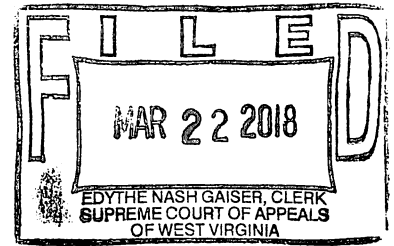


IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA



IN RE: PETITION FOR REINSTATEMENT OF
L. DANTÉ diTRAPANO,

No. 16-0869

BRIEF OF THE OFFICE OF
LAWYER DISCIPLINARY COUNSEL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

I. STATEMENT OF THE CASE.....1

 A. NATURE OF PROCEEDINGS AND RECOMMENDATION OF THE HEARING PANEL
 SUBCOMMITTEE1

 B. FINDINGS OF FACT5

 1. PETITIONER’S HISTORY UP TO HIS 2007 DISBARMENT5

 2. PETITIONER’S HISTORY SINCE HIS 2007 DISBARMENT12

 3. REINSTATEMENT HEARING18

II. SUMMARY OF ARGUMENT23

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION24

IV. ARGUMENT24

 A. STANDARD FOR REINSTATEMENT24

 B. PETITIONER HAS FAILED TO PROVE THAT HE PRESENTLY POSSESSES THE
 INTEGRITY, MORAL CHARACTER AND LEGAL COMPETENCE TO RESUME THE
 PRACTICE OF LAW27

 1. THE SERIOUSNESS OF PETITIONER’S UNDERLYING OFFENSE PRECLUDES
 REINSTATEMENT27

 2. PETITIONER HAS FAILED TO DEMONSTRATE REQUISITE
 REHABILITATION30

V. CONCLUSION.....35

TABLE OF AUTHORITIES

Cases:

Committee on Legal Ethics v. Blair

174 W.Va. 494, 327 S.E.2d 671 (1984).....26

Committee on Legal Ethics v. Karl

192 W.Va. 23, 449 S.E.2d 277 (1994).....26

Committee on Legal Ethics v. McCorkle

192 W.Va. 286, 452 S.E.2d 377 (1994).....26

Committee on Legal Ethics v. Pence

171 W.Va. 68, 74, 297 S.E.2d 843, 849 (1982).....29

In re Brown (Brown I)

164 W.Va. 234, 237, 262 S.E.2d 444, 446 (1980).....25

In re Brown (Brown II)

166 W.Va. 226, 273 S.E. 2d 567 (1980).....23, 25, 27, 35

In re Hiss

368 Mass. 447, 333 N.E.2d 429 (1975).....25

In the Matter of: Steven M. Askin

No. 30724 (W.Va. May 11, 2006)28

In re diTrapano

233 W.Va. 754, 767-68, 760 S.E.2d 568, 581-82 (2014)30, 34

In Re: Petition for Reinstatement of Thomas E. Esposito

No. 11-0671 (W. Va. June 12, 2013).....28

In Re: Petition for Reinstatement of William T. Douglass, Jr.

No. 14-0944 (W. Va. Jan. 20, 2016).....28

In Re: Petition for Reinstatement of Mark O. Hrutkay

No. 11-0136 (W. Va. June 12, 2013).....28

In re Smith

214 W.Va. 83, 85, 585 S.E.2d 602, 604 (1980).....26, 31

Lawyer Disciplinary Board v. Arch A. Moore, Jr.

214 W.Va., 780, 591 S.E.2d 338 (2003).....28

Lawyer Disciplinary Board v. ReBrook

No. 26556 (W. Va. May 9, 2001)28

Lawyer Disciplinary Board v. Sayre

207 W.Va. 654, 535 S.E.2d 719 (2000).....25

Lawyer Disciplinary Board v. Vieweg

194 W.Va. 554, 559, 461 S.E.2d 60, 65 (1995).....27

Roark v. Lawyer Disciplinary Board

207 W.Va. 181, 495 S.E.2d 552 (1997).....26

West Virginia Statutes and Rules:

R. of Appellate Proc.	Rule 19.....	2, 5, 24
R. Law Disc. Proc.	Rule 3.7.....	26
R. Law Disc. Proc.	Rule 3.15.....	4
R. Law Disc. Proc.	Rule 3.18.....	11, 12
R. Law Disc. Proc.	Rule 3.18(f).....	12
R. Law Disc. Proc.	Rule 3.24(a).....	26
R. Law Disc. Proc.	Rule 3.27.....	9
R. Law Disc. Proc.	Rule 3.27(c).....	9
R. Law Disc. Proc.	Rule 3.7.....	26
R. Law Disc. Proc.	Rule 3.30.....	1, 2, 24

R. Law Disc. Proc.	Rule 3.33	1, 2
R. Law Disc. Proc.	Rule 3.33(b)	2, 15
R. Professional Conduct	Rule 1.15(b)	31
R. Professional Conduct	Rule 8.4(b)	11, 12
Other:		
United State Code	18 U.S.C. §§922(g)(3)	8, 17, 23, 29, 31
United States Code	18 U.S.C. §924(a)(1)(A)	8
United States Code	18 U.S.C. §§924(a)(2).....	8, 17, 23, 29, 31
United States Code	18 U.S.C §1014.....	13, 23, 29, 32
United States Code	18 U.S.C. §3145(b).....	9

I. STATEMENT OF THE CASE

A. NATURE OF PROCEEDINGS AND RECOMMENDATION OF THE HEARING PANEL SUBCOMMITTEE

The Supreme Court of Appeals of West Virginia (hereinafter “Supreme Court”) annulled the law license of L. Danté diTrapano (hereinafter “Petitioner”) on May 10, 2007. Pursuant to Rules 3.30 and 3.33 of the West Virginia Rules of Lawyer Disciplinary Procedure, on or about June 1, 2012, Petitioner filed the “Petition of L. Danté diTrapano for Readmission to the Practice of Law in West Virginia” (hereinafter “2012 Petition for Readmission”). Thereafter, on March 27, 2013 and April 17, 2013, Petitioner’s Reinstatement Hearing was held in Charleston, West Virginia. The Hearing Panel Subcommittee heard testimony from sixteen witnesses.

On or about July 8, 2013, Petitioner filed the “Brief of Petitioner’s Proposed Findings of Fact, Conclusions of Law and Recommendation as to Reinstatement.” Thereafter, on or about July 19, 2013, the Office of Lawyer Disciplinary Counsel filed “The Office of Disciplinary Counsel’s Recommendation Regarding the Reinstatement Petition of L. Danté diTrapano.”

On or about October 17, 2013, the Hearing Panel Subcommittee submitted its “Report and Recommendation of the Hearing Panel Subcommittee,” wherein the Hearing Panel Subcommittee recommended that Petitioner’s law license be reinstated upon Petitioner’s satisfactory completion and termination of his sentence of supervised release, subject to conditions the Hearing Panel Subcommittee recommended. Thereafter, on or about October 24, 2013, the Office of Lawyer Disciplinary Counsel requested a hearing with the Supreme Court upon the matters arising on the petition.

By Order entered October 29, 2013, the Supreme Court ordered the parties to submit briefs on the matters arising on the 2012 Petition for Readmission as contained therein and set

the case for oral argument pursuant to Rule 19 of the West Virginia Rules of Appellate Procedure. On or about December 23, 2013, the Office of Lawyer Disciplinary Counsel filed the “Brief of the Office of Disciplinary Counsel,” and on or about January 6, 2014, Petitioner filed the “Reply Brief of the Petitioner Louis Danté diTrapano.”

On January 28, 2014, the parties appeared before the Supreme Court for oral argument. Thereafter, on June 18, 2014, the Supreme Court issued its opinion wherein it found that Petitioner had not satisfied his burden of showing that he presently possessed the integrity and moral character to resume the practice of law, and concluded that reinstatement would have a justifiable and substantial adverse effect on the public’s confidence in the administration of justice. Accordingly, the Supreme Court declined to reinstate Petitioner’s law license.

On or about September 16, 2016, pursuant to Rules 3.30 and 3.33 of the Rules of Lawyer Disciplinary Procedure, Petitioner filed the “Petition of L. Danté diTrapano for Readmission to the Practice of Law in West Virginia” (hereinafter “Petition for Reinstatement”). Along with the Petition for Reinstatement, pursuant to Rule 3.33(b) of the Rules of Lawyer Disciplinary Procedure, Petitioner filed his “Reinstatement Questionnaire,” which included, among other things, letters written in support of his reinstatement. (Joint Exhibit 40 at 000933-000936, 001030-001037, 001077-001078, 001083-001084).¹

The Office of Lawyer Disciplinary Counsel commenced an investigation pursuant to Petitioner’s Petition for Reinstatement. The undersigned took Petitioner’s sworn statement on or about January 19, 2017. (Joint Exhibit 46). Pursuant to Rule 3.33 of the Rules of Lawyer Disciplinary Procedure, the Office of Lawyer Disciplinary Counsel filed its report with the Hearing Panel Subcommittee of the Lawyer Disciplinary Board on June 26, 2017. The Office of

¹ The 2012 Petition for Reinstatement contained additional letters written in support of Petitioner’s reinstatement. Those letters are incorporated by reference herein. (Joint Exhibit 52 at 001385-001424).

Lawyer Disciplinary Counsel then filed its “Amended Report of the Office of Disciplinary Counsel Regarding the Reinstatement Petition of L. Danté diTrapano” on July 28, 2017.

The matter then proceeded to hearing in Charleston, West Virginia, on September 19 & 20, 2017. The Hearing Panel Subcommittee, comprised of Anne Werum Lambright, Esquire, Chairperson; Jay T. McCamic, Esquire; and Reverend Robert Wood, laymember, presided over the proceedings. Petitioner appeared *pro se*. Joanne M. Vella Kirby, Lawyer Disciplinary Counsel, appeared on behalf of the Office of Lawyer Disciplinary Counsel. The Hearing Panel Subcommittee heard testimony from William Stuart Calwell, W. Brad Sorrells, Dwaine Osborne, George Daugherty, Teri diTrapano, Tom Flaherty, Robert Albury, Jr., Bobbi Holland, Joey Holland and Petitioner. Additionally, Joint Exhibits 1-53 were admitted into evidence.

On or about November 13, 2017, the Office of Lawyer Disciplinary Counsel filed “The Office of Lawyer Disciplinary Counsel’s Report and Recommendation Regarding the Reinstatement Petition of L. Danté diTrapano.” Also on or about November 13, 2017, Petitioner filed the “Brief of Petitioner’s Proposed Findings of Fact, Conclusions of Law and Recommendation as to Reinstatement.” Thereafter, on or about November 16, 2017, the Office of Lawyer Disciplinary Counsel filed “The Office of Lawyer Disciplinary Counsel’s Amended Report and Recommendation Regarding the Reinstatement Petition of L. Danté diTrapano.”²

On or about January 8, 2018, the Hearing Panel Subcommittee issued its recommendation in this matter and filed with the Supreme Court its “Report and Recommendation of the Hearing Panel Subcommittee Regarding the Reinstatement Petition of L. Danté diTrapano” (hereinafter “Report”), wherein the Hearing Panel Subcommittee recommended that Petitioner’s law license be reinstated without further petition or hearings after he has honored his commitment to The

² The Office of Lawyer Disciplinary Counsel filed the Amended Report to correct errors in the original report, as previously explained in the Amended Report.

West Virginia State Bar by successfully completing the terms of his December 1, 2016 West Virginia Judicial & Lawyer Assistance Program monitoring agreement/contract. The date of completion in the contract is November 30, 2021.

The Hearing Panel Subcommittee also issued the following recommendation as appropriate conditions:

1. Immediately before completion of the monitoring agreement/contract, Director Albury, his successor or his designee report to the Court as to whether the monitoring contract/agreement currently in place should be extended, as Petitioner volunteered to do;
2. Petitioner's practice of law be supervised for a period of two (2) years following his reinstatement pursuant to written agreement between Petitioner, his supervisor, and the Office of Lawyer Disciplinary Counsel. The supervising attorney must be someone other than his current employer and the agreement shall, among other matters, require the supervising attorney to: meet at least twice per month with Petitioner and have complete access to Petitioner's files, calendar and trust account. The supervising attorney shall file monthly reports with the Office of Lawyer Disciplinary Counsel and respond to inquiries by the Office. Petitioner shall be candid and cooperative with the supervising attorney and shall follow his recommendations and directives. Petitioner shall not be reinstated until this agreement is executed by all parties
3. Prior to reinstatement, Petitioner be required to pay his dues to The West Virginia State Bar and complete all required CLEs; and
4. Petitioner be ordered to reimburse the Lawyer Disciplinary Board the costs of these reinstatement proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

Thereafter, on or about January 18, 2018, the Office of Lawyer Disciplinary Counsel filed its objection to the disposition recommended in the Hearing Panel Subcommittee's Report, and requested a briefing schedule. By Order entered January 19, 2018, the Supreme Court ordered the parties to submit briefs on the matters arising on the Petition for Reinstatement, and set the case for oral argument pursuant to Rule 19 of the West Virginia Rules of Appellate Procedure. On or about February 22, 2018, the West Virginia Judicial and Lawyer Assistance Program filed the "Amici Curiae Brief of West Virginia Judicial and Lawyer Assistance Program in Support of Petitioner L. Danté diTrapano's Petition for Readmission." On or about February 23, 2018, Petitioner filed the "Brief of Petitioner L. Danté diTrapano."

B. FINDINGS OF FACT

1. Petitioner's History up to his 2007 Disbarment

Petitioner was born in Charleston, West Virginia on October 23, 1962, the second oldest child in a family of five children. (Tr. at 288-289). Growing up, Petitioner was especially close with his younger brother, who was eighteen months younger than Petitioner. (Tr. at 289). Although Petitioner began experimenting with drugs and alcohol during his teenage years, Petitioner went from being a recreational user to being out of control when his younger brother died in an automobile accident at age eighteen.³ Id. In late 1988, Petitioner sought in-patient treatment for his addictions at the Charlotte Treatment Center in Charlotte, North Carolina. (Tr. at 291; Joint Exhibit 40 at 000911). Petitioner became "clean" on February 22, 1989, and remained drug and alcohol free for a period of approximately fifteen years. Id.

³ In the years following his brother's death, Petitioner not only struggled with drug and alcohol addiction, but also was charged with various crimes that related to his drug and alcohol abuse, including charges relating to possession of controlled substances that were dismissed, and driving under the influence charges to which Petitioner pled guilty, was fined and spent brief periods of time in jail. (Tr. at 299-304; Joint Exhibit 40 at 001047).

During that time, Petitioner met his wife, started their family, completed college, attended and completed law school, and worked as a successful attorney in his father's law firm in Charleston. (Tr. at 290-294; Joint Exhibit 40 at 000911, 000926). Petitioner regularly attended twelve-step meetings and actively focused on his sobriety for the first ten of the fifteen years that he was sober. Id. According to Petitioner, he did not regularly attend his meetings or remain focused on his sobriety during the last five of the aforementioned fifteen years, because he was frequently traveling throughout the country as part of his work. (Tr. at 294-295; Joint Exhibit 40 at 000926).

In 2004, Petitioner developed a cough with chest pain and wheezing. (Tr. at 295-296; Joint Exhibit 40 at 000926). Petitioner was coughing and wheezing while coaching his son's sports team, when a father of one of the players, a physician, suggested that Petitioner come into his office in order to receive an examination. Id. Without having asked Petitioner about any history of substance abuse, and without Petitioner having volunteered information regarding the same, the physician prescribed Petitioner cough syrup, which contained hydrocodone. (Tr. at 296; Joint Exhibit 40 at 000926). Petitioner stated that although he knew he should not have taken the medicine, he did anyway, and quickly became addicted to it. Id.

For the next year, Petitioner abused the cough syrup, which eventually led to Petitioner abusing oxycodone. (Tr. at 296-297; Joint Exhibit 40 at 000926). Additionally, in 2005, the five year old son of one of Petitioner's friends accidentally drowned in Petitioner's family pool and Petitioner's wife's best friend/his paralegal died in the Petitioner's family home where she had been living. (Tr. at 312-313; Joint Exhibit 40 at 000926). Petitioner maintained that after these tragic events, he "spun completely out of control" and began smoking crack cocaine. Id. In early

2006, Petitioner's family and friends intervened, and Petitioner agreed to seek treatment for his drug addiction in Florida. (Tr. at 297-299, 307).

On or about March 14, 2006, while in Florida to begin treatment, Petitioner was arrested in St. Petersburg, Florida and charged with possession of cocaine. (Tr. at 307; Joint Exhibit 11 at 000033, 000041)⁴. Petitioner pled not guilty to the charges, and was able to post bond with the condition that he report to a treatment facility for his substance abuse. (Joint Exhibit 40 at 001048). A felony information was subsequently filed in the Pinellas County Court on or about April 5, 2006. (Joint Exhibit 11 at 000033, 000041; Joint Exhibit 40 at 001048).

On or about March 16, 2006, Lawrence J. Lewis, then Chief Disciplinary Counsel, sent Petitioner correspondence that advised Petitioner that the Office of Disciplinary Counsel had initiated an investigation regarding Petitioner's recent conduct and arrest in Florida. Petitioner was asked to provide a verified response within twenty days of receipt of the March 16, 2006 correspondence.

On or about April 6, 2006, a federal search warrant was executed for Petitioner's home in Charleston, West Virginia. (Tr. at 307-309). Among the items seized were several loaded firearms⁵, ammunition, and crack cocaine. Id.

Thereafter, on or about April 14, 2006, Mr. Lewis sent Petitioner additional correspondence regarding the Office of Disciplinary Counsel's pending investigation concerning Petitioner. Again, Petitioner was asked to provide a verified response within twenty days of receipt of the April 14, 2006 correspondence.

On or about April 24, 2006, Petitioner was arrested in Dekalb County, Georgia, and charged with driving on a suspended license and possession of cocaine. (Joint Exhibit 11 at

⁴ As noted in the Joint Exhibits, please refer to the upper Bates numbers when referencing exhibits.

⁵ The firearms were located in locked safes. (Tr. at 308-309).

000033, 000043-000045). He posted bond and was released. Petitioner was again arrested on or about June 11, 2006 in South Charleston, West Virginia for driving on a suspended license, no insurance, expired registration, and expired inspection sticker. Petitioner posted bond that day and was released. (Joint Exhibit 11 at 000033, 000047-000074; Joint Exhibit 40 at 0001048).

On or about May 7, 2006, Sean P. McGinley with the law firm diTrapano, Barrett & DiPiero, PLLC, sent the Office of Disciplinary Counsel correspondence in which Mr. McGinley noted that Petitioner was no longer with the law firm, and may not have received the April 14, 2006 correspondence. Accordingly, on or about May 16, 2006, Mr. Lawrence sent Petitioner an additional letter that requested Petitioner to respond to the pending ethics complaint. Petitioner was advised to do so no later than May 23, 2006.

On or about June 14, 2006, Petitioner was indicted in the United States District Court for the Southern District of West Virginia. Count One of the two-count indictment charged Petitioner with knowingly possessing various firearms in and affecting interstate commerce while being an unlawful user of and addicted to a controlled substance in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(2). (Tr. at 307-309; Joint Exhibit 11 at 000033, 000076-000078). Count Two charged Petitioner with knowingly making a false statement and representation to a licensed dealer of firearms regarding his dependence on a controlled substance in violation of 18 U.S.C. § 924(a)(1)(A). Id.

Petitioner was again arrested on or about June 15, 2006, pursuant to a federal arrest warrant in Charleston, West Virginia. Petitioner appeared before the Honorable Mary E. Stanley, United States Magistrate Judge, was arraigned, and was remanded to the custody of the United States Marshal Service pending his detention hearing. On or about June 20, 2006, Petitioner again appeared before Judge Stanley for his detention hearing, after which he was ordered

detained pending his trial set for August 23, 2006 before the Honorable David A. Faber, United States District Judge. (Joint Exhibit 11 at 000033-000034, 000081-000082, 000084-000087, 000089-000094).

On or about June 23, 2006, Petitioner filed “Defendant’s Second Motion for Bond,” which the District Court construed as a motion for review of Judge Stanley’s detention order, pursuant to 18 U.S.C. § 3145(b). The District Court scheduled the aforementioned motion to be heard on or about June 27, 2006. (Joint Exhibit 11 at 000034).

Thereafter, on or about June 26, 2006, pursuant to Rule 3.27 of the West Virginia Rules of Lawyer Disciplinary Procedure, Ms. Fletcher Cipoletti filed a petition seeking the immediate temporary suspension of Petitioner’s license to practice law in the State of West Virginia, until the pending disciplinary proceedings against him before the Lawyer Disciplinary Board were completed. (Joint Exhibit 2). By order entered the same day, the Supreme Court of Appeals of West Virginia (“Supreme Court”) determined that good cause existed pursuant to Rule 3.27(c), and set the matter for hearing. (Joint Exhibit 3).

On or about July 26, 2006, Petitioner pled guilty to Count One of the Indictment. (Tr. at 308-309; Joint Exhibit 11 at 000034-000035, 000096-000099, 000101-000102).⁶ Petitioner was released on bond pending sentencing, with special conditions including that Petitioner complete a twenty-eight day in-house substance abuse treatment program. Id. Additionally, on or about July 28, 2006, Judge Faber entered an order wherein he ordered Petitioner to report to the Pretera Center (PARCWEST) in Huntington, West Virginia, immediately upon his release so

⁶ Petitioner acknowledged that he also knowingly made a false statement and representation to a licensed dealer of firearms regarding his dependence on a controlled substance in violation of federal law, as set forth in Count Two of the Indictment, in that he lied about his drug addiction on his application to purchase a firearm. (Tr. at 317-319; Joint Exhibit 40 at 000920).

that Petitioner could complete the Center's twenty-eight day in-house substance abuse treatment program. Id.

On or about August 3, 2006, Petitioner, through counsel Michael J. DelGuidice, presented to the Supreme Court a brief in opposition to the petition seeking the immediate temporary suspension of Petitioner's license to practice law in the State of West Virginia. (Joint Exhibits 7, 8).

Thereafter, on or about August 29, 2006, Petitioner appeared before Judge Stanley upon his arrest on the United States Probation Office's Petition for Action on Conditions of Pretrial Release. (Joint Exhibit 11 at 000035-000037, 000104-000105, 000107, 000109, 000111-000122). Id. The aforementioned Petition alleged various violations of Petitioner's conditions of home confinement. Id. Accordingly, Petitioner appeared before Judge Faber on or about September 5, 2006 for his bond revocation hearing. Id.

On or about September 8, 2006, Judge Faber entered a Memorandum Opinion and Order wherein he ordered that Petitioner's pre-sentencing supervised release and bond revoked, and that Petitioner be remanded to custody of the United States Marshal pending his sentencing. Id.

On that same day, Ms. Fletcher Cipoletti filed a supplement to the petition seeking the immediate temporary suspension of Petitioner's license to practice law in the State of West Virginia, then pending before the Supreme Court. (Joint Exhibits 10, 11). The parties appeared before the Supreme Court for oral argument on or about September 13, 2006, and the Supreme Court granted the aforementioned petition on or about September 14, 2006. (Joint Exhibit 12).

Petitioner appeared for his sentencing hearing on or about October 10, 2006. Judgment was entered, and Petitioner was sentenced to term of imprisonment of six months and a term of three years supervised release. The Court also recommended that Petitioner participate in a

substance abuse treatment program. (Tr. at 309; Joint Exhibit 18 at 000146-000147, 000167-000173, 000175-000249).

On or about January 17, 2007, the Conditions of Probation and Supervised Release were filed. While on supervised release, Petitioner was arrested on or about April 1, 2007 and charged with simple possession of methamphetamine. Based on Petitioner's arrest, John B. Edgar, Senior United States Probation Officer, petitioned the Court to revoke Petitioner's supervised release on or about April 4, 2007. Thereafter, on or about April 17, 2007, Mr. Edgar filed an amended petition to revoke Petitioner's supervised release, which alleged that Petitioner failed to appear for his scheduled urinalysis testing on April 5, 2007, and that Petitioner provided a urine specimen that returned positive for cocaine and morphine on April 10, 2007. A revocation hearing was held on or about April 18, 2007, and the Court ordered Petitioner to be imprisoned for twenty-four months without any subsequent supervised release. (Tr. at 309; Joint Exhibit 30; Joint Exhibit 34 at 000545-000591).

During this time, Ms. Fletcher Cipoletti filed a "Petition Seeking Annulment of Respondent's Law License Pursuant to Rule 3.18 of the Rules of Lawyer Disciplinary Procedure." Specifically, on or about November 16, 2006, Ms. Fletcher Cipoletti filed the aforementioned petition, which requested that the Supreme Court annul Petitioner's law license. The petition was based on Rule 3.18 of the Rules of Lawyer Disciplinary Procedure, due to Petitioner having entered a guilty plea to a crime involving moral turpitude and professional unfitness based on his conviction in the United States District Court for the Southern District of West Virginia. The petition also alleged that Petitioner violated Rule 8.4(b) of the Rules of Professional Conduct, which states that it is professional misconduct for a lawyer to "commit a

criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." (Joint Exhibit 18, 30).

On or about December 12, 2006, Petitioner's counsel filed a request for a mitigation hearing, which was denied by the Lawyer Disciplinary Board on or about December 19, 2006. (Joint Exhibit 19, 23). The Lawyer Disciplinary Board determined that a mitigation hearing was not warranted, as Petitioner had been clearly convicted of a crime involving moral turpitude and clearly violated Rule 8.4(b) of the Rules of Professional Conduct. (Joint Exhibit 23). Thereafter, on or about March 8, 2007, Petitioner filed "Objections to Ruling Filed Pursuant to Rule 3.18(f) of the Rules of Lawyer Disciplinary Procedure and Response to Petition Seeking Annulment of Respondent's Law License." (Joint Exhibit 26).

On or about May 10, 2007, the Supreme Court entered an order that granted the Office of Disciplinary Counsel's "Petition Seeking Annulment of Respondent's Law License Pursuant to Rule 3.18 of the Rules of Lawyer Disciplinary Procedure," and thereby annulled Petitioner's license to practice law in the State of West Virginia. (Joint Exhibit 33).

2. Petitioner's History since his 2007 Disbarment

During the time that Petitioner was incarcerated after having his supervised release revoked by the United States District Court for the Southern District of West Virginia, he voluntarily participated in the institution's nine-month "Residential Drug and Alcohol Assistance Program." (Tr. at 309-310, 000344-000360; Joint Exhibit 40 at 000913, 000926-000927). Upon his release from prison, Petitioner completed the six-month aftercare program at the Community Corrections Center, a half-way house located in Rand, West Virginia. *Id.* Subsequently, Petitioner represents that he has continuously participated in substance abuse and family counseling, has attended Alcoholics Anonymous and Narcotics Anonymous meetings, has been

gainfully employed, and has regularly attended church services. Id. Furthermore, Petitioner represents that he received drug counseling from Dr. Jack Stringfellow at Pyramid Counseling until Dr. Stringfellow's death in April 2016. Id. Beginning in June 2016, Petitioner began receiving drug counseling from Dr. William B. Webb of OASIS Behavioral Health Services, and continues to see Dr. Webb presently on a regular basis. Id.

In November of 2008, while at the half-way house, Petitioner received a target letter from the United States Attorney's Office for the Southern District of West Virginia. Id. The target letter included a charge that Petitioner made a false statement to a bank to secure a loan of \$500,000 for a strip mall project in the Kanawha City section of Charleston, West Virginia. Id.

On or about July 17, 2009, the United States Attorney filed an Information that charged Petitioner with knowingly making a false statement for the purpose of influencing the actions of United Bank, an institution whose accounts were insured by the Federal Deposit Insurance Corporation, in connection with his application to obtain a \$500,000 loan. (Tr. at 310-311, 321-322; Joint Exhibit 35; Joint Exhibit 40 at 000917-918). The Information further charged that Petitioner forged the signature of another individual⁷, yet stated to the bank that the individual had personally signed the relevant documents, in violation of 18 U.S.C. § 1014. Id.

On or about August 27, 2009, Petitioner entered a written plea of guilty to the aforementioned charge, and appeared before the United States District Court for the Southern District of West Virginia for his guilty plea hearing. Id. The Court accepted Petitioner's guilty plea, and released him on bond pending his sentencing hearing, which was scheduled for January 14, 2010. Id.

⁷ Although the Information charged that Petitioner forged the "signature of an individual known to the United States Attorney," there is no dispute that the aforementioned individual was Petitioner's client. (Tr. at 321-322; Joint Exhibit 35; Joint Exhibit 40 at 000917-918).

As part of the written guilty plea, Petitioner and the United States stipulated and agreed to facts that comprised the offense charged. Id. The parties agreed that on or about July 2005, Petitioner approached United Bank in order to secure a \$500,000 loan for the aforementioned project in which he and another individual intended to invest. Id. Although Petitioner was aware that the other individual wished to invest his portion of the investment, approximately \$225,000, from the individual's liquid assets, Petitioner falsely represented to the bank that both he and the individual would execute the loan papers and would be jointly liable for the loan. Id. Based on Petitioner's representations and the forged loan documents, United Bank issued the loan for \$500,000 in the name of Petitioner and the other individual. Id.

Thereafter, on or about July 14, 2005, Petitioner caused an account titled in the other individual's name to be opened at United Bank with Petitioner's personal address used as the address on the account. Id. On or about July 15, 2005, the \$500,000 loan proceeds were deposited into the account. Id. The parties further stipulated that while Petitioner used \$435,000 of the loan proceeds for loan related purposes, he also deposited \$35,000 from the loan proceeds into his personal checking account and subsequently used said funds for non-loan related purposes. Id.

Petitioner has since acknowledged and demonstrated remorse for having committed the above crime and acknowledged that he was responsible, his conduct was wrong and that he hurt his client, his former law firm and his family. (Tr. at 310-311, 321-333; Joint Exhibit 40 at 000920-000922). Petitioner has further acknowledged and demonstrated remorse for his wrongful conduct when he misappropriated funds from his client, the same client referenced above, by wrongfully using his power of attorney to open a margin loan against his client's investment accounts. (Tr. at 314-317, 321-333; Joint Exhibit 40 at 000920-000922). Moreover,

Petitioner acknowledged that in his 2012 Petition for Readmission, he did not candidly address these matters, nor did he accept responsibility for his wrongful conduct. Id.

Petitioner appeared for his sentencing hearing on or about January 14, 2010. Judgment was entered, and Petitioner was sentenced to term of imprisonment of one day and a term of five years supervised release. The Court also ordered Petitioner to perform 1,000 hours of community service during his period of supervised release. (Joint Exhibit 35).

On June 1, 2012, Petitioner filed the 2012 Petition for Readmission, which was ultimately denied by the Supreme Court on or about June 18, 2014. Thereafter, on September 16, 2016, Petitioner filed the instant Petition for Reinstatement. Along with the Petition for Reinstatement, pursuant to Rule 3.33(b) of the Rules of Lawyer Disciplinary Procedure, Petitioner filed his "Reinstatement Questionnaire." (Joint Exhibit at 40).

Petitioner maintains that he has been sober since April 10, 2007. (Joint Exhibit 40 at 000913, 000922). Additionally, since 2007, Petitioner completed his sentence, including the term of supervised release, stemming from his 2010 conviction in the United States District Court for the Southern District of West Virginia. (Joint Exhibit 40 at 000917, 001028). Moreover, Petitioner has worked to rehabilitate himself by having completed various substance abuse programs, including the program in prison, as well as continuously participated in substance abuse and family counseling, and has attended Alcoholics Anonymous and Narcotics Anonymous meetings.(Joint Exhibit 40 at 000913).

Petitioner voluntarily participates in a monitoring program with the West Virginia Judicial & Lawyer Assistance Program wherein he signed a five-year contract to monitor Petitioner's conduct. (Tr. at 372-374, 394; Joint Exhibit 43). Specifically, the contract, into which he entered on December 1, 2016, requires Petitioner to subject himself to random urine

screens, to participate in monthly counseling sessions and to have weekly conversations with a mentor established through the program. Id. Petitioner also noted that he has reconnected and made amends with the people he had hurt when he was an addict, including his family, friends, and former colleagues and clients. (Joint Exhibit 40 at 000920-000922).

Since Petitioner's license to practice law in the State of West Virginia was annulled in 2007, he has been gainfully employed, both as a legal assistant for attorney John Mitchell, Jr. in Charleston, West Virginia from July 1, 2008 through December 31, 2008, and as a paralegal and as an Executive Assistant for attorney Stuart Calwell in Charleston, West Virginia from April 2009 through the present. Petitioner noted in his Reinstatement Questionnaire that he was unemployed briefly from approximately January 2009 until April 2009, when he began working for Mr. Calwell. (Joint Exhibit 40 000913-000915, 000922-000924).

Since the 2007 annulment, Petitioner was involved in one criminal case, as noted above, wherein he pled guilty to an Information filed by the United States Attorney for the Southern District of West Virginia in 2009. Petitioner was sentenced on January 14, 2010, and completed serving his five-year term of supervised release in January 2015. Petitioner acknowledged that, since his 2007 annulment, he has received four speeding tickets, which have all been paid and which resulted in nine points being added to his driver's license for a period of time. Petitioner explained that none of the tickets resulted in reckless driving charges. (Joint Exhibit 40 at 000917-000919).

Additionally, since 2007, Petitioner represented that he has been a party to four civil matters. Petitioner represents that two of the cases were actions for deficiencies on the foreclosure of Petitioner's former homes on Johnson Road and Kanawha Avenue, both located in Charleston, West Virginia. According to Petitioner, the first action, *Morgan Stanley v. Louis*

diTrapano, 07-C-796, was dismissed in 2009 by the Honorable Charles E. King, Circuit Judge in Kanawha County, West Virginia, whereas the second action, *BB&T v. Louis diTrapano, 11-C-237*, was dismissed in 2011 by the Honorable Louis H. “Duke” Bloom, Circuit Judge in Kanawha County, West Virginia. (Joint Exhibit 40 at 000916-000917).

Petitioner represents that the case *Louise Wood v. diTrapano, Barrett and Dipiero and Louis diTrapano, 08-C-13-2*, was dismissed in 2015 by the Honorable Robert G. Chafin, Circuit Judge in Kanawha County, West Virginia. According to Petitioner, the matter alleged professional liability against Petitioner and his former law firm. Id.

Petitioner further represents that the case *Calvary SPV LLC v. Louis diTrapano, 09-C-1651*, was dismissed by the Honorable James C. Stucky, Circuit Judge in Kanawha County, West Virginia. The aforementioned action allegedly concerned Petitioner’s unpaid credit card debt. Petitioner noted that the plaintiff, Calvary SPV LLC, has been enjoined from prosecuting the action by order of the Court entered in another case before Judge Stucky, which was brought by the West Virginia Attorney General for unfair collection practices and which has also been dismissed. Id.

In his Reinstatement Questionnaire, Petitioner noted that he has paid in full the \$10,000.00 fine that the United States District Court for the Southern District of West Virginia imposed on him as part of his sentence pursuant to his 2006 conviction for knowingly possessing various firearms in and affecting interstate commerce while being an unlawful user of and addicted to a controlled substance in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(2). (Joint Exhibit 40 at 000921).

Additionally, during the time that he was incarcerated in relation to his 2006 conviction, Petitioner’s former law partners paid one of his former clients a substantial sum of money that

Petitioner had misappropriated from the client's brokerage account between June 2005 and March 2006. In his Reinstatement Questionnaire, Petitioner acknowledged that he illegally used his Power of Attorney to borrow money against the former client's accounts, and that Petitioner's former law firm discovered his conduct, paid the misappropriated money back to the client's accounts and charged the amount taken as income to Petitioner. Petitioner asserted that in his 2012 Petition for Readmission, he did not address the matter of the misappropriated funds with the necessary candor nor the appropriate acceptance of responsibility, as the Supreme Court noted in its opinion denying Petitioner's reinstatement. Petitioner stated that since the Supreme Court denied his 2012 Petition for Readmission, he has come to accept that his conduct was "deplorable as an attorney trusted to take care of the finances of a client," and that "[w]hile [his] drug addiction and clouded mind were certainly present, they are not an excuse and [he] take[s] full responsibility for the illegal and unethical conduct." (Tr. at 310-339; Joint Exhibit 40 at 000921-000922).

On or about June 16, 2017, Petitioner submitted his final payment in which he satisfied his obligation to reimburse the Office of Disciplinary Counsel, in full, for the costs expended in connection with his 2012 Petition for Readmission, as ordered by the Supreme Court. The costs for the aforementioned proceeding totaled \$4,658.34.

3. Reinstatement Hearing

On September 19 & 20, 2017, a Reinstatement Hearing was held in the matter in Charleston, West Virginia. In addition to taking into evidence Joint Exhibits 1-53, the Hearing

Panel Subcommittee heard testimony from ten (10) witnesses, including Petitioner. The witness testimony is briefly summarized below.⁸

William Stuart Calwell, Esquire

Mr. Calwell, an attorney and Petitioner's employer, testified to Petitioner's character and legal competence to resume the practice of law. Mr. Calwell testified concerning Petitioner's work for him as a paralegal and as an executive assistant, and further testified that he believes that Petitioner has the requisite knowledge and skill of the law to successfully practice, should his law license be reinstated. Mr. Calwell stated that he is willing to supervise Petitioner, and that Petitioner would have a place at his firm as an associate lawyer. Mr. Calwell asserted that he has heard only positive comments from the community regarding the possibility of Petitioner having his law license reinstated. Mr. Calwell testified that he was aware of Petitioner's history with addiction and that he understood the circumstances surrounding Petitioner's felony convictions. Mr. Calwell further testified that he knew that Petitioner's former law firm had a client from whom Petitioner had misappropriated funds, that the law firm subsequently repaid to the client and that Petitioner had to declare as income. (Tr. at 10-50).

W. Brad Sorrells, Esquire

Mr. Sorrells, an attorney and Petitioner's peer mentor in the West Virginia Judicial & Lawyer Assistance Program, testified as to Petitioner's rehabilitation efforts regarding his drug and alcohol addiction, as well as to how Petitioner has assisted other addicts with their recovery efforts. Mr. Sorrells, who has been in recovery from drug and alcohol addiction since 2005, noted the positive effect that Petitioner has had on the recovery community in the area. Mr. Sorrells stated that he does not believe that the reinstatement of Petitioner's law license would

⁸ Petitioner's testimony at the Reinstatement Hearing, as well as the information he submitted pursuant to the Reinstatement Questionnaire, is set forth in subsections 1 and 2 *supra*.

have a justifiable and substantial adverse effect on the public confidence in the administration of justice. (Tr. at 51-83).

Dwaine Osborne

Mr. Osborne, the Head Coach of the University of Charleston Men's Basketball program and friend of Petitioner's, testified as to Petitioner's character. Mr. Osborne met Petitioner in 2013 when he accepted the position as Head Coach, as Petitioner's son played on the University of Charleston Men's Basketball team. Mr. Osborne testified about Petitioner's involvement with his son and his own family, as well as his love and support of the other members of the University of Charleston Men's Basketball team. Mr. Osborne stated that he was aware of Petitioner's felony convictions and the reason why Petitioner's law license had been annulled, that Petitioner has been very transparent about his use of drugs and alcohol and that he believes that Petitioner's law license should be reinstated. (Tr. at 83-113).

George Daugherty, Esquire

Mr. Daugherty, an attorney and the former Executive Director of the West Virginia Judicial & Lawyer Assistance Program, testified as to Petitioner's rehabilitation efforts regarding his drug and alcohol addiction, as well as to how Petitioner has assisted other addicts with their recovery efforts.⁹ Mr. Daugherty, who has been in recovery from alcohol addiction since 1979, noted the positive effect that Petitioner has had on the recovery community in the area. Mr. Daugherty characterized Petitioner's recovery as "good sobriety," and noted that Petitioner has accepted responsibility and has demonstrated remorse for his past decisions. Mr. Daugherty stated that he was aware of Petitioner's prior two felony convictions and the surrounding

⁹ When Mr. Daugherty was the Director of the Program, it was known as the West Virginia Lawyer Assistance Program.

circumstances, and that he does not believe that the reinstatement of Petitioner's law license would have a negative impact on the community. (Tr. at 115-140).

Teri diTrapano

Ms. diTrapano, Petitioner's wife, testified as to Petitioner's character, his rehabilitation efforts regarding his drug and alcohol addiction and to the family support Petitioner receives in that regard. Ms. diTrapano further testified to her own struggles with addiction and how her family's relationship with one another has changed for the better as a result of the work she and Petitioner have done to become, and remain, sober. (Tr. at 140-167).

Tom Flaherty, Esquire

Mr. Flaherty, an attorney practicing law in Charleston, testified to Petitioner's character and legal competence to resume the practice of law. Mr. Flaherty testified that he was aware of Petitioner's felony convictions, and that he had heard that Petitioner had misappropriated funds of a client of his former law firm. Mr. Flaherty stated that an addict should be held accountable for his or her actions while under the influence of drugs or alcohol, and that he believes that Petitioner has been held accountable for his actions. Mr. Flaherty asserted that he has heard only positive comments from the community regarding the possibility of Petitioner having his law license reinstated. Mr. Flaherty noted that although he anticipates that there would be some adverse feelings should Petitioner's law license be reinstated, he does not believe criticism of such a decision would be substantial. (Tr. at 167-194).

Robert Albury, Jr., Esquire

Mr. Albury, the Executive Director of the West Virginia Judicial & Lawyer Assistance Program, testified as to Petitioner's rehabilitation efforts regarding his drug and alcohol addiction, as well as to how Petitioner has assisted other addicts with their recovery efforts. Mr.

Albury, who has been in recovery from alcohol addiction and depressive disorder for approximately twenty-five years, approached Petitioner early in their acquaintance and questioned whether Petitioner would be willing to engage in a voluntary monitoring program with the West Virginia Judicial & Lawyer Assistance Program, to which Petitioner consented. Mr. Albury explained the voluntary monitoring program, which requires Petitioner to maintain a daily call-in schedule and to report for random urine, alcohol and drug screening. Mr. Albury noted that the voluntary monitoring program also requires Petitioner to attend a minimum of three 12-step meetings a week and submit a monthly calendar documenting his attendance, to participate in frequent meetings with a voluntary peer monitor and to attend individual therapy sessions with a therapist from whom the West Virginia Judicial & Lawyer Assistance Program receives quarterly reports. Mr. Albury testified that Petitioner signed a contract to participate in the voluntary monitoring program for a period of five years, but that Petitioner has expressed his willingness to extend the time, if necessary. (Tr. at 194-242).

Bobbi Holland

Ms. Holland, Petitioner's sister-in-law, testified as to Petitioner's character, his rehabilitation efforts regarding his drug and alcohol addiction and to the family support Petitioner receives in that regard. Ms. Holland testified that she was aware of Petitioner's struggles with addiction, and that she has no doubt that Petitioner will maintain his sobriety due, in large part, to his faith. (Tr. at 242-259).

Joey Holland

Mr. Holland, Petitioner's brother-in-law, testified as to Petitioner's character, his rehabilitation efforts regarding his drug and alcohol addiction and to the family support Petitioner receives in that regard. Mr. Holland testified that he was aware of Petitioner's

struggles with addiction, and that he has no doubt that Petitioner will maintain his sobriety due, in large part, to his faith. Mr. Holland further testified that he has only heard positive responses from members of the community about the possibility of Petitioner having his law license reinstated. (Tr. at 260-287)

II. SUMMARY OF ARGUMENT

Petitioner carries a heavy burden of persuading the Court that he presently possesses the integrity, moral character and legal competence to resume the practice of law. Indeed, the more serious the nature of the underlying offense(s), the more difficult the task becomes for Petitioner to show a basis for reinstatement. The Supreme Court has also 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.” In re: Brown, 166 W.Va. 226, 240, 273 S.E.2d 567, 574 (1980).

Although there is currently no *per se* bar to the admission or reinstatement of a convicted felon in West Virginia, the Office of Disciplinary Counsel asserts that a felony conviction, let alone two felony convictions, manifestly meets the test in Brown to preclude reinstatement. Indeed, Petitioner is a twice convicted felon, having pled guilty to: (1) knowingly possessing various firearms in and affecting interstate commerce while being an unlawful user of and addicted to a controlled substance in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(2); and (2) knowingly making a false statement for the purpose of influencing the actions of United Bank, an institution whose accounts were insured by the Federal Deposit Insurance Corporation, in connection with his application to obtain a \$500,000.00 loan, and forging his client’s signature, yet stating to the bank that the individual had personally signed the relevant documents, in violation of 18 U.S.C. § 1014.

In the event that this Honorable Court does not find that the seriousness of Petitioner's underlying offense leading to his disbarment precludes reinstatement such that further inquiry as to rehabilitation is not warranted, the Office of Lawyer Disciplinary Counsel maintains that Court should deny Petitioner's Petition for Reinstatement because Petitioner has failed to demonstrate requisite rehabilitation. The Office of Lawyer Disciplinary Counsel does not dispute that Petitioner possesses the legal competence to practice law or that he has been gainfully employed and has maintained sobriety in the time since his disbarment. However, the nature of the original offense for which Petitioner was disbarred was extremely serious and was replete with acts of dishonesty. Furthermore, at the time of his disbarment, Petitioner was an experienced attorney. Accordingly, the Office of Lawyer Disciplinary Counsel cannot recommend reinstatement in this matter.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to Rule 19 of the Rules of Appellate Procedure, this Honorable Court's January 19, 2018 Order scheduled this matter for oral argument on Tuesday, April 24, 2018.

IV. ARGUMENT

A. STANDARD FOR REINSTATEMENT

Rule 3.30 of the Rules of Lawyer Disciplinary Procedure, entitled "Requirements for reinstatement," reads as follows:

When for any reason, other than for nonpayment of membership fees, the license of any person to practice law has been or shall be suspended or annulled, whether or not for a limited time or until requirements as to restitution, conditions, or some other act shall be satisfied, such person shall not become entitled to engage in the practice of law in this State, whether such time [h]as elapsed or such other requirements as to restitution, conditions, or some other act have been satisfied, until such person shall have been restored to good standing as a member of the West Virginia State Bar as provided herein. Any conviction for false swearing, perjury or any

felony, and the person's prior and subsequent conduct shall be considered in the determination of good moral character and fitness.

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

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

Syl. Pt. 1, In re Brown, 166 W.Va. 226, 273 S.E.2d 567 (1980) (Brown II); Syl. Pt. 2, Lawyer Disciplinary Board v. Sayre, 207 W.Va. 654, 535 S.E.2d 719 (2000). Furthermore, "rehabilitation is demonstrated by a course of conduct that enables the court to conclude there is little likelihood that after such rehabilitation is completed and the applicant is readmitted to the practice of law he will engage in unprofessional conduct." Syl. Pt. 2, In re Brown (Brown II); Syl. Pt. 3, Sayre.

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). Recognizing the five-factor test in evaluating rehabilitation set forth in In re Hiss, 368 Mass. 447, 333 N.E.2d 429 (1975), the Supreme Court has held:

In judging whether a petitioner satisfies these standards and has demonstrated the requisite rehabilitation since disbarment, it is necessary to look to (1) the nature of the original offense for which

the petitioner was disbarred, (2) the petitioner's character, maturity, and experience at the time of his disbarment, (3) the petitioner's occupations and conduct in the time since his disbarment, (4) the time elapsed since the disbarment, and (5) the petitioner's present competence in legal skills.

In re Smith, 214 W.Va. 83, 85, 585 S.E.2d 602, 604 (1980).

The Office of Lawyer Disciplinary Counsel asserts that Petitioner's burden of proof to establish the foregoing is that of clear and convincing evidence. This is the same standard applied in all lawyer disciplinary cases under Rule 3.7 of the Rules of Lawyer Disciplinary Procedure. This is also the same burden lawyers who have been administratively suspended for a disability must meet pursuant to Rule 3.24(a) of the Rules of Lawyer Disciplinary Procedure.

In lawyer disciplinary matters, a *de novo* standard of review applies to questions of law, questions of application of the law to the facts, and questions of appropriate sanction to be imposed. Syl. pt. 1, Roark v. Lawyer Disciplinary Board, 201 W. Va. 181, 495 S.E.2d 552 (1997); Syl. pt. 3, Committee on Legal Ethics v. McCorkle, 192 W.Va. 286, 452 S.E.2d 377 (1994). The Supreme Court gives respectful consideration to the Lawyer Disciplinary Board's recommendations as to questions of law and the appropriate sanction, while ultimately exercising its own independent judgment. McCorkle, 192 W. Va. at 290, 452 S.E.2d at 381. The Supreme Court is the final arbiter of formal legal ethics charges and must make the ultimate decisions about public reprimands, suspensions or annulments of attorneys' licenses to practice law. Syl. pt. 3, Committee on Legal Ethics v. Blair, 174 W.Va. 494, 327 S.E.2d 671 (1984); Syl. pt. 7, Committee on Legal Ethics v. Karl, 192 W.Va. 23, 449 S.E.2d 277 (1994).

B. PETITIONER HAS FAILED TO PROVE THAT HE PRESENTLY POSSESSES THE INTEGRITY, MORAL CHARACTER AND LEGAL COMPETENCE TO RESUME THE PRACTICE OF LAW

At the outset, it is noted that “general statements and letters from attorneys, friends, and community leaders on behalf of a petitioner in a reinstatement proceeding are of little evidentiary value.” Lawyer Disciplinary Board v. Vieweg, 194 W.Va. 554, 559, 461 S.E.2d 60, 65 (1995). Instead, there must have been presented by Petitioner a course of conduct that would enable the Supreme Court to conclude there is little likelihood that after Petitioner is readmitted to the practice of law that he will engage in unprofessional conduct, along with addressing the fundamental question of whether Petitioner has shown that he presently possesses the integrity, moral character and legal competence to assume the practice of law. Syl. Pts. 1 and 2, In re Brown, 166 W.Va. 226, 273 S.E.2d 567 (Brown II). Furthermore, the Supreme Court must conclude that reinstatement of Petitioner’s law license will not have a justifiable and substantial adverse effect on the public confidence in the administration of justice. Id. at Syl. Pt. 1.

1. The Seriousness of Petitioner’s Underlying Offense Precludes Reinstatement

The Hearing Panel Subcommittee found that “Petitioner presented an impressive array of witnesses who testified at the hearing and individuals who provided letters in support. They all clearly supported Petitioner’s reinstatement.” (Report at 28). Yet, as the Hearing Panel Subcommittee noted, Petitioner’s burden of persuading the Supreme Court that he presently possesses the integrity, moral character and legal competence to resume the practice of law is high, and “the more serious the nature of the underlying offense, the more difficult the task become to show a basis for reinstatement.” In re Brown, 166 W.Va. at 234, 273 S.E.2d at 571 (Brown II). The Supreme Court has also 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.” Id., 166 W.Va. at 240, 273 S.E.2d at 574.

Although there is currently no *per se* bar to the admission or reinstatement of a convicted felon in West Virginia, the Office of Lawyer Disciplinary Counsel notes that, on numerous occasions over the past several years, the Supreme Court has denied the petitions for reinstatement of disbarred attorneys who were convicted felons. See In Re: Petition for Reinstatement of Thomas E. Esposito, No. 11-0671 (W. Va. June 12, 2013) (denying petition for reinstatement where the petitioner failed to demonstrate that he possesses the integrity, moral character and legal competence to resume the practice of law); In Re: Petition for Reinstatement of Mark O. Hrutkay, No. 11-0136 (W. Va. June 12, 2013) (denying petition for reinstatement where the petitioner failed to demonstrate that he possesses the integrity, moral character and legal competence to resume the practice of law, and where the Supreme Court cannot conclude that reinstatement of the petitioner will not have a justifiable and substantial adverse effect on the public confidence in the administration of justice); Lawyer Disciplinary Board v. Arch A. Moore, Jr., 214 W.Va., 780, 591 S.E.2d 338 (2003) (denying petition for reinstatement where the petitioner did not express remorse for his conduct that led to his disbarment); In the Matter of: Steven M. Askin, a former member of The West Virginia Bar, No. 30724 (W.Va. May 11, 2006); but see Lawyer Disciplinary Board v. ReBrook, No. 26556 (W. Va. May 9, 2001) (granted petition for reinstatement of disbarred attorney who was a convicted felon); In Re: Petition for Reinstatement of William T. Douglass, Jr., No. 14-0944 (W. Va. Jan. 20, 2016) (granted petition for reinstatement of disbarred attorney who was a convicted felon).

In this matter, Petitioner’s prior criminal conduct for which he was disbarred, which is relevant to the determination, was extremely serious. In 2006, Petitioner pled guilty to knowingly

possessing various firearms in and affecting interstate commerce while being an unlawful user of and addicted to a controlled substance in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(2). Petitioner's conduct undermined the foundations of the administration of justice and was clearly inconsistent with the character expected of an attorney.

Furthermore, in 2009, Petitioner was convicted of knowingly making a false statement for the purpose of influencing the actions of United Bank, an institution whose accounts were insured by the Federal Deposit Insurance Corporation, in connection with his application to obtain a \$500,000.00 loan, and forging his client's signature, yet stating to the bank that the individual had personally signed the relevant documents, in violation of 18 U.S.C. § 1014. Although the conduct that gave rise to the 2009 prosecution occurred prior to Petitioner's disbarment, the fact remains that Petitioner committed the aforementioned crime and pled guilty to a federal felony.

The Office of Lawyer Disciplinary Counsel cannot affirm that Petitioner has proven that his reinstatement will not have a justifiable and substantial adverse effect of 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). The Office of Lawyer Disciplinary Counsel has grave concerns that the reinstatement of any individual who has been convicted of two felony offenses would undermine the public confidence in the legal system.

As this Honorable Court noted in its opinion denying Petitioner's 2012 Petition for Readmission, honesty is an important quality for attorneys to possess and Petitioner admitted

conduct that was “replete with dishonest activity.” In re diTrapano, 233 W.Va. 754, 767-68, 760 S.E.2d 568, 581-82 (2014). Indeed:

[Petitioner’s] misconduct includes a prior admonishment; illegal drug use; multiple arrests, some of which were related to his possession of illegal drugs; knowingly possessing various firearms in and affecting interstate commerce while being an unlawful user of and addicted to a controlled substance, a crime for which he received a felony conviction; knowingly making a false statement and representation to a licensed dealer of firearms regarding his dependence on a controlled substance; knowingly making a false statement for the purpose of influencing the actions of a bank, a crime for which he received a second felony conviction; and ‘misappropriating’ client funds.

Id., 233 W.Va. at 766, 760 S.E.2d at 580.

Although Petitioner has accepted responsibility for his actions, the fact remains that Petitioner’s conduct was both dishonest and demonstrated a complete disregard for the law. The Office of Lawyer Disciplinary Counsel asserts that the seriousness of Petitioner’s underlying offense leading to disbarment precludes reinstatement such that further inquiry as to rehabilitation is not warranted.

2. Petitioner has Failed to Demonstrate Requisite Rehabilitation

In the event that this Honorable Court does not find that the seriousness of Petitioner’s underlying offense leading to his disbarment precludes reinstatement such that further inquiry as to rehabilitation is not warranted, the Office of Lawyer Disciplinary Counsel maintains that Court should deny Petitioner’s Petition for Reinstatement because Petitioner has failed to demonstrate requisite rehabilitation.

The Supreme Court has recognized a five-factor test in evaluating rehabilitation. In judging whether a petitioner satisfies these standards and has demonstrated the requisite rehabilitation since disbarment, it is necessary to look to (1) the nature of the original offense for

which the petitioner was disbarred, (2) the petitioner's character, maturity, and experience at the time of his disbarment, (3) the petitioner's occupations and conduct in the time since his disbarment, (4) the time elapsed since the disbarment, and (5) the petitioner's present competence in legal skills. In re Smith, 214 W.Va. at 85, 585 S.E.2d at 604.

The nature of the original offense for which Petitioner was disbarred

The nature of the original offense for which Petitioner was disbarred was extremely serious. In 2006, Petitioner pled guilty to knowingly possessing various firearms in and affecting interstate commerce while being an unlawful user of and addicted to a controlled substance in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(2). Petitioner's conduct undermined the foundations of the administration of justice and was clearly inconsistent with the character expected of an attorney.

Petitioner's character, maturity, and experience at the time of his disbarment

At the time of his disbarment, Petitioner had been licensed to practice law for over ten years, had tried numerous cases and was a partner in his former law firm. Thus, Petitioner clearly had considerable experience practicing law at the time of his disbarment.

Prior to his conduct in 2006 that ultimately led to the annulment of his law license, Petitioner had been admonished by the Investigative Panel of the Lawyer Disciplinary Board. In 2004, Petitioner was admonished for violating Rule 1.15(b) of the West Virginia Rules of Professional Conduct regarding a dispute over a letter of protection in a personal injury matter involving his client.¹⁰

Despite not having been convicted of knowingly making a false statement and representation to a licensed dealer of firearms regarding his dependence on a controlled

¹⁰ (Tr. at 304-305; Joint Exhibit 40 at 000920-000921).

substance, as set forth in Count Two of the 2006 Indictment, Petitioner acknowledged that he that he lied about his drug addiction on his application to purchase a firearm.

Furthermore, in 2009, Petitioner was convicted of knowingly making a false statement for the purpose of influencing the actions of United Bank, an institution whose accounts were insured by the Federal Deposit Insurance Corporation, in connection with his application to obtain a \$500,000.00 loan, and forging his client's signature, yet stating to the bank that the individual had personally signed the relevant documents, in violation of 18 U.S.C. § 1014. Although the conduct that gave rise to the 2009 prosecution occurred prior to Petitioner's disbarment, the fact remains that Petitioner committed the aforementioned crime and pled guilty to a federal felony.

Finally, Petitioner acknowledged that he had misappropriated funds from a former client's brokerage account between June 2005 and March 2006. In his Reinstatement Questionnaire, Petitioner acknowledged that he illegally used his Power of Attorney to borrow money against the former client's accounts, and that Petitioner's former law firm discovered his conduct, paid the misappropriated money back to the client's accounts and charged the amount taken as income to Petitioner. Petitioner asserted that in his 2012 Petition for Readmission, he did not address the matter of the misappropriated funds with the necessary candor nor the appropriate acceptance of responsibility, as the Supreme Court noted in its opinion denying Petitioner's reinstatement. Petitioner stated that since the Supreme Court denied his 2012 Petition for Readmission, he has come to accept that his conduct was "deplorable as an attorney trusted to take care of the finances of a client," and that "[w]hile [his] drug addiction and clouded mind were certainly present, they are not an excuse and [he] take[s] full responsibility for the

illegal and unethical conduct.” (Tr. at 310-339; Joint Exhibit 40 at 000921-000922). All of the aforementioned goes to Petitioner’s character and lack of honesty at the time of his disbarment.

Petitioner’s occupations and conduct in the time since his disbarment

Since Petitioner’s license to practice law in the State of West Virginia was annulled in 2007, he has been gainfully employed, both as a legal assistant for attorney John Mitchell, Jr. in Charleston, West Virginia from July 1, 2008 through December 31, 2008, and as a paralegal and as an Executive Assistant for attorney Stuart Calwell in Charleston, West Virginia from April 2009 through the present. Petitioner noted in his Reinstatement Questionnaire that he was unemployed briefly from approximately January 2009 until April 2009, when he began working for Mr. Calwell.

Significantly, Petitioner has remained sober since April 10, 2007. The evidence has demonstrated that Petitioner is extremely active in the recovery community in Charleston and that he has been a tremendous source of support and assistance to many struggling with addiction.

Additionally, the Office of Lawyer Disciplinary Counsel acknowledges that the evidence reflects that Petitioner has demonstrated great remorse for his previous misconduct, has acknowledged the severity of such, and appears to accept full responsibility thereof. The Office of Lawyer Disciplinary Counsel also acknowledges that Petitioner has demonstrated a record of honorable behavior since disbarment and gave testimony which reflected that he had come to terms with his past wrongdoing and intends to adhere to high moral standards in the future.

The time elapsed since the disbarment

Over ten years have passed since Petitioner was disbarred from the practice of law. As noted above, since the Supreme Court denied his 2012 Petition for Readmission, Petitioner has

come to accept that his conduct was “deplorable as an attorney trusted to take care of the finances of a client,” and that “[w]hile [his] drug addiction and clouded mind were certainly present, they are not an excuse and [he] take[s] full responsibility for the illegal and unethical conduct.” Whereas Petitioner did not fully acknowledge the wrongfulness of his conduct at the time of his 2012 Petition for Readmission, the Office of Lawyer Disciplinary Counsel submits that Petitioner presently recognizes the significance of his actions, and thus, the time elapsed since disbarment weigh in Petitioner’s favor.

Petitioner’s present competence in legal skills

The record clearly demonstrates that Petitioner presently possesses the legal competence to resume the practice of law.

The Hearing Panel Subcommittee recommended that Petitioner’s law license be reinstated without further petition or hearings after he has honored his commitment to The West Virginia State Bar by successfully completing the terms of his December 1, 2016 West Virginia Judicial & Lawyer Assistance Program monitoring agreement/contract. The date of completion in the contract is November 30, 2021. The Hearing Panel Subcommittee also recommended that the Supreme Court impose additional conditions upon Petitioner, as previously noted. The Hearing Panel Subcommittee found that the “misconduct that led to Petitioner’s disbarment was extremely serious but is mitigated in part by his addictions.” As this Honorable Court has previously held, drug addiction is not a mitigating factor with regard to Petitioner’s misconduct. In re diTrapano, 233 W.Va. at 769, 760 S.E.2d at 583.

Petitioner cites cases in other states in which courts have reinstated the law licenses of attorneys who are in recovery from addiction and who have participated in monitoring programs like the program run by the West Virginia Judicial & Lawyer Assistance Program. To date, this

Honorable Court has not reinstated the law license of any twice convicted felon in recovery from addiction who also misappropriated client funds.

The Office of Lawyer Disciplinary Counsel asserts that Petitioner has failed to demonstrate requisite rehabilitation. Petitioner's conduct, as discussed above, was extremely serious, egregious and dishonest. Thus, based upon the underlying criminal conduct that lead to Petitioner's disbarment, the witness testimony discussed herein, and the lack of clear and convincing evidence of rehabilitation, the Office of Lawyer Disciplinary Counsel asserts that Petitioner's reinstatement would have a justifiable and substantial adverse effect on the public confidence in the administration of justice.

V. CONCLUSION

It is this Honorable Court's inescapable and unenviable duty to protect the public and preserve the integrity of its Courts and our system of justice. Petitioner, a twice convicted felon, has failed to meet his heavy burden of persuasion in order to be reinstated to the practice of law in West Virginia. Although there is currently no *per se* bar to the admission or reinstatement of a convicted felon in West Virginia, the Office of Lawyer Disciplinary Counsel asserts that Petitioner's two felony convictions manifestly meet the test in Brown to preclude reinstatement. The Office of Lawyer Disciplinary Counsel has grave concerns that the reinstatement of any individual who has been convicted of two felony offenses would undermine the public confidence in the legal system. Moreover, Petitioner has failed to demonstrate requisite rehabilitation. Accordingly, the Office of Lawyer Disciplinary Counsel opposes reinstatement in this matter.

Respectfully submitted,
Office of Lawyer Disciplinary Counsel
By Counsel


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(304) 558-7999
(304) 558-4015 – *facsimile*

CERTIFICATE OF SERVICE

This is to certify that I, Joanne M. Vella Kirby, Lawyer Disciplinary Counsel for the Office of Disciplinary Lawyer Counsel, have this day, the 22nd day of March, 2018, served a true copy of the foregoing "Brief of the Office of Lawyer Disciplinary Counsel" upon Petitioner L. Danté diTrapano, by mailing the same via United States Mail with sufficient postage, to the following address:

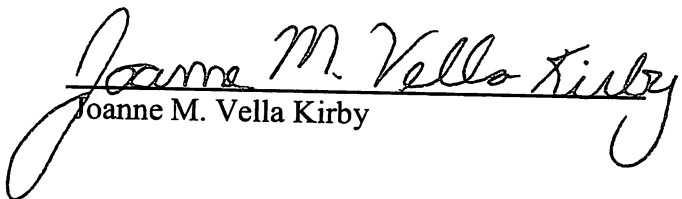
L. Danté diTrapano
500 Randolph Street
Charleston, West Virginia 25302

And upon the Hearing Panel Subcommittee at the following addresses:

Anne Werum Lambright, Esquire
Post Office Box 6023
Charleston, West Virginia 25362

Jay T. McCamic, Esquire
56-58 Fourteenth Street
Wheeling, West Virginia 26003

Reverend Robert M. Wood
596 Ames Heights Road
Lansing, West Virginia 25862


Joanne M. Vella Kirby