

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

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**In Re:** Petition for Reinstatement of C. MICHAEL SPARKS,  
a disbarred member of The West Virginia State Bar

**No. 23-71**

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**BRIEF OF THE LAWYER DISCIPLINARY BOARD**

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## **I. STATEMENT OF THE CASE**

### **A. Nature of the Proceedings**

Petitioner C. Michael Sparks (hereinafter “Petitioner”) was admitted to the West Virginia State Bar on September 30, 1996. As such, Petitioner is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board. On or about October 10, 2013, the Office of Lawyer Disciplinary Counsel (hereinafter “ODC”) filed a Petition for Annulment of Law License with the Supreme Court of Appeals of West Virginia and submitted Petitioner’s affidavit consenting to disbarment pursuant to Rule 3.25 of the Rules of Lawyer Disciplinary Procedure. [Jt. Ex. 15, Bates 514-517].<sup>1</sup> Although the ODC had initiated an investigation regarding the underlying conduct, formal charges were not pending at the time the petition was filed. On October 11, 2013, the Supreme Court of Appeals of West Virginia granted the aforesaid petition and annulled Petitioner’s license to practice law in the State of West Virginia by voluntary consent. [Jt. Ex. 15, Bates 513]. Petitioner consented to disbarment following the issuance of an information in the United States District Court for the Southern District of West Virginia charging him with a violation of 18 U.S.C. §242, deprivation of rights under the color of law, for depriving an individual, George White, of his right to counsel of his choice under the Sixth and Fourteenth Amendments to the Constitution of the United States. Prior to his disbarment, Petitioner served as the Mingo County Prosecuting Attorney from 2005 until his resignation in October 2013.

On or about February 8, 2023, Petitioner, by counsel, Lonnie C. Simmons, Esquire, filed a petition for reinstatement with the Supreme Court of Appeals of West Virginia, and the ODC

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<sup>1</sup> Joint Exhibits 1 through 15 are organized by Bates numbers in the top right-hand corner of the documents.

commenced an investigation thereof pursuant to Rule 3.33 of the Rules of Lawyer Disciplinary Procedure. The ODC reviewed the petition and accompanying documentation, including copies of Petitioner's state and federal income tax returns for the years 2013 through 2021. [Sealed Jt. Ex. 3]. The ODC received certified copies of Petitioner's federal income tax returns for the years 2015 through 2020 from the Internal Revenue Service. [Sealed Jt. Ex. 4]. Lawyer Disciplinary Counsel took Petitioner's sworn statement on May 10, 2023. [Jt. Ex. 14]. A legal advertisement soliciting written public comments regarding Petitioner's reinstatement petition was published three times in the Charleston Gazette-Mail, listing a submission deadline of April 20, 2023, and three times in the Williamson Daily News, listing a submission deadline of May 25, 2023. [Jt. Ex. 11 and 12]. The ODC did not receive any letters in response to the legal advertisements seeking comments regarding Petitioner's potential reinstatement, however Petitioner submitted several letters of support from members of his community. [Jt. Ex. 13].

On or about July 25, 2023, the ODC filed a report regarding this matter with the Hearing Panel Subcommittee of the Lawyer Disciplinary Board (hereinafter "HPS") pursuant to Rule 3.33 of the Rules of Lawyer Disciplinary Procedure. On or about August 9, 2023, Petitioner, by counsel, filed a Motion Seeking an Order from the Hearing Panel that He Has Substantially Complied with the Requirement to Produce Federal and State Income Tax Returns. On or about August 10, 2023, the HPS granted Petitioner's motion and ordered that the tax records provided by Petitioner were sufficient to move forward with the reinstatement proceedings.

#### **B. Reinstatement Hearing**

On September 6, 2023, this matter proceeded to hearing in Charleston, West Virginia. The HPS was comprised of Timothy E. Haught, Esquire, Chairperson; Margaret E. Lewis, Esquire; and

Kelly C. McGee, Layperson. Lonnie C. Simmons appeared on behalf of Petitioner, who also appeared, and Lauren Hall Knight, Lawyer Disciplinary Counsel, appeared on behalf of the ODC. The HPS heard testimony from Petitioner and John Mark Hubbard. Joint Exhibits 1 through 15 were admitted into evidence without objection from either party. Most of the evidence considered by the HPS which formed the basis for its recommendation in this matter was addressed in Petitioner's brief. Pursuant to Rule 10(d) of the Rules of Appellate Procedure, additional relevant evidence which was considered by the HPS will be set forth below.<sup>2</sup>

As set forth in Petitioner's brief, Petitioner began providing assistance to the federal government in its investigation into public corruption in Mingo County in May 2013. [Jt. Ex. 8, Bates 331]. On or about August 14, 2013, an indictment was issued in the United States District Court for the Southern District of West Virginia against former Mingo County Circuit Judge Michael Thornsburg. This indictment alleged that:

In 2008 and 2009, and again in 2012, [Judge Thornsburg] engaged in criminal conspiracies to violate the constitutional rights of victim R.W., using the authority of the police, the state grand jury, and the courts. R.W. was the husband of Judge Thornsburg's secretary, with whom Judge Thornsburg had an extramarital relationship. Judge Thornsburg conspired to plant illegal drugs on R.W.'s pickup truck; to have R.W. arrested for thefts he did not commit; to commandeer a state grand jury and use it to oppress R.W. and his family; and, after an incident in which R.W. was the victim of an assault, to arrange for R.W., rather than the perpetrator, to receive an exceptionally harsh sentence.

[Jt. Ex. 15, Bates 535]. Regarding the allegation that R.W. was arrested for thefts he did not commit, the indictment alleged, in part, that at the time R.W. was arrested in 2008, Petitioner had

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<sup>2</sup> Rule 10(d) of the Rules of Appellate Procedure sets forth that no statement of the case need be made in the respondent's brief beyond what may be deemed necessary in correcting any inaccuracy or omission in the petitioner's brief.

reason to know that Judge Thornsby had been in a romantic relationship with R.W.'s wife, and "knew that Judge Thornsby exerted great influence over" the charging officer, Trooper Brandon Moore, in the performance of Trooper Moore's official duties. [Jt. Ex. 15, Bates 541]. The indictment further alleged that Petitioner recognized that the criminal charges against R.W. were improper, and on or about December 18, 2008, Petitioner disqualified himself from the matter involving R.W. [Jt. Ex. 15, Bates 541].

Regarding the allegation that Judge Thornsby arranged for R.W. to receive an exceptionally harsh sentence for charges arising from an incident in which R.W. was the victim, the indictment alleged, in part, that in 2012 Judge Thornsby directed his close friend and confidant, Jeff Cline, to instruct Petitioner that R.W. should receive a sentence of six months' confinement in the case pending against him. [Jt. Ex. 15, Bates 537, 550]. The indictment further alleged that Mr. Cline instructed Petitioner, and an assistant prosecutor who handled cases in Mingo County Magistrate Court, as Judge Thornsby directed, and that a prosecutor from Petitioner's office offered R.W. a plea agreement under which R.W. would plead guilty to one or more of the charges against him and receive a sentence of six months' confinement. [Jt. Ex. 15, Bates 551]. R.W. and his attorney refused the offer, and on or about October 31, 2012, a day before R.W.'s trial was to begin, and contrary to Judge Thornsby's instructions, Petitioner moved to dismiss the charges against R.W. stating that, "[a]fter careful review of the video evidence, further prosecution of the charges would not be consistent with the public interest in the fair administration of justice." [Jt. Ex. 15, Bates 551]. The motion was granted and the charges against R.W. were dismissed. [Jt. Ex. 15, Bates 551].



On or about August 15, 2013, the ODC initiated a complaint against Petitioner based upon the allegations related to him set forth in the Thornsby indictment. [Jt. Ex. 15, Bates 589-92]. Thereafter, on or about September 19, 2013, an information was issued in the United States District Court for the Southern District of West Virginia against Judge Thornsby which described criminal conduct on the part of Petitioner regarding the deprivation of George White's right to counsel.<sup>3</sup> [Jt. Ex. 15, Bates 556-60]. That same day, the ODC initiated a complaint against Petitioner based upon this information and filed an Amended Petition Seeking Immediate Suspension of a Lawyer Pursuant to Rule 3.27 of the Rules of Lawyer Disciplinary Procedure regarding Petitioner's license to practice law. [Jt. Ex. 15; Bates 524-60].

Thereafter, an information was issued in the United States District Court for the Southern District of West Virginia charging Petitioner with a violation of 18 U.S.C. §242, deprivation of rights under the color of law. [Jt. Ex. 8, Bates 317-18]. On or about November 18, 2013, Petitioner executed a stipulation of facts and plea agreement wherein he admitted that he willfully and knowingly, and acting under the color of law, subjected an individual, George White, to the deprivation of his right to counsel of his choice under the Sixth and Fourteenth Amendments to the Constitution of the United States. [Jt. Ex. 8, Bates 319-28]. According to the stipulation of facts:

In or about February 2013, victim "G.W." was charged with drug-related criminal offenses in circuit court in Mingo County. In or about March 2013, [Mingo County Commissioner David Baisden] and the [then-sheriff of Mingo County] learned that G.W., with the assistance of his criminal defense attorney, C.W., was informing the news media and others, possibly including federal law enforcement,

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<sup>3</sup> The above-referenced indictment issued against Judge Thornsby was dismissed. Judge Thornsby pleaded guilty to conspiracy against civil rights related to his role in the deprivation of rights of George White.

about criminal conduct by the Sheriff. Baisden and the Sheriff advised Mr. Sparks that G.W. and C.W. were providing this information about criminal conduct by the Sheriff. Baisden and the Sheriff advised Mr. Sparks that they would seek to coerce G.W. into firing C.W. in order to prevent G.W. and C.W. from further providing information about criminal conduct by the Sheriff. Baisden, through a known messenger, then offered G.W. a more favorable plea agreement if he would fire C.W. In response, G.W. fired C.W. and replaced C.W. with a different attorney.

After G.W. fired C.W., Mr. Sparks entered into a plea agreement with G.W. under which three of five criminal counts pending against G.W. were dismissed. As part of the plea agreement, Mr. Sparks also accepted a forfeiture from G.W. of \$10,000, which was \$10,000 less than the forfeiture Mr. Sparks originally intended to seek from G.W. Moreover, as part of the agreement, Mr. Sparks agreed to recommend that the sentences for the two counts to which G.W. would plead guilty would run concurrently rather than consecutively. Mr. Sparks negotiated this plea agreement in part with County Commissioner Baisden himself and, at Baisden's behest, entered into a plea agreement more favorable than he otherwise would have. Mr. Sparks did these acts knowing that a more favorable plea agreement for G.W. was a necessary part of the scheme to coerce G.W. into firing C.W. in order to protect the Sheriff. Because Mr. Sparks was the county's Prosecuting Attorney, his cooperation in this regard was necessary to the scheme's success.

[Jt. Ex. 8, Bates 327-28]. Petitioner's sentencing hearing was held on July 7, 2014, before the Honorable Thomas E. Johnston. [Jt. Ex. 8, Bates 375-419]. Petitioner was sentenced to one year in prison and one year of supervised release upon his release from prison. [Jt. Ex. 8, Bates 420-25].

Petitioner testified as follows at his reinstatement hearing regarding the underlying conduct leading up to his disbarment and the substantial assistance that he provided to federal authorities in their investigation of Judge Thornsby. Petitioner stated that after Mingo County Sheriff Eugene Crum was killed in April 2013, he began to discuss whether he should get involved in the

Federal Bureau of Investigation (hereinafter "FBI") investigation regarding this matter and if there was any information that he could provide to investigators. [Hrg. Tr. 14]. Petitioner stated that his investigator, Mr. Gilman, arranged for him to meet with Sergeant Dave Nelson of the West Virginia State Police. [Hrg. Tr. 14]. Present at this meeting was Petitioner, Mr. Gilman, Sergeant Nelson, Trooper Perdue, and an FBI agent. [Hrg. Tr. 15]. Petitioner testified that he did not consult with counsel prior to attending this meeting. [Hrg. Tr. 15]. Petitioner stated that he answered questions and that he was advised by troopers that Judge Thornsby was the target of their investigation. [Hrg. Tr. 16]. Petitioner testified that he met with Assistant United States Attorney Steven Ruby a few weeks later, without counsel present, and provided Mr. Ruby with insight into the political landscape of Mingo County and Judge Thornsby's circle. [Hrg. Tr. 16].

Petitioner testified that sometime after this meeting, Jeff Cline, one of Judge Thornsby's "political cronies," came to his office one evening, frightened, and informed Petitioner that he was summoned to Judge Thornsby's office at midnight one night. [Hrg. Tr. 16-17]. Petitioner testified that Mr. Cline told him that when he arrived at Judge Thornsby's office, he witnessed Judge Thornsby crushing pills and putting them in a metal box. [Hrg. Tr. 17]. Mr. Cline further informed Petitioner that Judge Thornsby told him that he wanted to have a relationship with his secretary, so they were going to put the box of pills under Judge Thornsby's secretary's husband's vehicle so that Trooper Brandon Moore, who was close to Judge Thornsby, would pull him over, seize the drugs, and arrest him to get him out of the picture. [Hrg. Tr. 17]. Petitioner testified that he relayed this information to Trooper Nelson. [Hrg. Tr. 18]. Petitioner stated that this information was used in the subsequent federal indictment of Judge Thornsby. [Hrg. Tr. 18]. Petitioner discussed that he encouraged other witnesses to obtain legal counsel and to provide information to

Mr. Ruby and the FBI, and that he would arrange meetings to facilitate the same. [Hrg. Tr. 18-19]. Petitioner stated that he also testified before the grand jury regarding Judge Thornsberry. [Hrg. Tr. 21].

Regarding the allegation set forth in the Thornsberry indictment that Judge Thornsberry arranged for R.W. to receive an exceptionally harsh sentence for charges arising from an incident in which R.W. was the victim, Petitioner stated that R.W. “got into a fight with a person at a Speedway in Gilbert, and he was charged with battery.” [Hrg. Tr. 21]. Petitioner testified that Mr. Cline approached him one day to advise him that Judge Thornsberry wanted him to get R.W. to plead guilty to battery and put R.W. in jail. [Hrg. Tr. 22]. Petitioner said that at the time he just said “okay,” but that he did not follow through with the request. [Hrg. Tr. 22]. Petitioner testified that he did not go to magistrate court when R.W. was charged but when it came time for R.W.’s case to go to trial, R.W.’s attorney, Mike Callaghan, told Petitioner to look at the surveillance video of the incident. [Hrg. Tr. 22]. Petitioner testified that he ultimately dropped the charges against R.W. after reviewing the surveillance video. [Hrg. Tr. 22]. Petitioner stated that at that time he believed that there would be retribution from Judge Thornsberry, stating that when he would do something that Judge Thornsberry did not like, he would give Petitioner’s assistant prosecuting attorneys “a really rough time in court.” [Hrg. Tr. 23]. Petitioner testified that he provided this information to Mr. Ruby. [Hrg. Tr. 23].

Petitioner discussed what was referred to as the state grand jury scheme in the Thornsberry indictment.<sup>4</sup> Petitioner testified that he came into his office one day to find boxes of documents in

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<sup>4</sup> The Thornsberry indictment alleged, in part, that in 2009 Judge Thornsberry convened the Mingo County Grand Jury for the purpose of issuing subpoenas duces tecum to harass and oppress R.W., members of his family and his co-workers, and to ultimately procure an indictment against R.W. The indictment further

the hallway. [Hrg. Tr. 35]. Petitioner testified that he was advised that the grand jury was meeting without a prosecutor, and that Jarrod Fletcher was the foreperson, and Trooper Moore would be testifying. [Hrg. Tr. 35]. Petitioner testified that in hindsight he should have reported this when it happened. [Hrg. Tr. 35].

Regarding the conduct which led to Petitioner's misdemeanor conviction, Petitioner stated that George White was a local businessman who made political signs, many of which were purchased by Sheriff Crum. [Hrg. Tr. 25]. Petitioner stated that Mr. White sold pills to a confidential informant and was indicted for two or three controlled purchases, and when Mr. White was arrested, officers found more drugs. [Hrg. Tr. 25]. Petitioner testified that he believes Mr. White was charged with two counts of possession with intent to deliver and three counts of delivery. [Hrg. Tr. 25]. Petitioner stated that he assigned the case to Glenn Rutledge and Charles "Butch" West represented Mr. White. [Hrg. Tr. 25]. Petitioner stated that one day Sheriff Crum came to his office and informed him that Mr. West called the Daily News to get them to interview Mr. White and was going to allege that Mr. White had sold pills to Sheriff Crum. [Hrg. Tr. 26]. Sheriff Crum also said that something needed to be done. [Hrg. Tr. 26]. Petitioner stated that he told Sheriff Crum that he needed to get thicker skin and at the time his thought was that Mr. White was a drug dealer, and he might say anything but there is nothing that they could do about it. [Hrg. Tr. 26].

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alleged that Thornsby appointed his close friend and business partner, Jarrod Fletcher to be the foreperson, and that this scheme was undertaken without the involvement of a prosecutor as Petitioner, having disqualified himself from the criminal matter involving R.W., declined to participate in Judge Thornsby's plan.

Petitioner testified that he had a formula for drug offenses, with exceptions, in which if there were more than three counts pending, he would offer for the defendant to plead guilty to two counts. [Hrg. Tr. 26]. Petitioner testified that Mr. White was charged with five counts, so the initial plea offer for Mr. White was to plead guilty to two counts, and for the sentences to run consecutively. [Hrg. Tr. 26]. Petitioner testified that David Baisden, who was a Mingo County Commissioner at the time, and friends with Mr. White's brother, came up to him "once or twice and said, 'Hey, Michael, can you do better?'" referring to the plea offer he made to Mr. White. [Hrg. Tr. 26]. Petitioner testified that generally counsel would come back after the initial plea offer and he would agree to run the sentences concurrently, but Mr. West never came back after the initial plea offer. [Hrg. Tr. 27]. Petitioner testified that Mr. Baiden came up to him one day after lunch and said, "Michael we're getting rid of – George is going to get a new attorney. We're going to get Ron Rumora." [Hrg. Tr. 27]. Petitioner testified that he "should have done something" because he was aware that Sheriff Crum was Judge Thornsby's "crony," and he knew that Judge Thornsby was upset with Mr. West and he "knew – at least had reason to believe" that there were "other things at play here," but in his "shortsighted thinking," he thought Mr. White was "going to get the same deal he's going to get anyway," so Petitioner "did nothing about it" and "went with the flow." [Hrg. Tr. 27-28].

Petitioner testified that later Mr. Rumora came to him to negotiate a better plea deal, and he advised Mr. Rumora that he would run the sentences concurrently. [Hrg. Tr. 28]. Mr. White accepted the plea offer. [Hrg. Tr. 28]. Petitioner testified that he found out later that Judge Thornsby advised Mr. Baisden that if Mr. White did not fire Mr. West, he would have no chance of getting probation. [Hrg. Tr. 28]. Petitioner testified that he did not know this information at the

time but that he “knew enough to where [he] certainly should have done something.” [Hrg. Tr. 28-29]. Petitioner testified that he was not paid any money to give Mr. Rumora a better deal, and he did not receive any benefit from changing the deal for Mr. White after he fired Mr. West. [Hrg. Tr. 29-30]. Petitioner testified that if he could do it over again, he would have told Mr. Baisden not to come to him anymore, and to back off and let Mr. White have the attorney that he wants. [Hrg. Tr. 30-31].

Petitioner testified that once the Thornsby information became public he became aware that the federal government was looking at him, so he got an attorney and arranged for a meeting. [Hrg. Tr. 32]. Petitioner testified that the federal government initially told him, “Just say you lied to us in some way, and we’ll let you plead to a felony, you know, giving false information to an FBI officer.” [Hrg. Tr. 32]. Petitioner testified that he did not want to plead guilty to a felony and after discussion, Mr. Ruby agreed to let him plead guilty to a misdemeanor. [Hrg. Tr. 32]. Petitioner stated that his attorney accepted the offer without knowing what Petitioner was going to plead guilty to because he was afraid that they would change their mind. [Hrg. Tr. 33]. Petitioner testified that while he believes that he did not have enough information to file a judicial complaint against Judge Thornsby, he should have approached investigators sooner. [Hrg. Tr. 34-35].

On cross-examination, Petitioner testified that Mr. White’s brother was good friends with Mr. Baisden, and that when Mr. Baisden came to him for the first time to talk about Mr. White his impression was that he came to him on Mr. White’s brother’s behalf and to help Mr. White. [Hrg. Tr. 73, 75]. Petitioner stated that when Mr. Baisden came to him to ask if he could do something better for Mr. White, he told him that Mr. White would have to plead guilty to a felony and that he would not recommend probation. [Hrg. Tr. 75-76]. Petitioner clarified that Sheriff Crum came to

him to complain about Mr. White and Mr. West doing an interview with news media after Mr. Baisden came to him to see if he could offer Mr. White a better plea deal. [Hrg. Tr. 76]. Thereafter, Mr. Baisden ran into Petitioner on the street and informed him that they had Mr. White fire Mr. West and hire Mr. Rumora. [Hrg. Tr. 82]. When asked if he knew why Mr. Baisden would want Mr. West off the case Petitioner testified: "I think that's [...] where I failed is Ron Rumora would have been someone that [...] the judge would have approved of [...]. So it just – it had a stench to it that, you know, 'here we go.' We know – I know nobody likes Butch. You know, the judge doesn't. I know that Eugene Crum has complained about Butch, and I know if he told me, he certainly told the judge probably first, and then was told to come to me, see if I would do anything about it. So yeah, that's when, you know, I should have said, you know, 'Hey, guys, this is – you know, I know what's going on here. This is no good,' but I didn't." [Hrg. Tr. 82-83].

When asked if he negotiated Mr. White's plea agreement with Mr. Baisden or at Mr. Baisden's behest or direction, Petitioner testified that he did not. [Hrg. Tr. 88-89]. Earlier in his testimony, Petitioner explained how Sheriff Crum and Mr. Baisden had come to him at separate times to discuss Mr. White's case. [Hrg. Tr. 26]. Sheriff Crum told Petitioner that he had learned Mr. White was going to speak with the media and allege that he had sold pills to Sheriff Crum. [Hrg. Tr. 25-26]. At a different time, Mr. Baisden, who was friends with Mr. White's brother, asked Petitioner if he could offer a better deal for Mr. White. [Hrg. Tr. 26]. At a later time after he had made the initial approach to discuss Mr. White, Mr. Baisden specifically told Petitioner that "We're getting rid of – George is going to get a new attorney. We're going to get Ron Rumora," "who was my former boss." [Hrg. Tr. 27]. Petitioner did learn after the fact that Mr. Baisden had



been involved in a discussion with Judge Thornsberry, who explained that if Mr. White did not get new counsel, he had no chance of getting probation. [Hrg. Tr. 28].

Petitioner testified that Mr. Baisden was not present when Petitioner negotiated the plea agreement with Mr. White's new counsel Ron Rumora. [Hrg. Tr. 88]. However, by the time this plea agreement for Mr. White was negotiated, Petitioner was aware that Sheriff Crum, Mr. Baisden and maybe others had been involved in a plan to persuade Mr. White to discharge Mr. West and to hire Mr. Rumora. [Hrg. Tr. 27]. Petitioner explained he knew Mr. White would not have gotten probation if Mr. White was still represented by Mr. West. [Hrg. Tr. 87]. Petitioner also knew that Judge Thornsberry would have acted in a punitive nature against Mr. White if his counsel was Mr. West. [Hrg. Tr. 87].

Petitioner testified that he accepted responsibility under the statement of facts. [Hrg. Tr. 92]. Moreover, Petitioner testified: "These facts are required to [...] provide a factual basis for the conviction that I had. If I did not stipulate to these facts as written, then I would not have been able to – the judge would have rejected the plea." [Hrg. Tr. 92]. When asked if the stipulation of facts may not accurately portray Petitioner's involvement in what happened to Mr. White, Petitioner testified: "I accept responsibility under the stipulation of facts. Whatever it says, that's the criminal responsibility I accepted... [T]o the extent that my testimony here today is different from the stipulation of facts, then – then it's a mistake on my part, and I accept the stipulation of facts as written." [Hrg. Tr. 93].

Petitioner testified that Mr. White's guilty plea was ultimately set aside and the charges against him were dismissed. [Hrg. Tr. 94]. Petitioner testified that he believed at the time, and today, that the charges against Mr. White were supported by probable cause. [Hrg. Tr. 94, 96].

Petitioner testified that Sheriff Crum's successor took evidence home in the trunk of his car and that was part of the basis for the dismissal of Mr. White's charges. [Hrg. Tr. 94-95]. Petitioner testified that injustice occurred in Mr. White's case due to his failure to act more proactively and to protect Mr. White's right to counsel of his choice. [Hrg. Tr. 98]. Petitioner agreed that as a prosecutor he had a duty to the public and the justice system to ensure the fair administration of justice and that his conduct was a breach of that duty and had a negative effect on the public confidence in the justice system in Mingo County. [Hrg. Tr. 98-99].

Regarding the state grand jury scheme alleged in the Thornbury indictment, Petitioner testified that after he was informed that the grand jury was meeting and that there was not a prosecuting attorney involved, Judge Thornsby advised him that it was meeting regarding a large theft ring but because it was not his case, he did not ask much about it. [Hrg. Tr. 105]. Petitioner testified that at the time he had no knowledge that the grand jury was convened for the purpose of targeting R.W. [Hrg. Tr. 106]. Regarding the allegation set forth in the Thornsby indictment that Judge Thornsby had R.W. arrested for thefts he did not commit, Petitioner testified that he disqualified himself from the prosecution because he dealt with Judge Thornsby's secretary on a daily basis and felt that his office should not be involved in the prosecution of her husband. [Hrg. Tr. 108]. When asked if he was aware that the charges against R.W. were improper, Petitioner testified that he was not aware but that he probably should have looked into it because he knew Trooper Moore was involved. [Hrg. Tr. 108]. Petitioner stated that he "had no reason to believe [...] that there would be a false – you know, just absolutely false charges with no basis at all. No, I didn't think that at all. Again, probably naïve or turned a blind eye unconsciously. You know, in hindsight, it's terrible." [Hrg. Tr. 109].

Regarding the allegations in the Thornsby indictment that Mr. Cline informed Petitioner and an assistant prosecuting attorney in his office of Judge Thornsby's directive that R.W. should receive a sentence of six months confinement and that an assistant prosecuting attorney in his office offered R.W. a plea agreement in line with Judge Thornsby's directive, Petitioner testified that he could not recall which assistant prosecuting attorney was working in magistrate court at the time, but that he did not "think any of the assistants that I had would have done something like that at the behest of the judge." [Hrg. Tr. 110-11]. Petitioner testified that at this time, he knew that Judge Thornsby was attempting to influence his office regarding plea negotiations, however: "you don't file a judicial complaint on Jeff Cline's – not defending my inaction, but you don't on his word. But probably something – I don't know. Maybe I should have reported it to the FBI and stuff. I – again, I regret that – I mean, as I – these facts are horrific as I, you know, sit here today, and – and not making any excuses at all. It's bad." [Hrg. Tr. 112-13]. Petitioner agreed that the allegations made against Judge Thornsby called into question his fitness for judicial office and testified that he takes "full responsibility" for not reporting Judge Thornsby to the Judicial Investigation Commission. [Hrg. Tr. 118-19].

Upon questioning by Mr. Haught, Petitioner agreed that he did not have any firsthand knowledge of any wrongdoing by Judge Thornsby which would substantiate or give him probable cause to believe that Judge Thornsby was violating the rules of judicial ethics, and that mere suspicion is insufficient to justify filing an ethics complaint against another lawyer or a judge. [Hrg. Tr. 137-39]. Petitioner testified that he did not have enough evidence to take action against Judge Thornsby until the FBI became involved. [Hrg. Tr. 139-40]. Regarding the discrepancy between Petitioner's testimony and the stipulation of facts, Mr. Haught asked Petitioner if he had

been threatened with felony prosecution by the federal government to which Petitioner testified that he had. [Hrg. Tr. 149]. Petitioner testified that he agreed to the stipulation of facts so that he could plead guilty to a misdemeanor offense. [Hrg. Tr. 154]. Petitioner discussed how Mr. Ruby made it clear to him that he could either accept the misdemeanor plea or “we’ll just roll the dice,” and Petitioner could not risk spending five years away from his family. [Hrg. Tr. 153-54]. Petitioner testified that he was not minimizing his conduct stating that “just because it may have not 100 percent happened the way the stipulation of facts [sets forth] doesn’t mean that I did not shirk a duty [...] and commit egregious misconduct....” [Hrg. Tr. 155]. When asked if he knowingly engaged in the underlying conduct as part of an agreement with Judge Thornsby and Mr. Baisden, Petitioner testified that he did not but that he accepts responsibility for it. [Hrg. Tr. 155-56]. When asked if he knew that what he was doing was criminal at the time, Petitioner testified that he did not. [Hrg. Tr. 156-57].

### **C. Recommendation of the Hearing Panel Subcommittee**

On or about December 13, 2023, Petitioner and the ODC filed Proposed Joint Findings of Fact Regarding the Reinstatement Petition of C. Michael Sparks. On or about December 13, 2023, the ODC filed its Proposed Conclusions of Law and Recommendation Regarding the Reinstatement Petition of C. Michael Sparks in which it argued that Petitioner failed to demonstrate the requisite rehabilitation to prove that he presently possesses the integrity and moral character to resume the practice of law based upon perceived discrepancies between records related to Petitioner’s underlying criminal conviction and Petitioner’s testimony throughout the reinstatement proceedings. On or about December 14, 2023, Petitioner filed his Proposed Conclusions of Law.

On or about March 11, 2024, the HPS filed its Report of the Hearing Panel Subcommittee Regarding the Reinstatement Petition of C. Michael Sparks (hereinafter "Report") wherein it found that Petitioner had proven, by clear and convincing evidence, that he possesses the integrity, moral character and legal competence to resume the practice of law. [Report at 41]. Moreover, the HPS found that Petitioner demonstrated a record of rehabilitation, and that there was no evidence suggesting that Petitioner's reinstatement would have any adverse effect on the public confidence in the administration of justice. [Report at 41]. Based on the foregoing, the HPS recommended that:

1. Petitioner be reinstated to the practice of law;
2. Petitioner's practice of law be supervised for a period of two (2) years following his reinstatement pursuant to written agreement between Petitioner, his supervisor, and the Office of Lawyer Disciplinary Counsel. The agreement shall, among other matters, require the supervising attorney to: meet at least twice per month with Petitioner and have complete access to Petitioner's files, calendar and trust account. The supervising attorney shall file monthly reports with the Office of Lawyer Disciplinary Counsel and respond to inquiries by the Office. Petitioner shall be candid and cooperative with the supervising attorney and shall follow his or her recommendations and directives. Petitioner shall not be reinstated until this agreement is executed by all parties;
3. Prior to reinstatement, Petitioner be required to pay his dues to the West Virginia State Bar and complete all required CLEs; and
4. Petitioner be ordered to reimburse the Lawyer Disciplinary Board the costs of these reinstatement proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

[Report at 42]. Regarding the contention set forth by the ODC that Petitioner's testimony throughout the reinstatement proceedings was inconsistent with the records related to Petitioner's underlying criminal conviction, the HPS found that Petitioner's testimony throughout the

reinstatement proceedings was consistent with the proffers made by Mr. Ruby at Petitioner's sentencing hearing and the information contained within the records related to the underlying conviction. [Report at 29]. On or about March 12, 2024, Petitioner filed his consent to the recommendation of the HPS, and on or about March 20, 2024, the ODC filed its consent to the recommendation of the HPS.

## **II. SUMMARY OF ARGUMENT**

Although Petitioner was convicted of the misdemeanor offense of deprivation of rights under the color of law in his role as Mingo County Prosecuting Attorney, the HPS found that Petitioner accepted responsibility for the same by pleading guilty and voluntarily surrendering his law license. Moreover, Petitioner cooperated fully with federal authorities and provided substantial assistance in the investigation of former Judge Thornsby. The record shows that Petitioner has exhibited a pattern of honorable conduct following his release from prison through gainful employment and community involvement. The record also shows that Petitioner possesses the requisite legal competence to resume the practice of law through his work as a paralegal and continuing legal education. Further, the HPS found that there is no evidence in the record, other than the facts which gave rise to his misdemeanor conviction and his prior discipline, that indicate that the public confidence in the administration of justice would be substantially impacted should Petitioner's license to practice law be reinstated. Based upon the foregoing, the HPS found that Petitioner demonstrated a record of rehabilitation and that he presently has the integrity, moral character, and legal competence to resume the practice of law.

### III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to the Order of this Honorable Court entered on November 22, 2024, the Clerk of Court will provide the parties with a Notice of Argument pursuant to Rule 19 of the Rules of Appellate Procedure.

### IV. ARGUMENT

#### A. Standard of Review

“A *de novo* standard applies to a review of the adjudicatory record made before the [Lawyer Disciplinary Board] as to questions of law, questions of application of the law to the facts, and questions of appropriate sanctions.” Syl. Pt. 2, *In re Reinstatement of diTrapano*, 240 W. Va. 612, 814 S.E.2d 275 (2018) (*diTrapano II*) (quoting Syl. Pt. 3, *Comm. on Legal Ethics v. McCorkle*, 192 W. Va. 286, 452 S.E.2d 377 (1994)). However, substantial deference is given to the Lawyer Disciplinary Board’s findings of fact unless the findings are not supported by reliable, probative, and substantial evidence on the whole record. *Id.* Additionally, absent a showing of some mistake of law or arbitrary assessment of the facts, recommendations made by the Lawyer Disciplinary Board regarding the reinstatement of an attorney are to be given substantial consideration. Syl. Pt. 3, *In re Brown*, 166 W. Va. 226, 273 S.E.2d 567 (1980) (*Brown II*).

#### B. Standard for Reinstatement

Rule 3.30 of the Rules of Lawyer Disciplinary Procedure sets forth that:

When for any reason, other than for nonpayment of membership fees, the license of any person to practice law has been or shall be suspended or annulled, whether or not for a limited time or until requirements as to restitution, conditions, or some other act shall be satisfied, such person shall not become entitled to engage in the practice of law in this State, whether such time has elapsed or such 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 other felony, and the person's prior and subsequent conduct shall be considered in the determination of good moral character and fitness.

Rule 3.33(b) of the Rules of Lawyer Disciplinary Procedure sets forth that:

After the expiration of five years from the date of disbarment, a person whose license to practice law has been or shall be annulled in this State and who shall desire reinstatement of such license may file a verified petition in the Supreme Court of Appeals reciting the cause of such annulment and what the person shall have done in satisfaction of requirements as to rehabilitation, restitution, conditions or other acts incident thereto, by reason of which the person should be reinstated as a member of the state bar and his or her license to practice law restored. The petitioner shall also file a completed reinstatement questionnaire provided by the Office of Disciplinary Counsel. At the time of filing the petition and questionnaire with the Clerk of the Supreme Court of Appeals, the petitioner shall also file a copy of each with the Office of Disciplinary Counsel, which shall conduct a prompt investigation thereof and shall file a report with a Hearing Panel Subcommittee of the Lawyer Disciplinary Board.

The primary authority in West Virginia on the standard for reinstatement of a lawyer whose license was annulled, *In re Brown*, provides:

The general rule for reinstatement is that a disbarred attorney in order to regain admission to the practice of law bears the burden of showing that he presently possesses the integrity, moral character and legal competence to resume the practice of law. To overcome the adverse effect of the previous disbarment, he must demonstrate a record of rehabilitation. In addition, the court must conclude that such reinstatement will not have a justifiable and substantial adverse effect on the public confidence in the administration of justice and in this regard the seriousness of the conduct leading to disbarment is an important consideration.

Syl. Pt. 1, *Brown*, 166 W. Va. at 226, 273 S.E.2d at 567. The fundamental question which must be addressed is whether the attorney seeking reinstatement has shown that he presently possesses the integrity, moral character and legal competence to assume the practice of law. *Lawyer Disciplinary*



*Board v. Hess*, 201 W.Va. 195, 495 S.E.2d 563 (1997). The prior and subsequent conduct of the attorney seeking reinstatement is relevant to the determination of good moral character and fitness. R. Law. Disc. Proc. 3.30. Moreover, “in assessing an application for reinstatement consideration must be given to the nature of the original offense for which the applicant was disbarred.” *Brown*, 166 W. Va. at 234, 273 S.E.2d at 571. It follows that the more serious the nature of the underlying offense, the more difficult the task becomes for the applicant to show a basis for reinstatement. *Id.* This Honorable Court has recognized that “the seriousness of the underlying offense leading to the disbarment may, as a threshold matter, preclude reinstatement such that further inquiry as to rehabilitation is not warranted.” *Brown*, 166 W. Va. at 240, 273 S.E.2d at 574.

A record of rehabilitation is “demonstrated by a course of conduct that enables the court to conclude there is little likelihood that after such rehabilitation is completed and the applicant is readmitted to the practice of law he will engage in unprofessional conduct.” Syl. Pt. 2, *Brown*, 166 W. Va. at 226-27, 273 S.E.2d at 567. “In judging whether a petitioner satisfies these standards and has demonstrated the requisite rehabilitation since disbarment, it is necessary to look to (1) the nature of the original offense for which the petitioner was disbarred, (2) the petitioner’s character, maturity, and experience at the time of his disbarment, (3) the petitioner’s occupations 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. *Brown*, 166 W. Va. at 229, 273 S.E.2d at 568 (quoting *In re Hiss*, 368 Mass. 447, 333 N.E.2d 429 (1975)); *In re Smith*, 214 W. Va. 83, 85, 585 S.E.2d 602, 604 (1980) (citations omitted).

The burden of proof is on Petitioner to establish his case for reinstatement. *Brown*, 166 W. Va. at 229, S.E.2d at 569. Petitioner’s burden of proof to establish the foregoing is that of clear

and convincing evidence. This is the same standard applied in all lawyer disciplinary cases under Rule 3.7 of the Rules of Lawyer Disciplinary Procedure. This is also the same burden lawyers who have been administratively suspended for a disability must meet pursuant to the specific language of Rule 3.24(a) of the Rules of Lawyer Disciplinary Procedure.

**C. Reinstatement will not have a justifiable and substantial adverse effect on the public confidence in the administration of justice.**

Petitioner was convicted of the misdemeanor offense of deprivation of rights under the color of law in his role as Mingo County Prosecuting Attorney. The Court has held that ethical violations by a lawyer holding public office are viewed as more egregious because of the betrayal of the public trust attached to the office. *Lawyer Disciplinary Board v. Moore*, 214 W. Va. 780, 792, 591 S.E.2d 338, 350 (2003) (citing Syl. Pt. 3, *Committee on Legal Ethics v. Roark*, 181 W. Va. 260, 382 S.E. 2d 313 (1989)). Petitioner's misconduct not only violated the duty he owed as an officer of the Court, but the duty he owed as a prosecutor to the public and the justice system to ensure the fair administration of justice. Petitioner's misconduct was clearly inconsistent with the character and integrity expected of an attorney.

As previously noted, consideration must be given to the nature of the original offense for which Petitioner was disbarred. Although Petitioner's misconduct was undoubtedly serious, the record reflects that Petitioner cooperated fully with federal authorities and provided substantial assistance to the United States in the investigation of public corruption in Mingo County, including in the investigation and prosecution of former Judge Thornsby. [Jt. Ex. 8, Bates 331-33; Hrg. Tr. 14-16, 18-19, 21, 23]. Mr. Ruby noted at Petitioner's sentencing hearing that Petitioner was candid and truthful and never once lied to federal authorities. [Jt. Ex. 8, Bates 412]. Moreover, Petitioner accepted responsibility for his role in depriving Mr. White of his right to counsel of his

choice by resigning from his position as Mingo County Prosecuting Attorney, pleading guilty, and voluntarily surrendering his law license. [Jt. Ex. 8, Bates 319-328]. Importantly, pursuant to the terms of his plea agreement with the United States, Petitioner agreed that he would not seek or serve in any public office at any time after his resignation as Mingo County Prosecuting Attorney. [Jt. Ex. 8, Bates 320].

Petitioner submitted several letters from members of his community in support of his reinstatement, and although the HPS recognized that these letters are not dispositive on the issue of reinstatement, the HPS found that these letters suggest that the reinstatement of Petitioner's law license will not have a substantial adverse effect on the public confidence in the administration of justice. The testimony of John Mark Hubbard, a national account manager for United Central Industrial Supply and a former Mingo County Commissioner, at Petitioner's reinstatement hearing was compelling in this regard, as Mr. Hubbard testified that the community has fully embraced Petitioner, and that he does not believe that the reinstatement of Petitioner's license to practice law would have an adverse effect on the public confidence in the administration of justice. The HPS found that there was no evidence in the record other than Petitioner's prior discipline and the facts which gave rise to his misdemeanor conviction, that would indicate that the public confidence in the administration of justice would be adversely impacted by the reinstatement of Petitioner's law license.

**D. Petitioner has established a record of rehabilitation and has shown that there is little likelihood he will engage in unprofessional conduct if his privilege to practice law is restored.**

As this Honorable Court is aware, there must have been presented a course of conduct that would enable the Court to conclude there is little likelihood that after the rehabilitation is complete

and the applicant is readmitted to the practice of law that he will engage in unprofessional conduct, along with addressing the fundamental question of whether Petitioner has shown that he presently possesses the integrity, moral character and legal competence to assume the practice of law. *Lawyer Disciplinary Board v. Hess*, 201 W.Va. 195, 495 S.E.2d 563 (1997). As discussed above, Petitioner took responsibility for his underlying misconduct by resigning from his position as Mingo County Prosecuting Attorney, pleading guilty, and voluntarily surrendering his law license. [Jt. Ex. 8, Bates 319-328]. Moreover, Petitioner served his prison sentence and fully complied with the terms of his supervised release, without ever taking any legal action to challenge his conviction. [Hrg. Tr. 71]. The record shows that after his release from prison, Petitioner returned to his home in Williamson, West Virginia, and that he has remained gainfully employed throughout this time, including as a paralegal at Carlton Law Office and Simpkins Law Office. [Hrg. Tr. 45-47]. Petitioner has not been charged with or convicted of any crimes other than the misdemeanor conviction discussed herein, and there was no evidence presented in these proceedings that Petitioner has engaged in any subsequent misconduct since his disbarment. [Jt. Ex. 6 and 7]. Since his disbarment, Petitioner has been involved in his community by writing a weekly theology column for a local newspaper for a period, remaining active in his church, serving dinners to residents at a local drug treatment facility, and delivering Christmas presents on behalf of a local charity. [Hrg. Tr. 49; Jt. Ex. 1, Bates 9]. Petitioner also assisted in unloading water and supplies to flood victims in eastern Kentucky and made arrangements to facilitate the showing of movies to preschool and elementary school students as well as for some churches. [Jt. Ex. 1, Bates 9].

Despite the ODC's assertion in its Proposed Conclusions of Law and Recommendation Regarding the Reinstatement Petition of C. Michael Sparks that Petitioner's testimony before the

HPS was inconsistent from the facts asserted in the underlying criminal proceedings, the HPS found that Petitioner's statements and testimony remained consistent. In making this finding, the HPS examined the Proposed Joint Findings of Fact Regarding the Reinstatement Petition of C. Michael Sparks submitted by the parties and the records from the underlying criminal proceedings which were admitted into the record in the instant reinstatement proceedings. Moreover, the HPS assessed the credibility of Petitioner's testimony regarding his role in the scheme to deprive Mr. White of his right to counsel of his choice and made its findings accordingly.

This Honorable Court has previously granted petitions for reinstatement of disbarred attorneys who were convicted of serious criminal conduct. *See Lawyer Disciplinary Board v. ReBrook*, No. 26556 (W.Va. May 9, 2001) (unpublished) (granting reinstatement where petitioner was previously disbarred following conviction for insider trading (reversed and dismissed by U.S. Court of Appeals for the Fourth Circuit) and wire fraud (upheld by U.S. Court of Appeals for Fourth Circuit); *In re Reinstatement of Douglass*, No. 14-0944 (W.Va. January 20, 2016) (unpublished) (granting reinstatement with certain conditions following petitioner's disbarment after entered a guilty plea to a one count information charging him with the felony offense of Falsifying Accounts of the State of West Virginia Board of Pharmacy; record reflected that the petitioner made immediate restitution in the underlying matter); *In re Reinstatement of diTrapano*, 240 W.Va. 612, 814 S.E. 2d 275 (2018) (*diTrapano* II) (granting second reinstatement petition following petitioner's disbarment for criminal convictions where petitioner demonstrated that he had maintained sobriety and employment, served his criminal sentence, entered into a voluntary five-year monitoring agreement with the West Virginia Judicial and Lawyer Assistance Program, accepted responsibility for his actions, mentored other lawyers struggling with addiction, and made

full restitution); *In re Petition for Reinstatement of Thomas Jason Drake*, No. 21-0292 (W.Va. January 6, 2022) (unpublished) (granting second reinstatement petition with certain conditions following petitioner's consent to disbarment after entering an *Alford* plea by way of information to one felony count of embezzlement where petitioner made full restitution after the denial of his first reinstatement petition).

The Supreme Court has also previously denied the petitions for reinstatement of disbarred attorneys who were convicted of serious criminal conduct. *See In re Reinstatement of Esposito*, No. 11-0671 (W.Va. June 12, 2013) (unpublished) (denying reinstatement where the petitioner consented to disbarment following his felony conviction of misprision of a felony because the Court was not satisfied that he possessed the integrity, moral character and legal competence to resume the practice of law given the specific natures of the conduct leading to and resulting in the petitioner's disbarment); *In re Reinstatement of Hrutkay*, No. 11-0136 (W.Va. June 12, 2013) (unpublished) (denying reinstatement where the petitioner consented to disbarment following felony conviction of mail fraud because the Court could not conclude that reinstatement would not have a justifiable and substantial adverse effect on the public confidence in the administration of justice); *Lawyer Disciplinary Board v. Moore*, 214 W.Va. 780, 591 S.E.2d 338 (2003) (denying reinstatement where the petitioner continually denied wrongdoing despite his criminal conviction following the entry of guilty pleas to extortion, mail fraud, tax fraud and attempts to obstruct the federal grand jury); *In the Matter of Askin*, No. 30724 (W.Va. May 11, 2006) (unpublished) (denying reinstatement following disbarment for criminal contempt); *In re Reinstatement of diTrapano*, 233 W.Va. 754, 760 S.E.2d 568 (2014) (*diTrapano I*) (denying reinstatement following disbarment due to criminal convictions where the petitioner did not satisfy his burden to show that

he possessed the integrity and moral character to resume the practice of law).

Although the evidence presented herein and the underlying misconduct committed by Petitioner is distinguishable from the above-referenced decisions, the instant case is more closely aligned to the cases in which this Honorable Court has granted reinstatement. Here, although the criminal offense of which Petitioner stands convicted was undoubtedly serious and was committed while Petitioner was acting in his capacity as Mingo County Prosecuting Attorney, the record reflects that Petitioner cooperated fully with federal authorities and provided substantial assistance to the United States in the investigation of public corruption in Mingo County, including in the investigation and prosecution of former Judge Thornsberry. [Jt. Ex. 8, Bates 331-33; Hrg. Tr. 14-16, 18-19, 21, 23]. Petitioner was candid and truthful in his cooperation with federal authorities. [Jt. Ex. 8, Bates 412]. Moreover, Petitioner accepted responsibility for his role in depriving Mr. White of his right to counsel of his choice by resigning from his position as Mingo County Prosecuting Attorney, pleading guilty, and voluntarily surrendering his law license. [Jt. Ex. 8, Bates 319-328]. Petitioner also expressed remorse for his role in depriving Mr. White of his right to counsel of his choice and paid Mr. White \$5,000.00 pursuant to the terms of the settlement agreement reached in the civil action filed against Petitioner by Mr. White. [Sealed Jt. Ex. 2 at 24-30; Hrg. Tr. 57, 134-35]. Petitioner has also demonstrated gainful employment and community involvement since his disbarment. Ultimately, while the conduct leading to disbarment and the evidence presented in reinstatement proceedings varies from case to case, the decisions in these matters turn on whether the applicant for reinstatement can satisfy his burden to demonstrate a record of rehabilitation, that he presently has the integrity, moral character, and legal competence to resume the practice of law, and that the reinstatement will not have a substantial adverse effect

on the public confidence in the administration of justice.

**E. Petitioner has established that he possesses the requisite legal competence to resume the practice of law.**

The record shows that Petitioner has worked as a paralegal since his release from prison, first at Carlton Law Office, and later at Simpkins Law Office where he is presently employed. [Hrg. Tr. 44-47]. While working as a paralegal in the Simpkins Law Office, Petitioner has had the opportunity to work with First Amendment lawyers from around the country, assisting Mr. Simpkins and co-counsel from Los Angeles in litigating the defamation action pursued by Don Blankenship. [Hrg. Tr. 51-53]. Petitioner testified that under the supervision of Mr. Blankenship's counsel, he has been able to draft pleadings, including a petition for appeal in the Fourth Circuit Court of Appeals and a petition for writ of certiorari in the Supreme Court of the United States. [Hrg. Tr. 53]. Moreover, Petitioner obtained 11.80 total Continuing Legal Education credits, including 2.20 ethics credits, during the 2020-2022 reporting period, and 13.60 Continuing Legal Education credits during the 2022-2024 reporting period. [Jt. Ex. 9, Bates 437-38; Jt. Ex. 10, Bates 339-40].

## **V. CONCLUSION**

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. 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 v. Pence*, 171 W.Va. 68, 74, 297 S.E.2d 843, 849 (1982). It is anticipated by his course of conduct since his disbarment that Petitioner will strive to uphold the standards of integrity expected of officers of the Court. Based



upon the evidence presented in this matter, the HPS found that Petitioner has proven, by clear and convincing evidence, that he possesses the integrity, moral character and legal competence to resume the practice of law. Furthermore, the HPS found that Petitioner demonstrated a record of rehabilitation and that there is no evidence suggesting that the reinstatement of Petitioner's license to practice law will have any adverse effect on the public confidence in the administration of justice. Based upon the foregoing, the HPS recommends the following:

1. Petitioner be reinstated to the practice of law;
2. Petitioner's practice of law be supervised for a period of two (2) years following his reinstatement pursuant to written agreement between Petitioner, his supervisor, and the Office of Lawyer Disciplinary Counsel. The agreement shall, among other matters, require the supervising attorney to: meet at least twice per month with Petitioner and have complete access to Petitioner's files, calendar and trust account. The supervising attorney shall file monthly reports with the Office of Lawyer Disciplinary Counsel and respond to inquiries by the Office. Petitioner shall be candid and cooperative with the supervising attorney and shall follow his or her recommendations and directives. Petitioner shall not be reinstated until this agreement is executed by all parties;
3. Prior to reinstatement, Petitioner be required to pay his dues to the West Virginia State Bar and complete all required CLEs; and
4. Petitioner be ordered to reimburse the Lawyer Disciplinary Board the costs of these reinstatement proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

*Respectfully Submitted,*  
The Lawyer Disciplinary Board  
By Counsel

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**CERTIFICATE OF SERVICE**

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This is to certify that I, Lauren Hall Knight, Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 20<sup>th</sup> day of February, 2025, served a true copy of the foregoing **"BRIEF OF THE OFFICE LAWYER DISCIPLINARY COUNSEL"** upon Petitioner's counsel Lonnie C. Simmons, Esquire, via email, to the following email address:

Lonnie C. Simmons, Esquire  
Post Office Box 1631  
Charleston, WV 25326  
[Lonnie.simmons@dbdlawfirm.com](mailto:Lonnie.simmons@dbdlawfirm.com)

  
\_\_\_\_\_  
**Lauren Hall Knight**