

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

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IN RE: JARRELL L. CLIFTON, II, an annulled
member of The West Virginia State Bar

**Bar No.: 10616
Supreme Court No.: 24-330
I.D. No.: 24-05-330**

REPORT OF THE HEARING PANEL SUBCOMMITTEE

I. PROCEDURAL HISTORY¹

Petitioner Jarrell L. Clifton, II, (hereinafter “Petitioner”) was admitted to the West Virginia State Bar on November 6, 2007. On November 18, 2015, the Supreme Court of Appeals of West Virginia issued an opinion annulling Petitioner’s law license due to his intentional and repeated violations of the Rules of Professional Conduct.² [Jt. Ex. 1 at 55].³

On or about June 12, 2024, Petitioner filed his Petition for Reinstatement with the Supreme Court of Appeals of West Virginia, and the Office of Lawyer Disciplinary Counsel (hereinafter “ODC”) commenced an investigation thereof. [Jt. Ex. 1]. The ODC reviewed the Petition, the completed Reinstatement Questionnaire additional documents provided therewith, and the file from the underlying disciplinary matter. The ODC obtained Petitioner’s state and federal criminal background records. [Jt. Ex. 13-15]. The ODC also obtained copies of Petitioner’s federal tax returns for the years 2015 through 2023 as well as his state tax returns for the years 2014 through

¹ The Respondent does not challenge the Procedural History submitted by the ODC.

² Pursuant to Rule 26 of the Rules of Appellate Procedure, the opinion became final and Petitioner’s law license was annulled by Mandate issued December 22, 2015. Petitioner was ordered to pay costs of \$7,471.30.

³ Joint Exhibits 1 through 22 were admitted into evidence at the hearing without objection with bates stamped numbering.

2023. [Jt. Ex. 16-20]. Lawyer Disciplinary Counsel took Petitioner's sworn statement on January 30, 2025. [Jt. Ex. 11]. A legal advertisement soliciting written public comments regarding Petitioner's reinstatement petition was published three (3) times in the *Hinton News*, and three (3) times in *The Pocahontas Times*. [Jt. Ex. 9]. The ODC received ten (10) letters supporting the reinstatement of Petitioner's law license from the following individuals: Brian Smith, Mark and Terry Wagner, Julie McNabb, Michael Johnson, Randall and Kathy Irvine, Samuel Mitchell, Clint Carte, Phillip Anderson, Shelley Clark, and Lloyd Arbogast. [Jt. Ex. 21]. The ODC did not receive any letters voicing objection. On or about October 29, 2025, 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 January 14, 2026, this matter proceeded to hearing in Charleston, West Virginia. The HPS was comprised of Charles R. Steele, Esquire, Chairperson (via Zoom); Matthew L. Clark, Esquire (in person); and Mark Blankenship, Layperson (in person). Petitioner appeared pro se, and Kristin P. Halkias and Lauren Hall Knight, Lawyers Disciplinary Counsel, appeared on behalf of the ODC. The HPS heard testimony from Petitioner, Kaitlin Tierney, Andrew "Frosty" McNabb, Brian Smith, Willard Clinton Carte, Mary Beth Barr, and Ellen Galford (all of whom appeared through Zoom Video Conference). Joint Exhibits 1 through 22 were admitted into evidence upon joint motion of Petitioner and ODC.

Following the hearing, the Hearing Panel Subcommittee conducted multiple Zoom Video Conferences to discuss the record facts, the hearing testimony, the relevant law, and, ultimately, the recommended disposition of this matter.

II. FINDINGS OF FACT⁴

1. Background

Petitioner was raised in Marlinton, West Virginia, and graduated from Marshall University in 1991. [Jt. Ex. 11 at 1189]. Following graduation, Petitioner was wait-listed at the West Virginia University College of Law when he enlisted in the United States Army. [Id.] Petitioner joined the Army National Guard in the spring of 1992 and was placed on inactive Ready Reserves for the remainder of his eight-year commitment. [Id. at 1189-90].

During that time, Petitioner was in the restaurant and bar industry for five years. He first leased a restaurant and lounge for a year before opening his own bar, The Loft, and he later opened a second bar, Huckleberry's. [Jt. Ex. 11 at 1190]. Petitioner first met K.M., one of the women involved in the underlying misconduct, while operating The Loft.

While operating Huckleberry's, Petitioner began working as a law enforcement officer for the Marlinton Police Department, and later transferred to the Pocahontas County Sheriff's Department, where he focused on drug-related matters. [Jt. Ex. at 1191]. He left law enforcement and worked for Child Protective Services for two years before leaving to attend law school in 2004. [Id. at 1192]. Petitioner graduated from the West Virginia University College of Law in 2007, passed the bar exam and, after a slight delay due to the bankruptcy on his record, became a member of the West Virginia State Bar on November 6, 2007. [Id. at 1193]. While in law school, Petitioner met his current wife, Kim, and they were married on March 19, 2009. [Id. at 1195].

Petitioner was hired as a part-time assistant prosecutor by then Pocahontas County

⁴ The Respondent, in his submitted Proposed Findings of Fact and Conclusions of Law, indicated that "all relative (sic) facts regarding the loss of the Petitioner's law license in this matter are uncontested." (Petitioner's Proposed Findings of Fact, Conclusions of Law, and Recommendations as to Reinstatement, p. 1).

Prosecuting Attorney Walter Weiford, at which time he handled magistrate court cases. [Jt. Ex. 11 at 1193-94]. He was later hired as a full-time assistant prosecutor by former Pocahontas County Prosecuting Attorney Donna Price, at which time he primarily handled abuse and neglect and juvenile cases. [Id. at 1193]. In 2010, Petitioner unsuccessfully ran for County Commission and left the prosecutor's office in early 2011 to work in private practice for Mike Doss, a local sole practitioner. Petitioner worked for Mr. Doss until his indictment in August of 2012. [Id. at 1196]. Petitioner had not received any discipline from the Investigative Panel or the Supreme Court of Appeals prior to engaging in the conduct that led to his disbarment.

2. Details of Charge and Discipline

Petitioner served as an assistant prosecutor in Pocahontas County during the time in which the underlying misconduct occurred. Petitioner was indicted on two counts of sexual assault in the second degree and two counts of imposition of sexual intercourse on an incarcerated person. [Jt. Ex. 6 at 619-20]. The indictment alleged that on two occasions Petitioner unlawfully and feloniously engaged in sexual intercourse with an individual, T.S., by having her place her mouth on his penis, without her consent, and the lack of consent was the result of T.S. being threatened with incarceration. [Id.] The indictment further alleged that Petitioner engaged in this conduct with T.S. while she was incarcerated. [Id.] Petitioner self-reported the indictment to the ODC, and a complaint regarding this matter was opened by the ODC on August 8, 2012. [Jt. Ex. 1 at 123]. The disciplinary proceedings were stayed pending the resolution of the criminal matter [Id.] with the Petitioner rightly availing himself of his rights under the Fifth Amendment. The criminal charges against Petitioner were dismissed, with prejudice on January 8, 2013, and the stay on the disciplinary proceedings was subsequently lifted. [Jt. Ex. 6 at 627-31].

Formal charges against Petitioner were filed with the Clerk of the Supreme Court of Appeals

on November 5, 2013, alleging, in part, that Petitioner obtained, or requested, oral sex from T.S., K.M., and L.C., all of whom were directly and indirectly involved with the court system in Pocahontas County during the time in which Petitioner served as an assistant prosecuting attorney. [Jt. Ex. 1 at 3-14]. After a two-day evidentiary hearing on November 10-11, 2014, the HPS found that T.S. performed oral sex on Petitioner in his office and that he solicited, and was provided, sexually explicit pictures and videos from T.S. while she was on probation and participating in Day Report in violation of Rules 1.7(b), 8.4(c), and 8.4(d) of the Rules of Professional Conduct. [Id. at 32-33]. The HPS also found that Petitioner provided false information to the ODC when he denied the conduct alleged in the indictment and that he provided false information to investigators about his relationship with T.S. in violation of Rules 8.1(a) and 8.4(b), respectively. [Id. at 34].

Regarding K.M., the HPS found that Petitioner attempted to require her to perform oral sex on him when she went to his office at the prosecutor's office to inquire about her son's criminal case in violation of Rules 1.7(b) and 8.4(d) of the Rules of Professional Conduct. [Jt. Ex. 1 at 33]. The HPS also found that Petitioner knowingly provided false information in his Answer to the formal charges when he represented that he no longer possessed a copy of the videotaped sexual encounter between himself and K.M. in violation of Rule 8.4(b) of the Rules of Professional Conduct. [Id. at 34]. Regarding L.C., the HPS found that she performed oral sex on Petitioner in his office after she approached him with an inquiry about a criminal matter while she was both a defendant and a victim in violation of Rules 1.7(b) and 8.4(d) of the Rules of Professional Conduct. [Id. at 33]. The HPS recommended that Petitioner's law license be suspended for two years. [Id. at 52]. Both the ODC and Petitioner objected to the disposition recommended by the HPS, and the Court ultimately concluded that Petitioner's misconduct warranted annulment of his law license. [Jt. Ex. 1 at 55-103]. Regarding the findings of fact which formed the basis for this discipline, T.S. was indicted in

Pocahontas County on two counts of possession with intent to deliver a controlled substance. [Jt. Ex. 1 at 62]. T.S. pled guilty to one count, and by order entered on March 19, 2010, she was sentenced to one to five years of incarceration, and her sentence was suspended on the condition that she complete two years of probation and participate in Day Report. [Id.] After T.S. began Day Report, Petitioner sent her a Facebook message in which he complimented a picture she posted of her “backside,” and the two began ongoing correspondence. [Id.] T.S. communicated to Petitioner that she did not want to participate in Day Report and Petitioner invited her to stop by his office. [Id. at 63]. T.S. testified that she went to Petitioner’s office three to four times in the summer of 2010, and that during these visits Petitioner asked to take nude pictures of her and asked her to perform oral sex on him. [Id.] T.S. testified that she complied with his requests because Petitioner told her that he did not “want to see her go back to jail” and she understood this to be a threat. [Id. at 63-64]. T.S. testified that she “started to give him oral sex” during her third visit to his office and that after her last visit to his office, she began sending Petitioner explicit pictures and videos of herself at his request. [Id. at 64].

In August 2011, the State Police and the FBI began to investigate Petitioner’s relationship with T.S. following allegations by T.S. that her sexual relationship with Petitioner, while he was the assistant prosecuting attorney, was not consensual. [Id. at 65]. The investigators asked T.S. to meet with Petitioner in April 2012 at his law office and for her to wear a wire. [Id.]⁵ During the meeting on April 19, 2012, Petitioner “repeatedly asked to take photos of T.S. and continually requested that T.S. touch his penis.” [Id.]

Petitioner was questioned by two investigators on May 29, 2012, and during this meeting

⁵ Petitioner had left the Office of the Prosecuting Attorney and was working in private practice in April 2012. [Jt. Ex. 1 at 65].

Petitioner described T.S. as a professional acquaintance, claimed that they were not friends, and denied knowledge of her criminal background. [Jt. Ex. 1 at 66]. Later, after investigators began questioning him about whether he had a sexual relationship with T.S., Petitioner admitted that he received nude pictures from her. [Id.] Before the HPS, Lieutenant Robert Simon of the West Virginia State Police testified that investigators determined that the sexual encounters between Petitioner and T.S. were consensual and the above-referenced indictment was dismissed with prejudice. [Id. at 67]. In the underlying proceedings, Petitioner acknowledged that he received explicit pictures from T.S. and engaged in sexual banter with her on Facebook. [Id. at 68]. Petitioner also acknowledged that T.S. met with him in his office at the courthouse and that she exposed herself to him but denied he ever had any physical contact with her. [Id.]

K.M. worked in a bar owned by Petitioner in the mid-1990s, and during this time she had a sexual relationship with Petitioner that included having sex at the bar. [Jt. Ex. 1 at 68]. K.M. testified before the HPS that Petitioner recorded a sexual encounter at the bar without her knowledge using the video security system. [Id.] K.M. testified that she discovered that Petitioner possessed this recording about two years later, and that she asked him to destroy it. [Id. at 68-69]. Prior to attending law school, Petitioner told K.M. that he had destroyed the recording, so they “called a truce.” [Id. at 69]. After Petitioner became licensed to practice law, he represented K.M. in a civil matter while he worked part-time as an assistant prosecuting attorney. [Id.] In March 2009, a criminal complaint was issued against K.M.’s son for brandishing, and shortly thereafter, K.M. encountered Petitioner at the grocery store and asked him for advice concerning her son’s criminal charge, and Petitioner invited K.M. to his office to discuss the case. [Id.]

K.M. testified that when she met with Petitioner at his office, he informed her that he had not destroyed the recording of their prior sexual encounter like he had promised, but that he would

be willing to destroy it under two conditions, the first of which was to show him her body. [Jt. Ex. 1 at 70]. K.M. testified that Petitioner then exposed his penis and urged her to “just touch it.” [Id.] K.M. further testified that she was terrified for her son, so she proceeded to hold and kiss Petitioner’s penis. [Id.] The criminal charge against K.M.’s son was dismissed in 2009 upon a motion filed by Petitioner on behalf of the State. [Id. at 71]. Before the HPS in the underlying matter, Petitioner testified that K.M.’s description of this meeting was largely fabricated, and he denied that he exposed his penis to K.M. and that she kissed his penis. [Id.] Petitioner admitted that contrary to the assertions set forth in his Answer, the recording of his prior sexual encounter with K.M. had not been destroyed when he told K.M. that he had done so. [Id.]

L.C. had a sexual encounter with Petitioner in the summer of 1995. [Jt. Ex. 1 at 72]. L.C. testified before the HPS in the underlying matter that she was the victim of a theft and that she met with Petitioner at his office to discuss this matter. [Id.] L.C. testified that the conversation then turned to sex, and that she performed oral sex on Petitioner in his office during this visit. [Id. at 73]. Prior to performing oral sex on Petitioner, L.C. was the victim of domestic violence and criminal charges were filed against her then-boyfriend. [Id.] L.C. testified that when she met with Petitioner to see about dropping the domestic violence protective order against her then-boyfriend, he “mentioned something about seeing [her] breasts.” [Id.] Later, L.C. was charged with destruction of property in May 2009 for breaking her then-boyfriend’s windshield and she entered into a diversion agreement, and the case was ultimately dismissed. [Id. at 74]. Both the diversion agreement and dismissal order were signed off on by Petitioner. [Id.] L.C. testified that she engaged in oral sex with Petitioner at his office on one or two more occasions after her first visit. [Id.] Before the HPS, Petitioner denied having any sexual contact with L.C. in his office at the courthouse. [Id. at 75].

At his sworn statement, Petitioner testified that he was aware that T.S. had some involvement with the Pocahontas County court system in 2009. [Jt. Ex. 11 at 1205]. Petitioner testified that he may have been involved in her arraignment in magistrate court, but after her case went upstairs, he did not have anything to do with it, although he was aware that she was doing work at the courthouse on Day Report. [Id.] He said that after she was no longer doing work at the courthouse, Petitioner and T.S. began communicating through Facebook. [Id.] Petitioner described their communication as being “innocent enough” initially but that it did not take long for it to become “highly inappropriate.” [Id.] Petitioner testified that during this time T.S. met with him at his office several times, and that in all but three of those visits they discussed her work with the Prevention Coalition and efforts to get a bowling alley built in the community. [Id.] Petitioner testified that T.S. exposed herself to him in his office on two occasions, and that on another occasion, she handed him her phone through his office window, and he took a sexual picture of himself on her phone. [Id. at 1206]. Petitioner testified that throughout this time, he engaged in sexual conversation with T.S., and that he received pictures and videos from T.S. that were sexual in nature. [Id.] Petitioner denied that anything else of a sexual nature happened during her visits to his office. [Id.]

Petitioner testified that the last time he met with T.S. in his office, she asked him to write a letter on her behalf to get her off Day Report. [Jt. Ex. 11 at 1206]. Petitioner testified that it was at that point that he realized she was still on Day Report, and he decided to cut off communication with T.S. after this as he was “crossing a boundary” that he did not want to cross. [Id. at 1206-1207]. Petitioner acknowledged that he was not truthful with investigators when he was questioned regarding his relationship with T.S., stating that he was trying to “shield” himself and “wanted to remove [himself] as far away from her as possible at that point.” [Id. at 1207].

Petitioner testified that he met K.M. in the mid-1990s through his work in the restaurant and

bar industry, and that he represented her on two separate civil matters after he became licensed to practice law. [Jt. Ex. 11 at 1200]. Petitioner testified that he had a long-standing sexual relationship with K.M. throughout the years which ended while he was in law school. [Id. at 1201]. K.M. testified at the first hearing that Petitioner recorded their sexual encounter without her knowledge using the bar's video security system. [Jt. Ex. 1 at 68]. She said she did not know of the recording for two years, and upon discovering the recording, she asked him to get rid of it. [Id. at 69]. Despite reassuring K.M. that he had destroyed it, Petitioner hung on to the video for more than a decade, never destroying it until after his initial disciplinary hearing. [Id. at 325-26].

During his sworn statement, Petitioner testified that he had several videotapes of that nature and, around the time he went to law school, he set them on fire. [Id. at 1201]. Petitioner said that he believed the recording with K.M. was part of that collection, and that he only realized he still had this video sometime "in the process of dealing with the Statement of Charges."⁶

During his sworn statement, Petitioner denied that he exposed himself to K.M. during the meeting in his office at the courthouse when they discussed the criminal charge pending against her son. [Id. at 1203]. Petitioner acknowledged that there was likely inappropriate banter but denied that he made any sexual advances toward K.M. during this meeting. [Id.]

Petitioner testified that he had a one-time sexual encounter with L.C. in the mid-1990s after which time he lost contact with her. [Jt. Ex. 11 at 1197]. Petitioner testified that they reconnected after he became an assistant prosecuting attorney and L.C. and her boyfriend had criminal charges pending against them. [Id.] Petitioner recalled that although she came to his office to discuss this

⁶ K.M. testified during the first hearing that Petitioner had informed her in his office at the courthouse in 2009 that he had never destroyed the video. [Jt. Ex. 1 at 70]. This would have predated the Statement of Charges by almost four years.

matter, he did not discuss the criminal matter with L.C. as she was represented by counsel at the time. [Id. at 1197-98]. Petitioner testified that after the criminal matter was resolved, L.C. came to his office on other occasions to discuss other matters, including whether her boyfriend had any criminal charges pending against him. [Id. at 1198]. Petitioner denied that he engaged in oral sex or had any physical contact with L.C. in his office. [Id.] Petitioner acknowledged that there was “a good possibility” that he engaged in sexual banter with L.C. in his office but denied that he made any advances toward her. [Id.] Regarding the underlying disciplinary hearing, Petitioner testified that “there was a lot of embellishment and a lot of stuff that didn’t happen.” [Jt. Ex. 11 at 1199-1200].

3. Petitioner’s History Since Disbarment

Following the Supreme Court’s mandate annulling his law license in December 2015, Petitioner began working as a paralegal for the law firm Wooton, Davis, Hussell and Ellis in February 2016.⁷ Petitioner testified in his sworn statement that he primarily worked remotely from his home, going occasionally to the Charleston, Beckley, or Lewisburg offices, as needed. [Jt. Ex. 11 at 1211]. Petitioner continued to work with the firm until June of 2023 when he left to operate the Hannah Insurance Agency/Pocahontas Realty Company with his wife. Together, he and his wife purchased the business in January of 2024 from Ellen Galford, who continues to assist with the business without drawing a paycheck. Ms. Galford runs a license and title business in the same office. [Id. at 1212].

Petitioner and his wife are licensed to sell property and casualty insurance lines, and Petitioner reactivated his real estate license in the fall of 2023. Prior to becoming a licensed resident

⁷ Petitioner’s criminal defense attorneys were Brandon Johnson and Jody Wooton, attorneys with the firm Wooton, Davis, Hussell and Ellis.

producer, Petitioner's application was denied by the West Virginia Offices of the Insurance Commissioner (hereinafter "WVOIC") on June 12, 2023, due to Petitioner's underlying professional misconduct that involved "dishonesty, fraud, deceit or misrepresentation," and the finding made by the WVOIC that Petitioner lied to the ODC. [Jt. Ex. 1 at 299-322]. A hearing was held on July 25, 2023, and a Final Order was entered by Insurance Commissioner Allan McVey on September 14, 2023, granting Petitioner a West Virginia resident producer license.

In the spring of 2016, Petitioner sought a "Christian therapist," and attended his first counseling session with Harriett Warf, M.A., L.S.W., with Seneca Health Services, on April 6, 2016, at the Greenbrier County Maxwelton Clinic. [Jt. Ex. 1 at 218]. Ms. Warf's records indicate Petitioner's faith was very important to him and that he desired his faith be incorporated into any treatment regimen. Ms. Warf's notes indicated her treatment goals for Petitioner were to reduce Petitioner's obsessive thinking and depression, with little mention of Petitioner's professional misconduct and its causes. [Id. at 220]. Thereafter, Petitioner met with Ms. Warf every couple of weeks for about seven individual sessions, focusing on his obsessive thinking and marital relationship. On September 8, 2016, Petitioner brought his wife with him for marital/family counseling, and he and his wife attended a total of twelve (12) monthly counseling sessions through August 21, 2017, during which time they addressed a troubling issue with extended family and worked to improve the marriage. [Id. at 248]. Although this was Petitioner's last visit with Ms. Warf, she had recommended Petitioner return in one month for follow-up. Petitioner testified at his sworn statement that he ceased his counseling sessions when Ms. Warf resigned from the facility, and he denied seeking any other mental health treatment, testing, counseling, or rehabilitation since

his disbarment.⁸

Petitioner testified at his sworn statement that he and his wife began attending church in 2010 or 2011 at Edray United Methodist Church where he became a lay minister. Petitioner attempted to become a certified Methodist minister but was denied certification due to his underlying lawyer disciplinary misconduct. Thereafter, Petitioner and his wife left the Methodist Church, but he still preaches and works as a lay minister and a local mentor, as well.

Petitioner was appointed to the Pocahontas Memorial Hospital Board of Trustees in 2014 by the County Commission. He said he offered to resign upon losing his law license, and the Board permitted him to retain his position. He has since been reappointed and is currently the Vice Chair of the Board and serves on various committees. Petitioner and his wife currently reside in Marlinton with their three children, who are home-schooled.

As directed by the Court in its December 22, 2015, mandate, Petitioner reimbursed the ODC Seven Thousand Four Hundred Seventy-One Dollars and Thirty Cents (\$7,471.30) on June 15, 2021, for the costs of the underlying disciplinary proceeding. Petitioner submitted an Affidavit verifying his compliance with Rule 3.28 of the Rules of Lawyer Disciplinary Procedure on February 19, 2016. On that same date, Petitioner executed an Affidavit verifying that the original copy of the mid-1990's video of K.M. was destroyed following the November 2014 disciplinary hearing.

As factual support for Reinstatement, the Petitioner established the following:

1. More than five years have passed since entry of the order of annulment of Petitioner's license to practice making him eligible to seek readmission pursuant to W. Rules of Lawyer Discipline 3.33(b).
2. Petitioner has fulfilled the requirements imposed upon him in the order of

⁸ Petitioner admitted to seeking a psychiatric evaluation in 2013 or 2014 at the suggestion of his attorney but said he never saw the report and that "apparently it wasn't very glowing." [Jt. Ex. 11 at 1220].

annulment entered by the West Virginia Supreme Court with respect to paying the costs of the underlying proceeding which he did on June 15, 2021.

3. Petitioner has lived a life without incident or complaint concerning his conduct or behavior for over ten (10) years; has lived a law-abiding, responsible and ethical life; and has become a positive asset to his Church, to his family, to his employers and to the greater community. In his Reinstatement Questionnaire, the Petitioner set forth his efforts at rehabilitation through counseling; his work as paralegal for seven (7) years; the acquisition and operation of a local insurance agency; his work as a realtor through Pocahontas Realty; increased church involvement; his current service as the Trustees Chair on the Pocahontas Memorial Hospital Board; and some of the lost service and business opportunities which he voluntarily gave-up as a result his past transgressions. He also, in the past year, has been made a Trustee for Edray United Church where he also serves as a Pastor (as well as some other churches). Hrg. Transcript, p. 124).

Accordingly, the Hearing on Reinstatement involved the consideration of documentary evidence, the historical record pertaining to disbarment; the conduct of the Petitioner since disbarment; and the witness testimony – with the burden of proving the merits of the reinstatement Petition resting, at all times, on the Petitioner.

4. Reinstatement Hearing

Kaitlin Tierney, Esquire

Ms. Tierney testified that she is currently serving as a Fiduciary Commissioner for Greenbrier County while actively looking for other employment. She testified that she has known Petitioner since January 2019 when they were both employed at the law firm of Wooton, Davis, Hussell & Ellis. [Hrg. Tr. at 12] Ms. Tierney had graduated from law school and was licensed to practice law in the state of Indiana when she worked with Petitioner at the firm. [Hrg. Tr. at 17]. Ms. Tierney said she never discussed with Petitioner the reasons why he had lost his law license, but that she Googled his name and read the Supreme Court disciplinary decision. Ms. Tierney said she worked in the Charleston office while Petitioner worked remotely, but there were several times

he came to Charleston for meetings. Ms. Tierney said Petitioner told her “he was a different person prior to getting married and having kids.” [Hrg. Tr. at 21].⁹ She testified that although she is aware that Petitioner lost his law license due to his own sexual misconduct, she believes he possesses the moral character and integrity to practice law, and that he was professional in her presence. [Hrg. Tr. at 12-14].

Andrew “Frosty” McNabb

Andrew “Frosty” McNabb testified that he lives in Slaty Fork just south of Snowshoe and is disabled following an illness. He currently serves on the Board of Education for Pocahontas County. Mr. McNabb said he has known Petitioner since they were in their teens, that their families are very close. Mr. McNabb testified that he and Petitioner never discussed why Petitioner lost his law license, and “the only thing that I really know about it was...it had to do something with whenever [Petitioner] was supposed to have taken advantage of some women or something or other.” [Hrg. Tr. at 28-30]. Mr. McNabb testified that Petitioner has the legal competence to assume the practice of law, and to Petitioner said, that they grew up together, “helped each other throughout the years. We’ve rode motorcycles. You had a bar. I was your bouncer. I think I pretty well know you.” [Id. at 52-53]. He said Petitioner is now his pastor at the church they attend, and that Petitioner helps with the youth in the community. He said Petitioner “changed a 180 from what” he used to be and that he is a different person now. [Hrg. Tr. at 53, 59].

Upon cross-examination, Mr. McNabb testified that he was familiar with the rumor mill, but he thought there were only two women, he did not know there were three, and that does give him pause. [Hrg. Tr. at 56-57] He reiterated that he and Petitioner never discussed the situation and it

⁹ Petitioner was married on March 19, 2009, and their first child was born on November 12, 2011. [Jt. Ex. 11 at 1195].

never impacted their friendship, despite being initially disappointed in him. [Hrg. Tr. at 57].

Brian Smith

Brian Smith testified that he is a fourth-grade teacher at Marlinton Elementary School in Pocahontas County, West Virginia, where Petitioner's son is in his class. Mr. Smith said he has known Petitioner for eight or nine years after meeting one another when their children played soccer together. He said he was "vaguely aware" of why Petitioner had lost his law license, but that he "never wanted to hear all the details but [he knew] the gist of the allegation." [Hrg. Tr. at 35-36]. Without discussing the details of the reason Petitioner lost his law license, Mr. Smith said he had "no problem vouching" for Petitioner. [Id.] He said he believed Petitioner was a man of faith and that he had no reason to doubt their friendship or the sincerity of his faith. Petitioner asked Mr. Smith to speak about a newly formed youth basketball league the two are serving on in which they each nominated the other for a position on the Board. [Hrg. Tr. at 39].

Upon cross-examination, Mr. Smith testified that Petitioner called his attention to the publication in the paper regarding his reinstatement and Mr. Smith drafted a letter in response and sent it to the ODC. [Hrg. Tr. at 41]. Regarding Petitioner's misconduct, Mr. Smith testified that he had "heard there were accusations of conduct of a sexual nature, you know, using a position of power. But again, I've just never asked for details and don't really try to engage in the rumor-mill. So I've never asked for clarification...I heard that there were things that were done in a position of power or asserting authority over women, so that's probably the extent of my – my knowledge on the misconduct." [Hrg. Tr. at 43]. When questioned if he believed the Supreme Court decision disbaring Petitioner, he said he "would probably believe what he said," and that they have never discussed it. [Hrg. Tr. at 45].

Willard Clinton Carte, Esquire

Clint Carte testified that he met Petitioner when they were in law school together, and that he now works for the Federal Public Defender's Office in Charleston. [Hrg. Tr. at 64]. He said he worked in Marlinton briefly from 2014 through October of 2015 as the state public defender and Petitioner had an office close by. He rented a house from Petitioner prior to Petitioner's disbarment, and shared that Petitioner helped him navigate Marlinton and become active in Rotary at that time. Mr. Carte said Petitioner really made an effort to take him under his wing. [Hrg. Tr. at 69].

Mr. Carte said that although Petitioner has not discussed his disbarment with him, Mr. Carte has discussed it with another lawyer, who is a mutual friend. [Hrg. Tr. at 66]. Mr. Carte provided thoughtful testimony concerning his own indiscretions and believed that people can bounce back and achieve a measure of forgiveness. He opined that Petitioner being a paralegal in the community after being disbarred would not have been easy, and that going from being a lawyer and then being babysat would be challenging. [Hrg. Tr. at 67]. Mr. Carte believes the community needs attorneys and that Petitioner would be a valuable part of the community again if reinstated. Upon questioning by the Hearing Panel, Mr. Carte testified that he would have no misgivings about Petitioner being reinstated. [Hrg. Tr. at 86]. The Hearing Panel asked Mr. Carte about the passage of time being important, that it's "not only the time but what he's done during that time..." and Mr. Carte agreed. [Hrg. Tr. at 89]. Upon cross-examination, Mr. Carte acknowledged that Petitioner accepting responsibility for his misconduct was one of the most important factors. [Hrg. Tr. at 89-90].

Mary Beth Barr

Mary Beth Barr testified that she is retired from Pocahontas Memorial Hospital in Buckeye, West Virginia where she served as the CEO for the hospital for about three years. [Hrg. Tr. at 94].

She first met Petitioner in July of 2018 when he served on the Board of Trustees for the

hospital. She said she is “vaguely aware” of the loss of his license and that she “chose not to listen to rumors or to investigate anything” of his past. [Id. at 95]. She said she found nothing in his demeanor that was not professional, and that his “integrity was of the highest regard.” [Id.] She said she believed he possessed the moral character and competence to practice law and that she never witnessed any “untoward behavior toward any of our female staff.” [Hrg. Tr. at 98]. Ms. Barr felt that Petitioner was very honest in the committee meetings, and that she “would never have believed that your past had...happened” based upon her observations of him. [Id. at 99].

Ellen Galford

Ellen Galford testified that she works with Hannah Insurance/Pocahontas Realty where she is the broker for the realty company, and is a member of the LLC at Hannah Insurance. She said she is listed as a secretary, and she’s “trying to get retired” after selling it two years ago to Petitioner. [Hrg. Tr. at 105]. She said she has known Petitioner his entire life, that his sister was in school with her son, and that she knows his mom and dad from their time together at Marlinton High School. Ms. Galford stated that her husband hired Petitioner as a real estate agent in 1990. [Hrg. Tr. at 106]. Ms. Galford said she has observed Petitioner working with people, and that he is professional and takes an interest in people. Ms. Galford believes he possesses the integrity to return to the practice of law. [Hrg. Tr. at 108].

Ms. Galford said she was aware of why Petitioner lost his law license, as it “was very well known.” [Id.] Initially, she said she was not sure if she had read “all” of the decision handed down by the Supreme Court, but during cross examination she said she believed “everybody read it” and that the community knew about it. [Hrg. Tr. at 106, 110]. Ms. Galford said she and Petitioner have never talked about the events that led to his disbarment, and she opined that the women in the statement of charges were “questionable”. [Hrg. Tr. at 112-13]. Upon further discussion, she

admitted she did not know the women, but that her opinion was formed “by reputation”. [Id.] Ms. Galford said she did not like Petitioner’s conduct, but that she was not there and does not know what really happened. She believes he has learned his lesson and suffered. [Hrg. Tr. at 111-12]. Ms. Galford testified that Petitioner’s reputation up until that point was fine, stating, “I mean he – he’s not a drugee [sic]. He wasn’t in and out of jail through his high school years. He led a good family life and still does. I mean, his reputation was unquestionable up until that period.” [Hrg. Tr. at 113].

Jarrell L. Clifton, II, Petitioner

Petitioner testified regarding the positive changes he has made in life since his disbarment to become a better person. [Hrg. Tr. at 126]. Petitioner highlighted the counseling he received from Seneca Health from April 6, 2016, to August 21, 2017, as well as his participation in taekwondo. [Hrg. Tr. at 124, 126-27]. Petitioner provided some updates to his resume, including that he was recently elected the Board Chair of Pocahontas Memorial Hospital after previously serving as Vice Chair and that he serves on the Board for the Pocahontas County Youth Basketball League. [Hrg. Tr. at 122-23]. Petitioner testified that he has also been made a Trustee for the Edray United Church within the past year. [Hrg. Tr. at 123]. Petitioner testified that he obtained continuing education for his real estate and insurance licenses, some of which dealt with aspects of the legal field including a three-hour course regarding property and insurance law and a three-hour course regarding estate planning. [Hrg. Tr. at 124-25].

Petitioner explained that after his disbarment he supported his family through his work at Wooton, Davis, Hussell & Ellis until April 2023 when he went on unemployment for about six months to study to become a licensed insurance producer. [Hrg. Tr. at 129]. Petitioner testified that the bulk of his income currently comes from Hannah Insurance and to a lesser extent from Pocahontas Realty. [Hrg. Tr. at 129]. Petitioner also owns Heights Property, LLC, which holds the

land on which his office sits as well as two rental properties. [Hrg. Tr. at 129-30].

Regarding the underlying misconduct, Petitioner testified that he engaged in “sexual misconduct with three women while [he] was the assistant prosecuting attorney” violating duties owed to his clients, the public, and the legal system. [Hrg. Tr. at 118]. Petitioner acknowledged that by providing false information to investigators and the ODC he violated duties to the legal system and the profession, and that he betrayed the public trust, as well as the trust of his family and friends by engaging in the underlying misconduct. [Hrg. Tr. at 118-19].

On cross-examination, Petitioner testified that he was 35 years old when he started law school and that upon graduating law school in 2007, he went to work for the prosecuting attorney’s office in Pocahontas County. [Hrg. Tr. at 133-34]. Petitioner recalled that while working at the prosecutor’s office he became aware that T.S. was on Day Report due to her work at the courthouse. [Hrg. Tr. at 137-38]. Petitioner testified that after T.S. was no longer working in the courthouse, he assumed that she was no longer on Day Report. [Hrg. Tr. at 139-40]. Petitioner testified that he then began communicating with T.S. on Facebook which then led to him soliciting explicit videos and pictures from her. [Hrg. Tr. at 135-36; 139]. Petitioner testified that during this time T.S. would also visit him in his office at the courthouse. [Hrg. Tr. at 140]. Petitioner testified that he was not aware that T.S. was on Day Report when he was soliciting explicit videos and pictures of her and during the time in which she visited him in his office. [Hrg. Tr. at 139-40]. Petitioner testified that T.S. exposed herself to him on two occasions in his office. [Hrg. Tr. at 141]. Petitioner recalled that T.S. subsequently came to his office asking if he could write a letter to get her off Day Report, and that it was at this point that he learned she was still on Day Report. [Hrg. Tr. at 142].

When asked if he had any physical sexual contact with T.S. during her visits to his office, Petitioner testified: “I’ve been found by clear and convincing evidence that I did, but – I’m not trying

to profess innocence, but I owe a duty of candor to answer that in the negative. No, there was not.” [Hrg. Tr. at 141]. In addition to disputing that T.S. gave him oral sex in his office, Petitioner also disputed the testimony of T.S. from the underlying disciplinary hearing that she initially reached out to him to seek help in getting off Day Report and that he initially invited her to his office to see if there was something he could do to help her get off Day Report early. [Hrg. Tr. at 146-47]. Petitioner acknowledged that he was not upfront with Lieutenant Simon and Special Agent Aldridge when he was questioned about his relationship with T.S. and that he “withheld information as long as he could” from investigators. [Hrg. Tr. at 144].

Regarding L.C., Petitioner testified that he had a sexual encounter with her one time in the 1990’s. [Hrg. Tr. at 152, 154]. Petitioner recalled that she stopped by his office when he was an assistant prosecutor on one occasion while she was a defendant in a criminal matter at which time he informed her that he would not talk to her without her attorney present. [Hrg. Tr. at 153]. Petitioner testified that after her criminal matter was resolved, L.C. met with him in his office alone several times to discuss a variety of matters. [Hrg. Tr. at 154]. When asked if he had any physical sexual contact with L.C. during these meetings in his office, Petitioner testified: “Again, the highest Court in our land and this – and the previous Panel by clear and convincing evidence found that I did. I don’t know how to answer. I did not have any sexual relations with her after that time back in the nineties.” [Hrg. Tr. at 154]. Petitioner denied that he attempted to initiate sexual contact with her in his office or otherwise made any sexual advances toward her during these meetings. [Hrg. Tr. at 154-55]. Petitioner further denied that he asked her to see her breasts during one of the meetings in his office. [Hrg. Tr. at 156].

Regarding K.M., Petitioner testified that she worked for him in the mid-1990s during which time they were friends and “occasional lovers.” [Hrg. Tr. at 157]. Petitioner recalled videotaping

one of his sexual encounters with K.M. in June of 1996. [Hrg. Tr. at 157-58] Petitioner testified that he thought he destroyed this tape around 2004, prior to going to law school. [Hrg. Tr. at 158]. Petitioner explained that he subsequently found this videotape in going through a trash bag “full of receipt tapes, cancelled checks” from his restaurant/bar when he “was trying to find evidence of employment of K.M.” [Hrg. Tr. at 159]. The following exchange occurred regarding the videotape:

Lawyer Disciplinary Counsel: Would you have found the tape, I guess, timeline wise, would that have been after you filed your answer and affirmative defenses [to the Statement of Charges] saying that you no longer possessed the tape? Did you find it after that was filed –

Petitioner: Yes.

Lawyer Disciplinary Counsel: – or before?

Petitioner: I found all the receipts and the cancelled checks that I needed before, but the tape – the tape I put in with some other tapes because I thought it was something else.

Lawyer Disciplinary Counsel: Okay.

Petitioner: Which – so then when I realized what it actually was would’ve been after the answer.

Lawyer Disciplinary Counsel: After – after the answer was filed?

Petitioner: Yes.

[Hrg. Tr. at 159-60].

Petitioner acknowledged that K.M. met with him alone in his office when he was an assistant prosecutor to discuss a criminal matter in which her son was a defendant. [Hrg. Tr. at 161-62].

Petitioner denied that he had any physical sexual contact with K.M. during this meeting, including that K.M. kissed his penis. [Hrg. Tr. at 162-63]. Petitioner further denied that he attempted to initiate physical sexual contact with K.M. during this meeting although he

acknowledged that there may have been discussions between them of a sexual nature. [Hrg. Tr. at 162]. Petitioner also denied that he exposed himself to K.M. during this meeting or that he brought up the videotape from the 1990s. [Hrg. Tr. at 163].

When asked about the issues with pornography that he testified to in the underlying disciplinary hearing, Petitioner testified that this testimony was offered in “an effort to get a mitigating circumstance” and that although he sees “any type of pornography as immoral and a problem” he never had “some sort of addiction to pornography or anything like that.” [Hrg. Tr. at 166-67].¹⁰ The following exchange occurred regarding his testimony in the underlying disciplinary hearing:

Lawyer Disciplinary Counsel: So your testimony at the underlying hearing that you had an issue with pornography was that something that you assessed yourself or did a clinician tell you that you had an issue with pornography? Where did that come from?

Petitioner: In preparing for the hearing with my attorney.

Lawyer Disciplinary Counsel: Can you offer – so was that a defense strategy to say –

Petitioner: Yes.

Lawyer Disciplinary Counsel: – that you had an issue with pornography?

Petitioner: Yes.

¹⁰ Petitioner testified in the underlying disciplinary matter that he “most certainly” had an issue with pornography, that he started counseling to address this issue after he was indicted, and that it was something that he worked “to keep under control through counseling.” [Jt. Ex. 5 at 569-70]. When asked in the underlying disciplinary hearing how he could assure the HPS that this type of conduct would not reoccur, Petitioner testified that “[t]hrough counseling, [he] identified what brings about this desire for pornography,” and that he continues to address those issues. [Id. at 573]. Despite the emphasis that he placed on his “counseling” in the underlying disciplinary matter in an attempt to receive mitigation from the Court, when Petitioner was asked at his sworn statement for specifics about this counseling, he testified that he did not know what he could have been referring to as he had “never done counseling” other than marital counseling with his first wife and then Seneca Health. [Jt. Ex. 11 at 1227]. Petitioner further testified at his sworn statement: “I mean, I jumped into the Bible. Maybe I was – in talking to local pastors – I mean, I was surrounding myself with as much God and Bible as I could get. If I went – if I classified that as counseling, that may be what I was talking about.” [Id.]

[Hrg. Tr. at 167-68].

When asked about his testimony in the underlying disciplinary proceedings that he had received counseling to address his issues with pornography, Petitioner explained that he was referring to talking with pastors, and that this was not counseling in a clinical sense, rather it was pastoring to address his issues with pornography. [Hrg. Tr. at 169-70]. Petitioner testified regarding the counseling that he received from Seneca Health and characterized this as individual counseling that morphed into marital counseling. [Hrg. Tr. at 164]. Petitioner affirmed that he submitted the entirety of his counseling records from Seneca Health in the instant reinstatement proceedings. [Hrg. Tr. at 164]. Petitioner testified that he addressed pornography in these counseling sessions and found that there was a deeper issue with obsessive thinking and the need for acceptance, recognition, and attention. [Hrg. Tr. at 172].

Upon questioning by Chairperson Steele, Petitioner testified that in 2012 he was 44 years old and had been practicing law for close to five years at that point, with a little over three of those years being at the prosecutor's office. [Hrg. Tr. at 151].

Upon questioning by Mr. Clark, Petitioner affirmed that while he denies having sexual contact with T.S., L.C., and K.M. in his office, he acknowledges the underlying findings of fact, and he is not directly disputing those findings. [Hrg. Tr. at 175]. Petitioner testified that he wants to be a lawyer again primarily because he enjoyed being a lawyer and due to the encouragement he has received from his peers to seek reinstatement. [Hrg. Tr. at 176]. Petitioner affirmed that if reinstated, he desires to be a guardian ad litem for children in abuse and neglect proceedings. [Hrg. Tr. at 177-78]. When asked how the HPS can be assured that he would not take advantage of his position like he did before, Petitioner testified: "I hope my [record] speaks for itself for the last 10 years. I don't know how to give you anymore assurance than that. I'm not – I'm not who I was 10

years ago, 15 years ago. I'm just – I'm not anywhere near that.” [Hrg. Tr. at 178].

Upon questioning by Mr. Blankenship, Petitioner affirmed that he was remorseful for his prior interactions with the ODC testifying that he was in “self-preservation mode” at the time of his underlying disciplinary matter. [Hrg. Tr. at 180].

In terms of sincerity of his testimony, the Petitioner expressed genuine emotion and regret for his prior transgressions. While there is some question as to what the true nature of the underlying offenses entailed – the Hearing Panel Subcommittee was impressed by the Petitioner’s heartfelt remorse throughout his testimony.

III. STANDARDS OF REVIEW AND CONCLUSIONS OF LAW

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

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

Syl. Pt. 1, *In re Brown*, 166 W. Va. 226, 273 S.E.2d 567 (1980) (*Brown II*)(emphasis added).

The ultimate question is whether the attorney seeking reinstatement possesses the integrity, high moral character, and legal competence to justify the reinstatement of his license. *In re Brown*, 164 W. Va. 234, 237, 262 S.E.2d 444, 446 (1980) (*Brown I*). Rule 3.30 of the Rules of Lawyer Disciplinary Procedure sets forth that any prior and subsequent conduct of the attorney seeking

reinstatement shall be considered in the determination of good moral character and fitness. Further, “in assessing an application for reinstatement consideration must be given to the nature of the original offense for which the applicant was disbarred.” *Brown II*, 166 W. Va. at 234, 273 S.E.2d at 571. Accordingly, **“the more serious the nature of the underlying offense, the more difficult the task becomes to show a basis for reinstatement.”** *Id.* (Emphasis added).

The Court has held that “[r]ehabilitation is demonstrated by a course of conduct that enables the court to conclude there is little likelihood that after such rehabilitation is completed and the applicant is readmitted to the practice of law he will engage in unprofessional conduct.” *Id.* at Syl. Pt. 2. The Court has identified five factors to look to in determining whether an attorney seeking reinstatement possesses the integrity, high moral character, and legal competence to justify the reinstatement of his law license: (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 I*, 164 W. Va. at 237-38, 273 S.E.2d at 446 (quoting *In re Hiss*, 368 Mass. 447, 333 N.E.2d 429 (1975)).

This case, like so many others which come before a Hearing Panel Subcommittee of the Lawyer Disciplinary Board, involves difficult evaluations after consideration of the evidentiary record and applicable case precedent. The Petitioner is a very likeable man who has done good things for his community prior to and since his disbarment. He further has numerous business and philanthropic interests to which he attends in that same community. His remorse for his past transgressions through sworn testimony was palpable and, by all appearances, very sincere. Accordingly, there is no judgment on a life’s worth or the redemption possible within it expressed herein, whatsoever.

The burden for reinstatement rests with the Petitioner to establish – by clear and convincing evidence – his case for reinstatement. “‘Clear and convincing’ is the measure or degree of proof that will produce in the mind of the fact finder a firm belief or conviction as to the allegations sought to be established.” *Brown v. Gobble*, 474 S.E.2d 489, 494 (W.Va. 1996). “It should be the highest possible standard of civil proof.” *Id. citing, Cramer v. Dep’t of Hwys*, 375, S.E.2d 568, 570 (W.Va. 1988). However, “the clear and convincing standard is ‘intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases.’” *Cramer v. W. Va. Dept. of Highways*, S.E.2d 568, 570 n.1 (1988)).

The judicial guidance on what is “clear and convincing” evidence nobly seeks to define the standard without using the words in the standard. The Hearing Panel believes that “clear and convincing” means what it says and says what it means. What became apparent after this Hearing Panel Subcommittee considered all the evidence and after numerous discussions by and between the panel members – was that the evidence was neither clear nor convincing.

The details of the underlying facts are meticulously set forth, above, because “in assessing an application for reinstatement consideration must be given to the nature of the original offense for which the applicant was disbarred.” *Brown II*, 166 W. Va. at 234, 273 S.E.2d at 571. Accordingly, “the more serious the nature of the underlying offense, the more difficult the task becomes to show a basis for reinstatement.” *Id.*

The underlying offense is a very serious one. A lawyer holding a public trust as an Assistant Prosecuting Attorney engaged in behavior which – by optics – looked to be quid-pro-quo engagements involving the exchange of sexual and legal favors. At the hearing, the Petitioner did not admit that physical sexual contact occurred – which the three (3) complaining witnesses specifically set forth in the underlying proceeding. He did, however, acknowledge that he used his

position as a lawyer and representative of the State as an assistant prosecutor in a manner that was morally and ethically wrong. (Hrg. Tr. at 120).

It is against this backdrop – which is a very serious underlying defense – that the Hearing Panel Subcommittee must evaluate the other factors to be considered for Reinstatement.

The second factor involves the Petitioner's character, maturity, and experience at the time of his disbarment. At the time of his disbarment, the Petitioner was 44 years old and had roughly five (5) years of practicing law under his belt. The Petitioner was not a 25 year old man when these events occurred. He was a middle-aged man with a wife and child. The Petitioner, to his credit, offered no palpable defense on this issue. Petitioner also acknowledged this in his Reinstatement Questionnaire stating that he "will not claim inexperience or lack of maturity at the time of annulment as something to be beneficial in [his] case."

The third factor considers the Petitioner's occupations and conduct in the time since his disbarment. The Petitioner called witnesses whom he knew and also worked with – all of whom spoke favorably about the Petitioner's character. He also received numerous letters from various people in support of his reinstatement. While "general statements and letters from attorneys, friends, and community leaders on behalf of a petitioner are of little evidentiary value." *Lawyer Disciplinary Board v. Vieweg*, 194 W. Va. 554, 560, 461 S.E.2d 60, 65 (1995), the HPS believes that the Petitioner has done and continues to do good things in his work as an insurance agent, realtor, and property owner in addition to his community and his family based upon the evidence presented.

There was simply no evidence of improper professional conduct or illegal activities since the time of his disbarment. The Petitioner's occupation and community service weigh substantially in his favor for his reinstatement.

The ODC raises questions about the Petitioner's truthfulness in the prior proceedings as well

as the present one on the issue of personal conduct. In doing so, it raises the question of whether the Petitioner has fully come to terms with the gravity of his past transgressions which is tantamount for true rehabilitation. “To overcome the adverse effect of the previous disbarment, he must demonstrate a record of rehabilitation.” Syl. Pt. 1, *In re Brown*, 166 W. Va. 226, 273 S.E.2d 567 (1980) (*Brown II*). The issue is troublesome to evaluate for this Hearing Panel Subcommittee. The Petitioner denied having engaged in any improper physical/sexual contact with any of the three (3) complaining witnesses in spite of the prior findings of the West Virginia Supreme Court of Appeals.

It is difficult to “prove a negative” as the Petitioner insisted upon during his sworn testimony – and at all times the Petitioner acknowledged that he had been found by clear and convincing evidence to have done these things. However, he felt as though his oath required him to tell the truth in spite of those findings. We believe that he is correct in what his oath currently and always requires – to tell the truth. However, when considering the personal “conduct” factor in the context of “rehabilitation,” the Petitioner simply did not establish the same by a clear and convincing standard. This is also complicated by his reliance on a pornography mitigation defense strategy in the underlying proceeding which was seemingly never dealt with, professionally, in a clinical setting. This leads the Hearing Panel Subcommittee to conclude it was just that – a strategy – and not an issue with which the Petitioner sincerely believed he had to address.

The fourth factor is the time elapsed since his disbarment. The Petitioner has been without a law license for over ten (10) years. That’s a long enough time to at least consider reinstatement on its face. Accordingly, this factor weighs in favor of the Petitioner. The fifth factor involves the Petitioner’s legal competence – and the ODC concedes that he possesses the legal competence to practice law.

When it comes to reinstatement, the five (5) factors evaluated, above, lead us back to the

general rule which is inseparable from the very first factor: the seriousness of the underlying conduct. In that regard, this Hearing Panel must conclude that such reinstatement would not have a justifiable and substantial adverse effect on the public confidence in the administration of justice and in this regard the seriousness of the conduct leading to disbarment is an important consideration. Syl. Pt. 1, *In re Brown*, 166 W. Va. 226, 273 S.E.2d 567 (1980) (*Brown II*)(emphasis added).

All of the Petitioner's witnesses were very supportive and complimentary of him. Some of them had read or were familiar with the Opinion of the Supreme Court of West Virginia which resulted in disbarment. However, none of them seemed to have any detailed knowledge about why the Petitioner's law license was annulled. If they did, they did not express, at the hearing, any detailed understanding of what occurred. And, the Petitioner, admittedly, did not prepare his witnesses by telling them of the details. All of the witnesses seemed shocked when considering and confronted with only the summary version of what occurred. Public confidence may be similarly shocked if reinstatement were recommended in this case.

In *In Re: Petition for Reinstatement of David Perry*, the Court permitted reinstatement after a ten (10) year absence in a scenario wherein the Petitioner's underlying offense was inappropriate, sexual telephone calls to the wife of a jailed client. In his dissent, Justice Armstead stated: "It is difficult to imagine a factual scenario that may do more to undermine public confidence in the integrity of the legal profession in our state."

In *Lawyer Disciplinary Bd. V. Hatfield*, 852 S.E.2d 785 (W.Va. 2020), the West Virginia Supreme Court of Appeals annulled the license of the Defendant by finding that he initiated unwelcome sexual dialogue and solicited sexual favors in exchange for legal services. In doing so, the Court found that the behavior "touches on the very essence of the public's perception of the legal profession." *Id.* at 797.

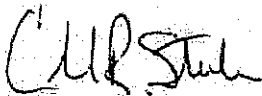
Public confidence in the administration of justice is like "clear and convincing" evidence – hard to measure and define. However, this Hearing Panel Subcommittee can conjure up no more serious offense which affects the very essence of the public's perception of the legal profession than a lawyer serving as an Assistant Prosecuting Attorney, having engaged in what appears to have been a quid-pro-quo arrangement involving the exchange of sexual and legal favors. The potential negative effect on the public confidence in the administration of justice is too much to allow for reinstatement, and while the evidence produced at the Hearing met a general burden of proof for reinstatement – it failed to meet the applicable burden of persuasion by clear and convincing evidence.

IV. RECOMMENDATION

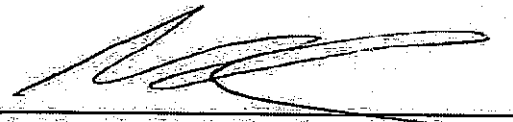
Based upon the foregoing, the Hearing Subcommittee recommends as follows:

1. The Petitioner's Petition for Reinstatement be **DENIED**; and,
2. The Petitioner pay the costs for this proceeding.

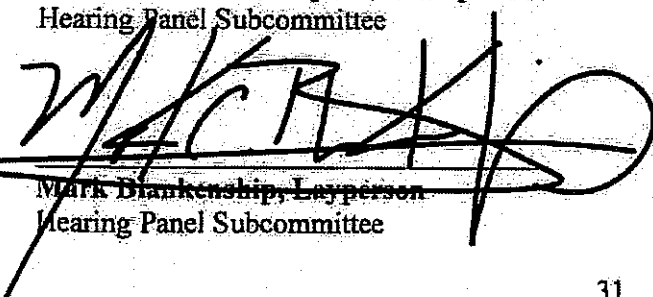
Dated this the 7th day of May, 2026.



Charles R. Steele, Esquire, Chairperson
Hearing Panel Subcommittee



Matthew L. Clark, Esquire
Hearing Panel Subcommittee



Mark Blankenship, Layperson
Hearing Panel Subcommittee

CERTIFICATE OF SERVICE

This is to certify that we, **Kristin P. Halkias and Lauren Hall Knight**, Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 14th day of May, 2026, served a true copy of the foregoing "**REPORT OF HEARING PANEL SUBCOMMITTEE**" to Petitioner, by mailing the same via Certified United States Mail, with sufficient postage, and electronically, through File and Serve Xpress, to the following address and e-mail:

Jarrell Lee Clifton II
1010 3rd Avenue
Marlington West Virginia 24954
Via Certified U. S. Mail

Jarrell Lee Clifton II
Petitioner
clifton_jl@yahoo.com

Charles R. Steele, Esquire
Chairman – HPS
chuck@steeleresolve.com

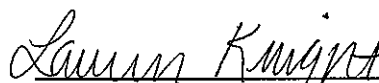
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Notice to Respondent: Within ten days after the filing of the report of the Hearing Panel Subcommittee, either the petitioner or Disciplinary Counsel shall have the right to make written request of the Court for a hearing upon the matters arising on the petition.

A stylized, cursive handwritten signature in black ink, appearing to read 'Kristin P. Halkias', positioned above a horizontal line.

Kristin P. Halkias

A cursive handwritten signature in black ink, appearing to read 'Lauren Knight', positioned above a horizontal line.

Lauren Hall Knight