IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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**In re: Petition for Reinstatement of
JARRELL LEE CLIFTON, II,
Petitioner,**

**No. 24-330**

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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 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.[1] [Jt. Ex. 1 at 55].[2]

On or about June 12, 2024, Petitioner filed with the Supreme Court of Appeals of West Virginia his Petition for Reinstatement, and the Office of Lawyer Disciplinary Counsel (hereinafter "ODC") commenced an investigation thereof. [Jt. Ex. 1]. The ODC reviewed the Petition, completed Reinstatement Questionnaire and 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 and 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 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

[1] 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.

[2] Joint Exhibits 1 through 22 are organized by Bates numbers in the bottom right-hand corner of the documents.

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; Matthew L. Clark, Esquire; and Mark Blankenship, Layperson. 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 several witnesses and Joint Exhibits 1 through 22 were admitted into evidence upon joint motion of Petitioner and ODC.

**B. <u>Underlying Disciplinary Matter</u>**

The HPS made the following findings of fact related to the underlying disciplinary matter that led to the annulment of Petitioner's license to practice law. Petitioner served as an assistant prosecuting attorney for Pocahontas County during the time 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 initiated on August 8, 2012. [Jt. Ex. 1 at 123]. The disciplinary proceedings were stayed pending the resolution of the criminal matter. [Id.] 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].[3]

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, the HPS in that matter 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

[3] The indictment was dismissed because the investigators believed the sexual encounters between Petitioner and T.S. were consensual, and not because they believed they did not happen. [Jt. Ex. 1 at 67].

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 62-64].

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. [Jt. Ex. 1 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.][4] 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 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 that 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.

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

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. Petitioner then 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 this 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 74-75].

At his sworn statement on January 30, 2025, 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]. Regarding the videotape of his sexual encounter with K.M., 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].[5] 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." [Id.][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.]

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[5] 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].

[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 he had surreptitiously videotaped of the two engaging in sexual intercourse. [Jt. Ex. 1 at 70]. This would have predated the Statement of Charges by almost four years.

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 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].

## C. Petitioner's History Since Disbarment

The HPS made the following findings of fact related to Petitioner's history since the annulment of his license to practice law. 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

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

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 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 Insurance Commissioner 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. [Id. at 302].

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 that 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 (7) 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. [Jt. Ex. 11 at 1221]. 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 works as a local mentor, as well. [Id. at 1221-23]. Petitioner was appointed to the Pocahontas Memorial Hospital Board of Trustees in 2014 by the County Commission. [Jt. Ex. 11 at 1224]. 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. [Id.] Petitioner and his wife currently reside in Marlinton with their three children, who are homeschooled.

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 initial 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

[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].

copy of the mid-1990s video of K.M. was destroyed following the November 2014 disciplinary hearing.

## D. Reinstatement Hearing

The HPS heard testimony from Petitioner, Kaitlin Tierney, Andrew "Frosty" McNabb, Brian Smith, Willard Clinton Carte, Mary Beth Barr, and Ellen Galford. The testimony of the witnesses is summarized as follows:

### 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. 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. 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. 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. 12-14].

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

**Andrew "Frosty" McNabb (via TEAMS)**

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 they and 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] were supposed to have taken advantage of some women or something or other." [Hrg. Tr. 28-30]. Mr. McNabb testified that Petitioner has the legal competence to assume the practice of law, 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 that Petitioner "changed a 180 from what" he used to be and that Petitioner 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 it was three, and that does give him pause. [Hrg. Tr. at 56-57]. He reiterated that he and Petitioner never discussed the situation and it never impacted their friendship, despite being initially disappointed in him. [Hrg. Tr. at 57].

**Brian Smith (via TEAMS)**

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. 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 accusation 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 disbarring Petitioner, he said he "would probably believe what [Petitioner] 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 be 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 (via TEAMS)**

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 almost 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 had never witnessed any "untoward behavior toward any of our female staff." [Hrg. Tr. 98]. Ms.

Barr felt that Petitioner was very honest in the committee meetings, and that she "would never have believed that [his] past had...happened" based upon her observations of him. [Id. at 99].

**Ellen Galford (via TEAMS)**

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 said that the women in the statement of charges were "questionable". [Hrg. Tr. at 112-113]. 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 111-112]. 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].

**<u>Jarrell L. Clifton, II, Petitioner, *pro se*</u>**

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 Pocohontas 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 1990s. [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.

[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

[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.]

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 any more 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].

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

On May 14, 2026, the HPS filed with the Court its Report regarding Petitioner's reinstatement. Upon a thorough review of the evidence before it, the HPS stated it "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..." [Report at 31]. Accordingly, the HPS found that Petitioner failed to show by clear and convincing evidence that he had met his burden regarding his request for reinstatement.

On May 21, 2026, the ODC, by counsel, consented to the HPS Report. On May 22, 2026, Petitioner filed an objection to the HPS Report and requested a hearing pursuant to Rule 3.33(c) of the Rules of Lawyer Disciplinary Procedure. By Order entered on May 22, 2026, this Honorable Court directed Petitioner to file a brief on or before July 6, 2026, and Respondent was directed to file their brief on or before August 20, 2026, with the Court notifying the parties of oral argument on a later date. Any reply brief deemed necessary was to be filed by Petitioner within twenty (20) days of the filing of Respondent's brief.

On June 25, 2026, Petitioner filed with the Court a motion for enlargement of time to file his brief to allow him time to retain counsel. The Court granted the motion and directed Petitioner to file his brief on or before July 20, 2026. Respondent was directed to file its brief by September 3, 2026, or withing forty-five (45) days of Petitioner's brief filing. Any reply brief may be filed within twenty (20) days of the filing of Respondent's brief. Petitioner filed his brief *pro se* on July

20, 2026. Oral argument is set for October 13, 2026, pursuant to Rule 19 of the Rules of Appellate Procedure.

## II. SUMMARY OF ARGUMENT

The evidence does not support a record of Petitioner acknowledging the wrongdoing identified by this Honorable Court, thereby preventing Petitioner from demonstrating successful rehabilitation on his part. Petitioner preyed on vulnerable people and took advantage of his position of authority in exchange for sexual favors. Ultimately, he failed to engage in sufficient rehabilitation efforts to overcome the egregiousness of his underlying conduct and, as a result, the record does not support the conclusion that there is little likelihood that, if reinstated, Petitioner will not engage in unprofessional conduct again. Accordingly, the HPS made the appropriate recommendation that Petitioner's license to practice law should not be reinstated and this Honorable Court is urged to accept the same and deny Petitioner's petition for reinstatement.

## III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to Rule 19 of the Rules of Appellate Procedure, this Honorable Court's Order set this matter for oral argument on October 13, 2026.

## IV. ARGUMENT

### A. <u>Standard of Review</u>

"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 3.33(b) of the Rules of Lawyer Disciplinary Procedure sets forth, in part, 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.

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.

*Brown* II at Syl. Pt. 1. 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*, 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.* 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.

This Honorable 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*, 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)). The burden of proof is on Petitioner to establish his case for reinstatement, and the standard of proof that Petitioner must meet to establish his case for reinstatement is that of clear and convincing evidence. *Brown*, 166 W. Va. at 229, 273 S.E.2d at 569; *In re Kohout*, 252 W. Va. 169, 182, 919 S.E.2d 72, 85 (2025).

### C. <u>The seriousness of the underlying offense leading to Petitioner's disbarment precludes reinstatement in this matter.</u>

As referenced *supra*, the Supreme Court of Appeals has long 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. In other words, "there will be cases where the original transgression is so threatening to the integrity of the entire legal system that no brief period of even the most exemplary conduct can provide satisfactory assurance to the Court that the public will be adequately protected." *In re Smith*, 214 W. Va. 83, 88, 585 S.E.2d 602, 607 (1980). Misconduct that rises to this level generally occurs "where the underlying offense was directly related to the practice of law." *Smith*, 214 W. Va. at 87, 585 S.E.2d at 606.

Here, while serving as an assistant prosecutor, Petitioner solicited sexually explicit pictures and videos from T.S. and received oral sex from her in his office at the courthouse while she was on probation and participating in Day Report. Petitioner also received oral sex from L.C. in his office at the courthouse while she was both a defendant and victim in a criminal matter, and he attempted to require K.M. to perform oral sex on him when she came to his office to discuss her son's criminal case. Petitioner also lied to investigators in an attempt to conceal his misconduct and he lied to the ODC regarding the recording of the sexual encounter between himself and K.M. Petitioner intentionally used his position as an assistant prosecutor to obtain sexual favors from vulnerable women, and he violated his duties owed to the public as a prosecutor as well as his duties to the legal system and legal profession. Petitioner's misconduct which led to his disbarment arose directly out of his practice of law and his misconduct violated his duty as an officer of the Court, undermined the foundations of the administration of justice, and was clearly inconsistent with the character expected of an attorney.

Upon reviewing the evidence in the underlying matter, the Supreme Court believed the testimony of the victims, who were not connected to one another prior to their involvement in the disciplinary matter. All three women told a similar story. The three victims were somehow involved in the criminal justice system in Pocahontas County, and Petitioner invited them to his office. While in the office, sexual banter ensued, he asked for them to expose their bodies to him, and he asked for, and received, oral sex. The Court determined the victims' accounts were credible, and that Petitioner, who had repeatedly lied, was not. Additionally, it is important to note that although Petitioner's indictment for his sexual misconduct while working as an assistant prosecuting attorney was dismissed, the reason for the dismissal was that the investigators "determined that the sexual encounters" between Petitioner and T.S. were consensual, not that they did not happen. [Jt. Ex. 1 at 67].

The HPS properly concluded that it "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." Indeed, Petitioner used his position as assistant prosecuting attorney to take advantage of three women on multiple occasions and was found to have knowingly and intentionally violated his duty to the State by engaging in sexual relationships with vulnerable women who were either a victim, a defendant, or seeking help for another defendant. *Law. Disciplinary Bd. v. Clifton*, 236 W. Va. 362, 378-81, 780 S.E.2d 628, 644-47 (2015). Accordingly, the seriousness of underlying misconduct should preclude reinstatement in this matter.

**D. <u>Petitioner has not acknowledged his conduct and has not established a record of rehabilitation in this matter, leaving the public at risk should his privilege to practice law be restored.</u>**

Even if the seriousness of the underlying misconduct does not preclude reinstatement as a threshold matter, Petitioner has failed to convincingly establish a record of rehabilitation. In a reinstatement proceeding, it is Petitioner's burden to establish a record of rehabilitation that overcomes the adverse effect of his disbarment. In this regard, general testimony that Petitioner is of good moral character is entitled to little weight and mere passage of time alone is insufficient to warrant reinstatement.

In applying the five factors set forth in *Brown* II, it is clear that the nature of the original offense for which Petitioner was disbarred is extremely serious. As to Petitioner's character, maturity, and experience at the time of his disbarment, the Court distinguishes "between the conduct of younger, less experienced attorneys and that of attorneys with more experience and sophistication." *Kohout*, 252 W. Va. at 185, 919 S.E.2d at 88. This factor is "designed to permit forgiveness of a young man who has been stupid in his youth," and it recognizes that "a youthful and inexperienced attorney may have blundered as a result of inexperience rather than as a result of deliberate calculation" *Smith*, 214 W. Va. at 88, 585 S.E.2d at 607; *Brown*, 166 W. Va. at 235, 273 S.E.2d at 572. Regarding his character, the opinion annulling Petitioner's law license sets forth that he knowingly and intentionally violated his duties owed to the State, the public, and the legal system and that he adversely impacted the fair administration of justice by abusing his position as an assistant prosecutor to elicit sexual behavior from vulnerable woman. [Jt. Ex. 1 at 96-97]. Moreover, Petitioner was dishonest with investigators and the ODC and was found to have "exhibited a pattern and practice of using the office of the prosecuting attorney and his position as assistant prosecuting attorney for his own sexual gratification." [Id. at 97]. Petitioner's character was clearly inconsistent with that expected of an attorney.

Regarding his maturity and experience, Petitioner was in his forties when he committed the underlying misconduct and had significant life experience as a business owner, law enforcement officer, and CPS worker. Although Petitioner had been licensed to practice law for less than five years when he engaged in the underlying misconduct, it is clear that his misconduct was due to deliberate calculation rather than inexperience in the practice of law. Moreover, an attorney does not require any level of experience in the practice of law to understand that soliciting oral sex from women involved in the criminal justice system as a prosecutor and lying to investigators and the ODC is wrong. 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." Accordingly, this factor weighs against reinstatement.

Regarding his occupations and conduct since disbarment, despite the fact that Petitioner continued to engage in community service as he did prior to his disbarment, he has yet to accept ownership and responsibility for his misconduct as determined by the Supreme Court. During the questioning of the witnesses at the hearing, it was apparent that Petitioner had never discussed his underlying misconduct with any of the witnesses. When describing his misconduct for the witnesses, he seemingly, by his wording, appeared to accept responsibility for his misconduct, saying he lied and violated the Rules of Professional Conduct. However, during his own testimony, he clarified that he was not admitting to the actual misconduct despite the evidence to the contrary in the underlying matter, but was only admitting that he had been found by clear and convincing evidence to have engaged in the underlying misconduct. Petitioner acknowledged that the Supreme Court concluded that the misconduct happened, but he refused to admit the full scope of his sexual misconduct, including that he received oral sex from T.S. and L.C. in his office and that he exposed himself to K.M. and attempted to require her to perform oral sex on him in his office, all of which is a significant component of the factual scenario that led to his disbarment.

Further, Petitioner attempts to reframe his deception as it relates to the videotape of his sexual encounter with K.M. In the reinstatement proceedings, Petitioner testified that he only discovered that he still possessed the videotape *after* he filed his Answer and Affirmative Defenses denying the existence of the videotape. [Hrg. Tr. at 159-60]. In the underlying disciplinary proceedings, Petitioner testified that he found the videotape during the pendency of his criminal case and he specifically testified: "At that point when the case was dismissed, I placed it into a safety deposit box because I did not want to destroy it. I did not want to be accused of destroying evidence." [Jt. Ex. 5 at 541]. As Petitioner's criminal case was dismissed on January 8, 2013, several months before the filing of his Answer and Affirmative Defenses, his testimony in the instant proceedings regarding the videotape is clearly inconsistent from his prior testimony regarding this issue. This inconsistency is especially glaring considering that his prior testimony on this issue is what led the Court to find that he lied to the ODC in his Answer and Affirmative Defenses when he stated that he "no longer possessed the videotape." [Jt. Ex. 1 at 93].

Petitioner lied to investigators, law enforcement, and disciplinary counsel in the underlying matter about his involvement with every victim until he was presented with irrefutable evidence to the contrary. At the hearing herein, Petitioner was asked if he was honest with investigators, he said he "withheld information as long as [he] could" and "wasn't upfront" with them. [Hrg. Tr. at 144]. However, Petitioner was not simply withholding information from the investigators, he was actually misleading them and lying. For example, when initially asked about his relationship with T.S., he indicated it was only professional, that they were working on bringing a bowling alley to the area. It was not until law enforcement provided him with copies of his inappropriate sexual messages with her that he finally admitted the nature of the relationship. Throughout the inquiry, he exhibited a pattern of misleading investigators until confronted with direct evidence to the contrary, at which point he was forced to admit the behavior.

Although Petitioner's involvement in community service and outreach activities is respectable, it is not demonstrative of a course of conduct that would enable the Court to conclude that if Petitioner is readmitted to the practice of law there would be little likelihood that Petitioner will engage in unprofessional conduct. Petitioner provided a resume containing current community involvement; however, the record demonstrates that Petitioner was always community oriented and invested in others even before his disbarment. Petitioner testified that his niece was shocked by his misconduct because she thought he was "one of the good guys." [Hrg. Tr. at 121]. Ms. Galford testified that prior to his disbarment, Petitioner's behavior had always been "unquestionable." [Hrg. Tr. at 113]. Mr. Carte testified that Petitioner had taken him under his wing and had gotten him involved in the community during his time in Marlinton prior to Petitioner losing his law license. [Hrg. Tr. at 69]. At the time of his misconduct, Petitioner intentionally presented a public persona that was very different than the private one he exhibited for the victims in his office at the courthouse.

To the public, Petitioner was a happily married family man, but behind the doors of his office in the prosecutor's office, he was quick to engage in sexual banter with all three victims and request and exchange sexually explicit pictures, which were, as noted above, only admitted to by Petitioner when he was confronted with them. It is Petitioner's testimony that despite all the evidence, despite taking a picture of his own penis with T.S.'s phone, despite asking her to hold his penis when she was wired, despite exchanging explicit messages over a long period, and asking all three victims to meet him in his office to discuss their cases, that he never engaged in the sexual conduct that was described in detail by all three women. This is stated not to relitigate the matter, rather, to demonstrate that by failing to acknowledge that the conduct occurred, Petitioner cannot express sincere remorse or engage in rehabilitation efforts sufficient to overcome concerns that he will engage in misconduct again. Without sufficient rehabilitation, Petitioner cannot establish that he possesses the integrity and moral character to resume the practice of law. Given the intentional clandestine and deceitful nature of Petitioner's prior misconduct, it is not behavior that can easily be corrected or even supervised. The practice of law is a sacred endeavor that requires lawyers to be trustworthy and to safeguard their clients from the very conduct Petitioner engaged in but fails to fully acknowledge.

Ms. Tierney testified that Petitioner told her he was a very different person prior to getting married and having a family. However, Petitioner testified in his sworn statement that he married his current wife on March 19, 2009, and their first child was born on November 12, 2011, indicating that he was already married and a parent when he asked the vulnerable women to come to his office and perform sex acts on him in exchange for favors. [Ex. 11 at 1195].

Rehabilitation on the part of Petitioner includes not only a demonstration of subsequent appropriate behavior, but also a state of mind in which he comes to terms with his past wrongdoing in such a way that his adherence to high moral standards in the future can be assured. Petitioner provided summarized notes of his meetings with a religious counselor focusing on his marital relationship. Although the notes reference in passing that Petitioner had suffered a professional situation that created problems with his marriage, the sessions were marital counseling that did not address or treat, if even possible, the underlying issues that prompted Petitioner to engage in his professional misconduct. Petitioner has presented a case for reinstatement that because he is married, has a family, is active in the community, and involved in his Church that he is reformed and no longer a danger to the public. However, at the time he was inappropriately engaging with the victims herein and asking them to come to his office to engage in sexual acts, Petitioner was married, had a family, was active in his community, and involved in his church. As such, Petitioner's occupations and conduct since disbarment do not provide proof of rehabilitation for reinstatement purposes. Thus, not only is the evidence not clear and convincing that Petitioner will not engage in the conduct that led to his disbarment if he is reinstated, but Petitioner's failure also to engage in any meaningful rehabilitation regarding his very real issues with inappropriate behavior with females, indicate that there is a strong likelihood of a repeated course of conduct.

As to the fourth factor, although it has been over 10 years since Petitioner's disbarment, the mere passage of time alone is insufficient to warrant reinstatement. *Brown*, 166 W. Va. at 234-35, 273 S.E.2d at 571-72. With regard to the passage of time: "Many reasons can be seen for considering of the passage of time in evaluating a petition for reinstatement from disbarment: Time may bring greater maturity than at the time of the misconduct; time may give an opportunity for a person to recognize, address, and overcome the circumstances and conditions that led to the misconduct; time may reduce the perception of the misconduct's gravity, perhaps because of changing mores or by placing the conduct in a historical perspective." *Lawyer Disciplinary Bd. v. Moore*, 214 W. Va. 780, 793, 591 S.E.2d 338, 351 (2003). As discussed above, Petitioner continues to deny misconduct that contributed greatly to his disbarment. As Petitioner has failed to adequately address the underlying misconduct, the passage of time does not weigh in favor his reinstatement. As to the fifth factor, the record demonstrates that Petitioner presently possesses the legal competence to resume the practice of law.

The Supreme Court has previously denied petitions for reinstatement of disbarred lawyers who failed to accept responsibility for the wrongfulness of their prior misconduct. *See In re Kohout*, 252 W. Va. 169, 919 S.E.2d 72 (2025) (denying reinstatement where the petitioner, among other things, continued to deny committing multiple acts of misconduct despite the Court's final resolution of these matters in his prior disciplinary proceeding); *In re Reinstatement of Drake*, 242 W. Va. 65, 829 S.E.2d 267 (2019) (denying reinstatement where the petitioner, who was disbarred after pleading guilty to embezzlement, attempted to qualify the money taken from the trust with excuses ranging from an alleged lack of experience to downplaying the amount owed in forensic accounting and legal fees to ascertain how much was taken from the trust); *In re Reinstatement of diTrapano*, 233 W. Va. 754, 760 S.E.2d 568 (2014) (denying reinstatement where the petitioner, among other things, was convicted of knowingly making a false statement to the bank and attempted to minimize his misconduct by testifying that he thought he had authority to execute the loan documents and that the client was not ultimately harmed by his actions); *Lawyer Disciplinary Bd. v. Moore*, 214 W. Va. 780, 591 S.E.2d 338 (2003) (denying reinstatement where the petitioner, among other things, insisted that he was innocent of most, if not all, of the conduct and behavior that led to his disbarment).

In *In re Reinstatement of Sparks*, the disbarred lawyer seeking reinstatement consented to disbarment after he pleaded guilty to the misdemeanor offense of deprivation of rights under the color of law for depriving a criminal defendant of his right to counsel of his choice while acting in his capacity as the elected prosecuting attorney. *In re Reinstatement of Sparks*, 252 W. Va. 335, 337, 922 S.E.2d 335, 337 (2025). The Court found that although Mr. Sparks presented himself as "a dedicated family man, church-going, and active in his community" and offered expressions of remorse and acceptance of responsibility in the reinstatement proceedings, he failed to demonstrate the requisite rehabilitation to justify reinstatement as his testimony in the reinstatement proceedings downplayed his misconduct and substantially differed from the facts he agreed to under oath in the underlying criminal matter. *Sparks*, 252 W. Va. at 341, 344, 348, 922 S.E.2d at 341, 344, 348.

Here, not only did Petitioner deny that he received oral sex from T.S. and L.C. in his office and that he exposed himself to K.M. and attempted to require her to perform oral sex on him in his office, but his testimony during the reinstatement proceedings was also inconsistent from his testimony in the underlying disciplinary proceedings regarding critical issues. First, as previously discussed, Petitioner's testimony regarding when he discovered that he still possessed the videotape of his sexual encounter with K.M. was inconsistent from his prior testimony on this issue. Petitioner also attempted to distance himself from his testimony in the underlying disciplinary hearing that he "most certainly" had an issue with pornography by testifying that this was simply a defense strategy to seek mitigation from the Court. Petitioner's prior testimony regarding the "counseling" that he received to keep his issues with pornography "under control" was also misleading as Petitioner now clarifies that he was referring to discussions with local pastors rather than counseling in a clinical sense.

Petitioner contends that his record post disbarment "speaks for itself" and offered statements reflecting remorse, however "rehabilitation sufficient to warrant reinstatement is not demonstrated solely by falling on one's sword and thereafter avoiding personal or professional missteps—that is the bare minimum expected from a disbarred attorney before seeking reinstatement. Accountability must be more than superficial; it must be thorough and consistently reflected in a lawyer's words and actions." *Sparks*, 252 W. Va. at 346, 922 S.E.2d at 346. The lack of thorough accountability and inconsistencies displayed throughout his testimony further show that Petitioner has not demonstrated adequate rehabilitation.

**E. Reinstatement will have a justifiable and substantial adverse effect on the public confidence in the administration of justice.**

Petitioner has also failed to carry his burden to prove that his reinstatement will not have a justifiable and substantial adverse effect on the public confidence in the administration of justice. 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). Petitioner's previous misconduct, an important consideration in this regard, was extremely serious and egregious, showing a willingness to be dishonest, to deceive, and to manipulate and violate the law for both personal and professional gain when he was placed in a position of public trust.

Moreover, Petitioner has indicated a desire to be a guardian ad litem or public defender should he be reinstated, which will lead to many opportunities for Petitioner to be alone with vulnerable clients.

Although Petitioner introduced testimony and letters of support from friends and other members of the community who indicated that there would not be an adverse impact on public confidence in the administration of justice, "general statements and letters from attorneys, friends, and community leaders on behalf of a petitioner are of little evidentiary value." *Lawyer Disciplinary Bd. v. Vieweg*, 194 W. Va. 554, 560, 461 S.E.2d 60, 65 (1995). Moreover, the Court has previously "expressed concern when personal opinions about a disbarred lawyer's character or legal competence are provided by persons who do not fully understand the offenses underlying the disbarment." *Kohout,* 252 W. Va. at 178 n. 14, 919 S.E.2d at 81 n. 14 (citing *Drake*, 242 W. Va. at 71, 829 S.E.2d at 273). It is imperative to point out that the majority of Petitioner's witnesses neither knew the details of the actual misconduct that led to his disbarment, nor did they care to know, and none of them had ever discussed the matter with Petitioner. There was reference made to the "questionable" reputations of the female victims in Petitioner's underlying matter, but any negative reputation attached to Petitioner as a result of his misconduct was considered "rumor" and was easily dismissed.

Most importantly, Petitioner's victims were not a CFO of a hospital, an elderly businesswoman who went to high school with his parents, lawyers, or male. Petitioner's victims were vulnerable women he took advantage of because he had power and opportunity, which is a position he may very well be in again if reinstated. Petitioner successfully concealed his inappropriate behavior with women from the public, family, and friends, and easily engaged in sexual banter with all three women once they were in private, and it is a very real threat to the public should he be licensed to practice again. Not only is the evidence *not* clear and convincing that Petitioner will not engage in the conduct that led to his disbarment if he is reinstated, his failure to engage in any meaningful rehabilitation regarding his very real issues with inappropriate behavior with females, indicates that there is a strong likelihood of a repeated course of conduct. Most concerning was Petitioner's dishonesty when first questioned about the conduct. Had there not been Facebook messages and screenshots and recordings with which to confront Petitioner, it is very likely he would have continued to deny any involvement. Thus, based upon the nature of the original offenses leading to Petitioner's disbarment, the witness testimony discussed herein, and the lack of clear and convincing evidence of rehabilitation, Petitioner's reinstatement would have a justifiable and substantial adverse effect on the public confidence in the administration of justice, and the HPS was correct in recommending that his request for reinstatement be denied.

## V. CONCLUSION

This Honorable Court has the duty to protect the public and preserve the integrity of its Courts and our system of justice. Rule 1 of the Rules of Lawyer Disciplinary Procedure states, in part, "The standard of professional ethics and conduct of the bench and bar is of the highest importance to the people of the State of West Virginia and to the members of the legal profession." Practicing law is a privilege and an honor, not an entitlement. Petitioner bore the burden of proving that he currently possesses the moral character and integrity to uphold the high standards of the legal profession. He has not provided any evidence of rehabilitation, or even acknowledgment of his role, in the terribly inappropriate and harmful situations he created for the victims in the underlying cases. Without genuine acknowledgment and ownership of his misconduct, Petitioner has failed to show by clear and convincing evidence that he has been sufficiently rehabilitated to be trusted with the authority that comes with bearing a law license. In fact, he provided evidence to the contrary. The HPS properly found that rehabilitation on the part of Petitioner must include not only a demonstration of subsequent appropriate behavior, but also a state of mind in which he comes to terms with his past wrongdoing in such a way that his adherence to high moral standards, necessary to the practice of law, can be assured in the future, and Petitioner failed to meet that burden.

A review of the record clearly indicates that the HPS properly considered the evidence and made an appropriate recommendation to this Honorable Court. Petitioner has failed to meet his heavy burden of persuasion in order to be reinstated to the practice of law in West Virginia. Accordingly, the Lawyer Disciplinary Board opposes reinstatement in this matter and urges this Honorable Court to deny Petitioner's petition for reinstatement and require Petitioner to pay the costs of this proceeding pursuant to Rule 3.33(g) of the Rules of Lawyer Disciplinary Procedure.

*Respectfully Submitted,*
The Lawyer Disciplinary Board
By Counsel

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## CERTIFICATE OF SERVICE

This is to certify that I, Kristin P Halkias, Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 27th day of August, 2026, served a true copy of the foregoing **"Reply Brief of the Lawyer Disciplinary Board"** upon Jarrell Lee Clifton, II, Petitioner, electronically via File & Serve Xpress and e-mail, to the following address:

clifton_jl@yahoo.com

Kristin P. Halkias