa. R.D.E. 402(k); *see also* Pa. Disc. Bd. Rule of Proc. § 93.108). Accordingly, in addition to closing and dismissing the present proceedings with prejudice for lack of subject matter jurisdiction, in order to mitigate the systemic and ongoing harm the

ODC's malfeasance has caused Respondent to suffer for more than four (4) years, the Supreme Court of Appeals should seal the docket for these proceedings to restore and protect Respondent's confidentiality rights (afforded by both West Virginia and Pennsylvania law) concerning the Misappropriated Document. Additionally, now that the possible existence of highly confidential disciplinary proceedings concerning Respondent in Pennsylvania has been broadcast nationally, through the Court's publication and reporting of *Doheny I*, Respondent has suffered and continues to suffer irreparable (and as set forth below, legally actionable) harm. In order to mitigate this harm, it is imperative that the Supreme Court of Appeals, in addition to dismissing these proceedings and sealing their record, notify the relevant Case Reporters (West Publications – Southeastern Reporter, WestLaw, LexisNexis, etc.) that the Supreme Court of Appeals has withdrawn and rescinded *Lawyer Disciplinary Board v. Patrick Doheny*, 875 S.E.2d 191 (W.Va. 2022) as improvidently decided, and direct that said Case Reporters withdraw and rescind publication of *Doheny I.*

B. Policy considerations extraneous to the issues currently before this Court warrant that the Court reconsider, vacate and rescind *Doheny I* so as to avoid future due process violations against, and related litigation brought by, out-of-state respondent attorneys and possibly even prosecutors.

1. Disciplinary counsel committed multiple crimes of criminal falsity when it reached across state lines, extorted and extracted from Respondent photocopies of highly sensitive and confidential documents generated in Pennsylvania, then misappropriated them by illegally publishing them on a public docket.

The Misappropriated Document labelled "PRIVATE REPRIMAND," attached as an Exhibit to the ODC's Notice of Reciprocal Discipline, even if ever authenticated pursuant to the West Virginia Rules of Evidence (which the ODC has never done), contains information that is strictly private and confidential under Pennsylvania law and W.Va.R.D.P. 2.6. Senior Disciplinary Counsel Andrea J. Hinerman, Esquire [Bar No. 8041] and Chief Lawyer Disciplinary Counsel

Rachel L. Fletcher Cipoletti, Esquire [Bar No. 8806] stole and illegally misappropriated this document when they secretly and arbitrarily converted the ODC's "Convictions Investigation" against Respondent pursuant to Rule 3.19 (No. 13-01-081) into a "Reciprocal Discipline Investigation" against Respondent pursuant to Rule 3.20 (No. 17-01-439), then illegally published and/or referenced the existence of this Misappropriated Document when they initiated these public disciplinary proceedings without first obtaining a "waiver of confidentiality" from Respondent, or even giving Respondent "reasonable notice" that they intended to do so as required by W.Va. R.L.D.P. 2.6 ("Confidentiality"). This Misappropriated Document is privileged and confidential under Pennsylvania law (as well as the West Virginia Rules of Evidence and Lawyer Disciplinary Procedure), and therefore is not admissible in any public proceedings, including the present reciprocal disciplinary action. *See Marano v. Holland*, 166, 366 S.E.2d 117, 127 (W.Va. 1988) (West Virginia follows the "exclusionary rule" relating to illegally-obtained evidence, such that evidence illegally obtained by the prosecution cannot be used at trial against a defendant where the defendant had a "reasonable expectation" of privacy).

On February 12, 2015, Hinerman sent Respondent a letter demanding that Respondent produce "a copy of any order or closing document" relating to any disciplinary proceedings against Respondent in Pennsylvania, under threat that failure to do so would "subject [Respondent] to disciplinary action." A copy of this February 12, 2015 letter from Hinerman to Respondent was produced in the ODC's Discovery Disclosures as Bates-stamped document no. 67 in these proceedings. Respondent, with the understanding that such documents would be protected by the clear and unambiguous confidentiality rules of both the Pennsylvania and West Virginia disciplinary systems, thereafter produced the Misappropriated Document to Hinerman and the

ODC in the course of the ODC's "Convictions Investigation" against Respondent pursuant to Rule 3.19 (No. 13-01-081).

In the event Hinerman and Cipoletti demanded, on February 12, 2015, that Respondent produce a photocopy of the Misappropriated Document, under the threat of heightened discipline, and with the knowledge and intent that they would later secretly and arbitrarily convert the ODC's "Convictions Investigation" against Respondent pursuant to Rule 3.19 (No. 13-01-081) into a "Reciprocal Discipline Investigation" against Respondent pursuant to Rule 3.20 (No. 17-01-439) without first obtaining a "waiver of confidentiality" from Respondent, then such actions would constitute the felonious crime of extortion under West Virginia law. *See* W.Va. Code § 61-2-13(a) ("Extortion or attempted extortion by threats; penalties") ("[a] person who threatens injury to the character, person, or property of another person...and thereby obtains anything of value, or other consideration, he or she is guilty of a felony and, upon conviction, shall be confined in a correctional facility not less than one nor more than five years. A person who makes such threat of injury or accusation of an offense as set forth in this section, but fails to obtain anything of value or other consideration, is guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than two nor more than 12 months and fined not less than $50 nor more than $500.").

Additionally, such actions of Hinerman and Cipoletti would constitute the crimes of Official Oppression and Obstructing Administration of Law or Other Governmental Function under Pennsylvania law (*see* 18 Pa. C.S. §§ 5301(1) and (2) ("[a] person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor of the second degree if, knowing that his conduct is illegal, he: (1) subjects another to...dispossession...or other infringement of personal or property rights; or (2) denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity"), and 18 Pa. C.S.

§ 5101 ("[a] person commits a misdemeanor of the second degree if he intentionally obstructs, impairs or perverts the administration of law or other governmental function by...breach of official duty, or any other unlawful act....")).

In the present case, Hinerman and Cipoletti committed multiple crimes of criminal falsity when they obtained the Misappropriated Document from Respondent under threat of extortion, then illegally publicized the existence of this Misappropriated Document by later secretly and arbitrarily converting the ODC's "Convictions Investigation" against Respondent pursuant to Rule 3.19 (No. 13-01-081) into a "Reciprocal Discipline Investigation" against Respondent pursuant to Rule 3.20 (No. 17-01-439) without first obtaining a "waiver of confidentiality" from Respondent or even providing Respondent with reasonable notice that they would do so. Because this illegally-obtained and inadmissible Misappropriated Document was the sole basis for the ODC commencing these proceedings, the ODC had no basis for even initiating these proceedings, and it should go without saying that the Supreme Court of Appeals should not give Hinerman and Cipoletti the benefit of their corruption and fraud by allowing this matter to proceed; let alone by granting Hinerman and Cipoletti the relief they have requested on the purported behalf of the ODC.

If Hinerman and Cipoletti had been representing the disciplinary system of Pennsylvania as opposed to West Virginia, and committed the acts that they committed against Respondent in this case in Pennsylvania instead of West Virginia, not only would they likely have been terminated and subject to Pennsylvania disciplinary proceedings themselves, they could also have been subject to criminal prosecution. In the event the lawyers of West Virginia's ODC continue to declare war in future cases against the disciplinary systems of other states in which West Virginia attorneys are also licensed though manifestly corrupt "reciprocal disciplinary proceedings" (which the ODC, in both of its Briefs to this Court, has indicated it fully intends to do), then it is only a

matter of time before disciplinary and prosecuting authorities in those foreign jurisdictions start taking actions to protect the integrity of their own disciplinary systems, and the rights of West Virginia attorneys also licensed in those foreign jurisdictions.

2. In the event the Court declines to reverse *Doheny I* and fails to protect Respondent's protected confidentiality and due process rights, the criminal malfeasance of disciplinary counsel has vested Respondent, after he has exhausted his administrative remedies, with standing to pursue a civil rights lawsuit for injunctive relief and monetary damages in federal court in Pennsylvania.

In its filings with this Court, the ODC repeatedly misapprehends the unauthenticated Misappropriated Document attached as an Exhibit to its Notice of Reciprocal Discipline (purporting to be a "Private Reprimand" from Pennsylvania) as "conclusively establishing" the fact of professional misconduct on the part of Respondent. This repeated assertion is both factually and legally incorrect. To the contrary, it is the factual existence of Respondent's DUI-related criminal convictions in Pennsylvania, and not any purported document from Pennsylvania's disciplinary authorities, that conclusively establishes the purely technical fact of professional misconduct on the part of Respondent (which is why, as set forth in Justice Wooten's dissent in *Doheny I* and the Concurring Opinion to the Second HPS Recommendation, the ODC should have, and only properly could have, proceeded against Respondent through a convictions-based proceeding pursuant to W.Va. R.L.D.P. 3.19). If anything, the unauthenticated Misappropriated Document relied upon by the ODC, purporting to be a "Private Reprimand" issued to Respondent in Pennsylvania, constitutes a final Pennsylvania judgment, entitled to full faith and credit in West Virginia, declaring that Respondent should not and cannot be "publicly" disciplined, on a "reciprocal" basis in another jurisdictions, in a manner that operates to reveal the existence of any strictly private and confidential disciplinary proceedings that may have occurred in Pennsylvania.

"Under the full faith and credit clause of the federal constitution [United States Constitution, Article IV, Section 1] the courts of this state may not refuse to enforce a judgment of another state because it involves some contravention of the public policy of this state." *Clark v. Rockwell*, 435 S.E.2d 664, Syllabus Point 2 (W.Va. 1993). By publicizing the possible existence of strictly private and confidential disciplinary proceedings against Respondent in Pennsylvania, West Virginia's disciplinary system (including the Supreme Court of Appeals) has violated and continues to violate the full faith and credit clause of the United States Constitution. The Misappropriated Document purporting to be a "Private Reprimand" issued to Respondent in Pennsylvania, if anything, constitutes a final Pennsylvania judgment, entitled to full faith and credit in West Virginia, declaring that any confidential disciplinary proceedings to which Respondent may have been subject in Pennsylvania cannot be publicly disclosed. For this reason alone, the Court should reconsider and vacate *Doheny I*, and seal the record of these proceedings.

Unfortunately, as a result of *Doheny I*, out-of-state attorneys licensed in West Virginia, who are issued private discipline in their home jurisdictions, now face the frightening and unpredictable prospect that West Virginia's Lawyer Disciplinary Board and ODC will decline to enforce the Rules of Lawyer Disciplinary Procedure as actually written, and will simply make up their own Rules, as a means of seeking and obtaining whatever form of discipline that comports with their own subjective whims, even where contrary to that which is allowed by the Rules themselves. If *Doheny I* is not reconsidered and vacated, it will be virtually impossible for out-of-state attorneys to know, just from reading the Rules as written and published by the Supreme Court of Appeals, that West Virginia's disciplinary authorities may hold out-of-state attorneys responsible for reporting matters that are not even reportable under the language of the Rules themselves (such as private discipline), and will attempt to institute reciprocal disciplinary

proceedings against out-of-state attorneys even where the text of the Rules prohibit the issuance of such discipline. This creates serious due process concerns (relating to the lack of adequate notice of the disciplinary standards actually being applied to out-of-state attorneys) by subjecting out-of-state attorneys to the egregiously undue burden and expense of having to defend against even frivolous disciplinary proceedings across state lines, and if unsuccessful, possibly even being assessed payment of significant "taxable costs" and other fees at the conclusion of proceedings that should never have even been commenced.

The rulings set forth in *Doheny I* are so unprecedented that if reciprocal discipline is ultimately imposed upon Respondent, he now has grounds to petition the Supreme Court of the United States for discretionary review. *See Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1051-58 (1991) (lawyer disciplinary rules of a state concerning permissible speech by a lawyer are subject to review by the U.S. Supreme Court, and may be deemed void for vagueness on constitutional grounds, where said rule may lead to discriminatory enforcement and operate to mislead attorneys into thinking that alleged misconduct was actually proper). Additionally, because the actions of West Virginia's disciplinary authorities have violated and continue to violate Respondent's substantive rights under Pennsylvania law and procedural due process rights under federal law, federal civil rights and jurisdictional statutes, as well as Pennsylvania's jurisdictional "longarm" statute, vest Respondent with standing, in his capacity as an aggrieved civil plaintiff, to pursue a collateral civil rights action, pursuant to 42 U.S.C. § 1983 (a "Section 1983 action") against West Virginia's disciplinary authorities in a federal forum in Pennsylvania, both for injunctive relief and monetary damages.

To establish a violation of procedural due process in a Section 1983 action, a plaintiff, such as Respondent in this case, must demonstrate that: (1) he had property or a property interest; (2)

of which the defendant(s) deprived him; (3) without due process of law. *Sunrise Corp. v. City of Myrtle Beach*, 420 F.3d 322, 328 (4th Cir. 2005) (citing *Sylvia Dev. Corp. v. Calvert Co., Md.*, 48 F.3d 810, 826 (4th Cir. 1995)). In the present case, Respondent clearly had a "property interest" in his professional reputation, and as a corollary, a property interest in keeping the existence of any strictly private and confidential disciplinary proceedings that may have been brought against him in Pennsylvania just that: strictly private and confidential. However, West Virginia's disciplinary authorities have deprived and continue to deprive Respondent of these property interests by publicizing the possible existence of strictly private and confidential disciplinary proceedings that may have been brought against him in Pennsylvania through these Rule 3.20 reciprocal disciplinary proceedings in Pennsylvania. Moreover, these deprivations were committed in the complete absence of any due process, in that West Virginia's ODC filed its Notice of Reciprocal Discipline in 2019 without first providing Respondent with requisite notice and opportunity to be heard prior to his property interests in privacy, confidentiality and professional reputation being deprived, in flagrant violation of the confidentiality and notice provisions of both Pennsylvania's and West Virginia's disciplinary rules. In the event *Doheny I* is not reconsidered and vacated, Respondent will have fully exhausted his administrative remedies at the conclusion of these proceedings, and Respondent's standing to bring a Section 1983 action to remedy these deprivations of his property interests and due process rights will have fully vested.

Lastly, because the rulings set forth in *Doheny I* (as the Court specifically states therein) are aimed at "holding [Respondent] to account" for DUI-related criminal offenses he was convicted of more than a decade ago in Pennsylvania, said rulings constitute an illegal *ex post facto* law. "Under *ex post facto* principles of the United States and West Virginia Constitutions, a law passed after the commission of an offense which increases the punishment, lengthens the

sentence or operates to the detriment of the accused, cannot be applied to him." *State v. Deel*, 788 S.E.2d 741, 742, Syllabus Point 2 (W.Va. 2016). In the present case, because the rulings in *Doheny I* (which were not the law of West Virginia prior to the Court's decision, and therefore constitute "new law") operate to Respondent's detriment, they constitute an illegal *ex post facto law*. Because the minimal due process afforded to Respondent in these truncated reciprocal disciplinary proceedings in no way afforded Respondent the opportunity to obtain discovery or even to be heard at a formal hearing on this issue, in the event *Doheny I* is not reconsidered and vacated, Respondent will also have pursue this claim in a subsequent collateral civil rights action after exhausting his administrative remedies in these proceedings.

VI. CONCLUSION

For the foregoing reasons, Respondent attorney, Patrick J. Doheny, Jr., Esquire, respectfully requests that the West Virginia Supreme Court of Appeals reject the July 24, 2023 Recommended Decision of the Hearing Panel Subcommittee (HPS) of the West Virginia Lawyer Disciplinary Board; adopt the original Recommendation of HPS dated October 4, 2021; and issue a decision, opinion and Order directing as follows:

a. reversing and rescinding *Lawyer Disciplinary Board v. Patrick Doheny*, 247 W.Va. 53, 875 S.E.2d 191 (2002) on the basis that it was improvidently decided;

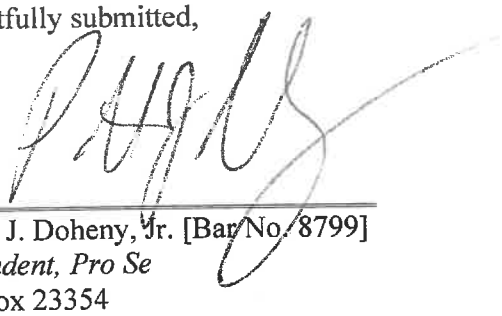
b. dismissing, with prejudice, the Office of Lawyer Disciplinary Counsel's Notice of Reciprocal Discipline against Respondent pursuant to W.Va. R.L.D.P. 3.20 on the basis of lack subject matter jurisdiction;

c. ordering that Respondent not be assessed any costs relating to this proceeding;

d. sealing the docket and record of these proceedings in order to restore and protect Respondent's protected privacy rights under Pennsylvania law; and

e. notifying the relevant Case Reporters (West Publications – Southeastern Reporter, WestLaw, LexisNexis, etc.) that the Supreme Court of Appeals has withdrawn and rescinded *Lawyer Disciplinary Board v. Patrick Doheny*, 247 W.Va. 53, 875 S.E.2d 191 (2002) as improvidently decided, and directing that said Case Reporters withdraw and rescind publication of said decision.

Respectfully submitted,



By: _____
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