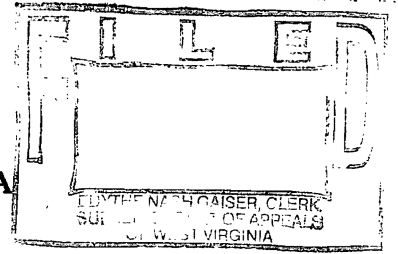


SUPREME COURT OF APPEALS OF WEST VIRGINIA



**Re: Petition for Reinstatement of
L. Danté diTrapano**

**Bar No. 6778
Supreme Court No. 16-0869
I.D. No. 16-06-449**

BRIEF OF PETITIONER L. DANTÉ diTRAPANO

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COMES NOW Petitioner L. DANTÈ diTRAPANO and presents his Brief of argument and authority to the Honorable Supreme Court of Appeals of West Virginia as follows:

I. STATEMENT OF THE CASE

Petitioner L. Danté diTrapano ("Mr. diTrapano") is before the Court on a hearing request by the Office of Disciplinary Counsel ("ODC") following the Report and Recommendation filed by the Hearing Panel Subcommittee ("HPS") on January 8, 2018, which recommended that Mr. diTrapano be reinstated to the practice of law, with conditions (but without further petition or hearings) upon the successful completion of the terms of his monitoring contract with the West Virginia Judicial & Lawyer Assistance Program ("WVJLAP"). Mr. diTrapano is scheduled to complete his aforementioned WVJLAP monitoring contract on November 30, 2021.

This Court annulled the law license of Petitioner diTrapano on May 10, 2007. On September 16, 2016, Petitioner filed his pending "Petition of L. Danté diTrapano for Readmission to the Practice of Law in West Virginia."¹

Mr. diTrapano did not request a hearing before this Court and was willing to have the case submitted in conference on the recommendations of the HPS. Mr. diTrapano respectfully

¹ Petitioner previously petitioned for readmission to the practice of law on or about June 1, 2012. This Court denied his prior petition in a written opinion on June 18, 2014. *In re diTrapano*, 233 W.Va. 754, 760 S.E.2d 568 (2014).

requests that this Honorable Court adopt the findings and recommendations of the HPS, specifically that:

1. Petitioner's law license be reinstated without further petition or hearings after he has successfully completed the terms of his December 1, 2016 WVJLAP Monitoring Agreement. The date of completion of the Agreement is November 30, 2021;

2. Immediately before completion of the Monitoring Agreement, Director Albury, his successor or his designee report to the Court as to whether the Monitoring Agreement currently in place should be extended, as Petitioner has volunteered to do;

3. Petitioner's practice of law be supervised for a period of two 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;

4. Prior to reinstatement, Petitioner be required to pay his dues to the West Virginia State Bar and complete all required CLEs; and

5. 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.

A. Nature of the Proceedings and Recommendations of the Hearing Panel Subcommittee

This matter proceeded to hearing in Charleston, West Virginia on September 19-20, 2017. The Hearing Panel Subcommittee was comprised of Anne Werum Lambright, Esq., Chairperson, Jay T. McCamic, Esq., and the Rev. Robert Wood, Layperson. The Hearing Panel Subcommittee heard testimony from W. Stuart Calwell, Esq., W. Bradley Sorrells, Esq., Dwaine Osborne, George Daugherty, Esq., Teri diTrapano, Thomas Flaherty, Esq., Robert Albury, Jr., Esq., Bobbi Holland, Joey Holland, and Petitioner. Additionally, Joint Exhibits 1-53 were received into evidence.

Included in evidence were over 100 letters supporting Petitioner's rehabilitation and/or reinstatement.² These letters were from Petitioner diTrapano's employer, current and former presidents of the West Virginia State Bar, dozens of members of the West Virginia State Bar, psychologists, teachers, police officers, former employees, former partners, co-workers, pastors, community leaders, neighbors, members of the recovery community, people from the community at large, family members, and friends. The ODC did not call any witnesses at Petitioner's hearing and received no letters objecting to Petitioner's reinstatement in response to the ODC's public notice of his pending Petition for Reinstatement.

The ODC has stipulated and HPS has found that Petitioner diTrapano possesses the legal competence to resume the practice of law. The ODC has acknowledged and the HPS has found that the Petitioner has presented a compelling record of rehabilitation concerning his past drug and alcohol addictions. The ODC has acknowledged and the HPS has found that the evidence reflects that Petitioner diTrapano has demonstrated great remorse for his previous misconduct,

² Included in evidence were letters in support of Petitioner that had previously been submitted pursuant to his 2012 Petition for Reinstatement.

has acknowledged the severity of that misconduct, and has accepted full responsibility for his misconduct. The ODC also acknowledges and the HPS has found that Petitioner diTrapano has demonstrated a record of honorable behavior since disbarment and presented testimony that demonstrates he has come to terms with his past wrongdoing and intends to adhere to high moral standards in the future. Furthermore, the HPS specifically found that Petitioner diTrapano has accepted full responsibility for and demonstrated appropriate remorse for his misappropriation of client funds in 2005-06 and has fully acknowledged that he failed to address this issue with necessary candor at the time of his 2012 Petition for Reinstatement and subsequent testimony related to his prior Petition.

B. Findings of Fact by Hearing Panel Subcommittee

The findings of fact by the HPS are not contested by Petitioner diTrapano (nor believed to be contested by the ODC) and are recited, in part, below to give this Court a convenient reference for its consideration of Petitioner diTrapano's pending Petition for Reinstatement:

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. *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.*

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.* He did not regularly attend his meetings or remain focused on his sobriety during the last five of the fifteen years. Petitioner said it was 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 substance abuse, the physician prescribed Petitioner cough syrup that contained hydrocodone. (Tr. at 296; Joint Exhibit 40 at 000926). Petitioner knew he should not have taken the medicine, but 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 testified that after these 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)³ 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 Florida 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 advising that the ODC 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 307309). Among the items seized were several loaded firearms,⁴ 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 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

³ As noted in the Joint Exhibits, please refer to the upper Bates numbers when referencing exhibits.

⁴ The firearms were located in locked safes. (Tr. at 308-309).

insurance, expired registration, and expired inspection sticker. Petitioner posted bond that day and was released. (Joint Exhibit 11 at 000033, 000047000074; 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 (“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 of the Indictment charged Petitioner with knowingly making a false statement and representation to a licensed dealer of fire arms 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).

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 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).⁵ 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 that Petitioner could complete the Center's twenty-eight day in-house substance abuse treatment program. *Id.*

On or about August 3, 2006, Petitioner, by 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

⁵ 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).

and 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 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 before Judge Faber for his sentencing hearing on October 10, 2006. Judgment was entered, and Petitioner was sentenced to term of imprisonment of six months and a term of two 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. 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 November 16, 2006, Ms. Fletcher Cipoletti filed the petition requesting 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 U.S. 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 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 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 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 in July of 2005 Petitioner made a false statement to a bank to secure a loan of \$500,000.00 for a strip mall project in the Kanawha City section of Charleston, West

Virginia. *Id.* On 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 \$500,000.00 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 individual,⁶ while stating 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.* 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 in July of 2005, Petitioner approached United Bank in order to secure a \$500,000.00 loan for the 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 \$225,000.00 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 \$500,000.00 in the name of Petitioner and the other individual. *Id.* On or about July 14, 2005,

⁶ 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).

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 \$500,000.00 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). 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 day⁷ and a term of five years supervised release. The Court also ordered Petitioner to perform one thousand (1,000) hours of community service during his period of supervised release. (Joint Exhibit 35).

⁷ Although the HPS and ODC have expressed concern that this sentence was lenient, the U.S. District Judge who determined the sentence believed it was appropriate under the circumstances. Judge Johnston performed an in-depth analysis of all the applicable sentencing factors under 18 U.S.C. § 3553(a) and determined that Petitioner diTrapano had already been rehabilitated by his prior incarceration. There is nothing in the record and Petitioner is not aware of any public concern that this sentence was too lenient.

Judge Johnston stated:

First of all, the prior prosecution, I'm not sure what to make of that. To tell you the truth, I've never seen this situation before where a defendant has been prosecution, has served, actually, in your case, two sentences for a total of 30 months; has been released and then was prosecuted again by the federal government for conduct occurring prior to the conduct which formed the basis of the prior prosecution.

....

This conduct occurred in the summer of '05. The firearms charge was based on facts which occurred in the winter of '06. So this conduct clearly predated that charge and the facts of that charge.

He further stated:

[Y]ou appear to have made some extraordinary steps toward rehabilitation, beginning at FCI Morgantown, but continuing to this day, from what I can tell, going to meetings and improving yourself. You appear to be supporting your family, contributing to the community, working and voluntarily continuing to participate in substance abuse treatment.

Id.

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 or about 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 40).

Petitioner 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). Petitioner has worked to

rehabilitate himself by completing multiple substance abuse programs, including the program in prison, as well as continuously participating in substance abuse and family counseling, and has regularly attending Alcoholics Anonymous and Narcotics Anonymous meetings. (Joint Exhibit 40 at 000913). Petitioner voluntarily participates in a monitoring program with the West Virginia Judicial and 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, attend 3 weekly recovery meetings, participate in monthly counseling sessions, and to have weekly conversations with a mentor established through the program. *Id.* Petitioner has reconnected with and made amends to 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 in Charleston, West Virginia, both as a legal assistant for attorney John Mitchell, Jr., from July 1, 2008 through December 31, 2008, and as a paralegal and as an Executive Assistant for attorney Stuart Calwell, 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 40000913-000915, 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 based on conduct that occurred in 2005. 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).

In his Reinstatement Questionnaire, Petitioner noted that he has paid in full the \$10,000 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 misconduct, 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 or 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.

C. Summary of Petitioner's History since the Court's 2014 Ruling Denying his Reinstatement

Following the Court's denial of Petitioner diTrapano's prior Petition for Reinstatement, Petitioner successfully completed serving his five-year term of supervised release on January 14, 2015. Petitioner diTrapano also requested that his former law firm clarify to the ODC the nature of the misconduct he had engaged in during the June 2005-March 2006 time period involving the misappropriation of funds from a client's investment account. On March 23, 2016, Sean P. McGinley, Esq., a partner at Petitioner's former firm, detailed these transgressions in a letter to the ODC. (Joint Exhibit 40 at 0010177-178.) In the letter, Mr. McGinley advised the ODC that he believes Petitioner's misconduct was the result of his severe addictions, that such behavior was clearly out of character for the Petitioner, and that Mr. McGinley had never seen similar behavior from Petitioner prior to his relapse or since his recovery. *Id.* Mr. McGinley emphasized that his firm now enjoys a good working relationship with Petitioner and his current employer, that he believes that Petitioner has made amends and has demonstrated "genuine remorse" for his past misconduct, and that he supports Petitioner's Petition for Reinstatement. *Id.*

Petitioner has continued his addiction counseling at Oasis Behavioral Health Services, each month seeing William B. Webb, Ph.D., L.I.C.S.W., M.A.C.. On August 29, 2016, Dr. Webb reported to the ODC that, based on his clinical observations, it was his opinion "to a high

degree of clinical certainty that [Petitioner] has established and is likely to continue to abide by a stringent and effective recovery infrastructure.” (*Id.* at 001079-82.) Dr. Webb went on to report that Petitioner had far exceeded the requirements of most individual rehabilitation programs and his risk of relapse is “very low.” *Id.* Dr. Webb also supports Petitioner’s reinstatement and has noted that all of Petitioner’s illegal behaviors were committed during active phases of his previously untreated addictive disease. (Joint Exhibit 51 at 001382-84.)

On December 2, 2016, Petitioner diTrapano voluntarily entered into a 5-year Monitoring Agreement with WVJLAP. (Joint Exhibit 43.) The Monitoring Agreement requires Petitioner to, among other things, participate in daily call-ins, provide random alcohol/drug screens, attend 3 weekly recovery meetings, meet face-to-face with his WVJLAP peer monitor at least monthly, provide a monthly calendar documenting his ongoing rehabilitation activities, and paying all costs associated with alcohol/drug screens and other conditions imposed by the Agreement. *Id.*

Petitioner continues to help others who struggle with addiction and speaks regularly to groups sharing his experience, strength, and hope in recovery. Petitioner visits his mother at least once a day and helps her with whatever she needs, including providing emotional support in grieving the loss of her recently deceased husband and Petitioner’s father, Rudolph L. diTrapano, Esq.

D. Key Conclusions of Law of the Hearing Panel Subcommittee

1. Conclusions as to Good Character and Skill in the Law

The HPS concluded that Petitioner diTrapano has met his burden pursuant to *Lawyer Disciplinary Board v. Hess*, 201 W. Va. 195, 495 S. E. 2d 563 (1997), to show his basic good character and knowledge and skill in the law. The HPS found that the evidence establishes, and Disciplinary Counsel conceded, that Petitioner has shown a course of conduct that would enable

the Supreme Court to conclude with full confidence that there is little likelihood that after being readmitted to the practice of law, that he will engage in unprofessional conduct, and has further proven by strong evidence that he possesses the integrity, moral character, and legal competence to assume the practice of law. This moral character and fitness includes unrebutted proofs of a strong, continuing and durable rehabilitation from alcoholism and drug abuse, including the fact that Petitioner has been and continues to be a source of support and assistance to others struggling with addiction. The HPS concluded that the record with respect to Petitioner diTrapano's remorse and accountability for his past misconduct specifically addresses those concerns raised by this Court in *In re diTrapano*, 233 W.Va. 754, 760 S.E.2d 568 (2014).

2. Nature of Petitioner's Misconduct Does Not Preclude Reinstatement

The HPS concluded that Mr. diTrapano has, by clear and convincing evidence, met his burden on the threshold question presented in *In re Brown*, 166 W. Va. 226, 240,273 S. E. 2d 567, 574 (1980) that the nature of the underlying offense leading to his disbarment (in addition to those other offenses committed by Petitioner prior to disbarment that did not serve as the basis for his disbarment) do not preclude his reinstatement, given his exemplary (and ongoing) record of rehabilitation from his addictive disease. The HPS determined that Petitioner's offenses do not reflect a record of significant, repeated involvement in government corruption such as is found in *In re Brown*, 166 W.Va. 226, 273 S.E.2d 567 (1980) or *Lawyer Disciplinary Board v. Arch A. Moore, Jr.*, 214 W.Va, 789, 591 S.E.2d 338 (2003) and failure to demonstrate remorse for past improper actions, as found in *L.D.B. v. Moore* and *In the Matter of: Steven M. Askin*, No. 30724 (W.Va. May 11, 2006). The HPS further found that addiction-related convictions of Petitioner and the record of the reinstatement also are, upon their facts, significantly different and less serious than seen in *In Re: Petition for Reinstatement of Thomas E. Esposito*, No. 11-0671

(W.Va. June 12, 2013) (denial of petition for reinstatement where the petitioner failed to prove he possessed integrity, moral character and legal competence to resume the practice of law) and *In Re: Petition for Reinstatement of Mark O. Hrutkay*, No. 11-0136 (W.Va. June 12, 2013) (petition for reinstatement denied as petitioner had failed to prove he possessed integrity, moral character and legal competence to practice law and where the Supreme Court of Appeals could not conclude that petitioner's reinstatement would not have a justifiable and substantial adverse effect on the public confidence in the administration of justice). Both Hrutkay and Esposito had been involved in significant political corruption in Logan County and had demonstrated no mitigating factors leading to their convictions and disbarments, and there was significant public objection of record to their petitions.

3. Effect of Petitioner's Reinstatement on Public's Perception of the Integrity of the Bench and Bar

The HPS found that that Petitioner diTrapano's addictive disease was a significant mitigating factor in the crimes and unprofessional conduct that pre-dated and/or resulted in Petitioner's convictions and disbarment. The HPS further found that Petitioner diTrapano's addictions have been addressed and rehabilitated for an extensive period of time. The HPS concluded that, notwithstanding the serious nature of Petitioner's prior offenses, Petitioner's extensive record of rehabilitation, coupled with his continuing participation in the WVJLAP's monitoring program, would protect the public's confidence in the judicial system upon his reinstatement following his completion of the terms of his WVJLAP monitoring contract.

II. SUMMARY OF PETITIONER'S ARGUMENT

Petitioner diTrapano requests that the Court accept the recommendations of the HPS. Petitioner has met the strong burden of proof as to all elements required of an applicant for readmission, including specifically addressing those concerns expressed by this Court regarding his lack of candor and lack of remorse regarding his prior loan document forgery and misappropriation of client funds in his 2012 Petition for Reinstatement.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

On January 8, 2018, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by its chairperson, Anne W. Lambright, presented to this Honorable Court its written report and recommendation that Petitioner L. Danté diTrapano be reinstated as an attorney to the West Virginia Bar with conditions, upon the successful completion of his WVLP monitoring contract, without further petition or hearing. Petitioner diTrapano did not ask for a hearing.

On January 18, 2018, pursuant to Rule 3.32(c) of the Rules of Lawyer Disciplinary Procedure, Joanne M. Vella-Kirby of the Office of Disciplinary counsel submitted her written objection and request for a hearing.

By Order entered January 19, 2018, this Honorable Court provided a briefing schedule and set this matter for oral argument on Tuesday, April 24, 2018

IV. ARGUMENT

A. Standard of Review Applicable to Determinations of Reinstatement

"A *de novo* standard applies to a review of the adjudicatory record made before the Committee on Legal Ethics of the West Virginia State Bar as to questions of law, questions of application of the law to the facts, and questions of appropriate sanctions; this Court gives respectful consideration to the Committee's recommendations while ultimately exercising its own independent judgment. On the other hand, substantial deference is given to the Committee's finding of fact, unless such findings are not supported by reliable, probative, and substantial evidence on the whole record." Syl. Pt. 3. *Committee on Legal Ethics v. McCorkle*, 192 W. Va. 286, 452 S.E.2d 377 (1994).

B. Petitioner Has Satisfied the Procedural Requirements for Readmission

A Petition for Reinstatement following annulment of one's license to practice law is governed by Rule 3.33 of the West Virginia Rules of Lawyer Disciplinary Procedures. Rule 3.33 states in pertinent part, as follows:

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

thereof and shall file a report with a Hearing Panel Subcommittee of the Lawyer Disciplinary Board.

On September 16, 2016, Petitioner diTrapano filed his pending verified petition and completed reinstatement questionnaire with the West Virginia Supreme Court of Appeals and Office of Disciplinary Counsel. The necessary five years of separation from the Bar had clearly run. On the same date, Petitioner diTrapano provided to the Office of Disciplinary Counsel a broad and general release, authorizations to access all criminal records via fingerprint cards, and certified copies of his Federal and State tax returns from years 2012 to 2015, as requested, so the Office of Disciplinary Counsel could conduct its prompt investigation. On January 19, 2017 Petitioner diTrapano gave his Sworn Statement to Disciplinary Counsel Attorney Joanna Vella-Kirby at the ODC. On July 28, 2017 the ODC filed its Amended Report Regarding the Reinstatement Petition of L. Dante' diTrapano. On September 19 and 20, 2017, hearings were held before the Hearing Panel Subcommittee. Petitioner diTrapano testified and called nine (9) witnesses in support of his reinstatement and submitted and expanded upon documentary support for his Petition. The ODC called no witnesses.

The record demonstrates that Petitioner diTrapano has satisfied all procedural requirements for reinstatement.

C. Petitioner Has Satisfied the Substantive Requirements for Readmission

The Supreme Court articulated the general rule for readmission to the West Virginia Bar in the case *In re Brown*, 166 W Va. 226, 273 S. E. 2d 567 (1980) (*Brown II*):

1. 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 public confidence in the administration of justice and in this regard the seriousness of the conduct leading to disbarment is an important consideration.

2. 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 practice law he will engage in unprofessional conduct.

Id., at Syl. Pts. 1-2.

As discussed below, the record in this matter overwhelmingly demonstrates that Petitioner diTrapano has satisfied the substantive requirements for reinstatement to the West Virginia Bar under the standards established by *In re Brown, supra*.

1. Petitioner's Record of Rehabilitation Demonstrates that He Possesses the Integrity, and Moral Character to Resume the Practice of Law and That There is Very Little Likelihood That Petitioner Will Engage in Unprofessional Conduct Following Reinstatement

Petitioner diTrapano's record of rehabilitation is exceptionally comprehensive, starting with his voluntary admission to a nine month treatment center in the Federal prison system in 2007, a six month aftercare program at a Community Corrections Center, addiction counseling by Dr. Jack Stringfellow of Pyramid Counseling and most recently Dr. William Webb of Oasis Behavioral Health Services, heavy involvement in Twelve Step recovery groups, pastoral counseling from Rev. Matthew Watts, and church attendance without absence for the last seven years. Petitioner diTrapano attends three to four Alcoholics Anonymous meetings weekly on average and is involved in significant community service programs that help other people in Charleston, West Virginia, who are struggling with addictions.

Additionally, following this Court's prior ruling denying his 2012 Petition for Reinstatement, Petitioner voluntarily entered a five-year Monitoring Agreement with the WVJLAP. This new program requires the Petitioner to login daily for personal accountability, attend three support group meetings each week, attend a monthly counseling session, submit to random drug screens, talk and meet with a mentor from the WVLAP, and provide monthly reports for all of the above. Additionally, Petitioner is the mentor for another member of WVJLAP. Petitioner's sobriety date is April 10, 2007, and he has maintained complete and total abstinence from all mood and mind altering substances for over ten years.⁸

Robert E. Albury, Jr., executive director of the WVJLAP, testified that he sought out Petitioner's participation in the new Monitoring Program in December of 2016, that Petitioner has been completely compliant with all the terms and conditions of his Agreement, that Petitioner serves as a volunteer peer mentor for another young attorney struggling with alcoholism and addiction issues, and that Petitioner has even volunteered to extend the terms of his Agreement. (Tr. at 194-203.) Mr. Albury testified that Petitioner's personal recovery, improvement of relationships, attendance in the workforce, commitment to his family, humility and his unreserved participation in the WVJLAP Monitoring Program all indicate that Petitioner has returned to his original value system that pre-dated his descent into addiction. *Id.* at 204-226.

Although this Court has long held that "general statements from attorneys, friends, and community leaders on behalf of a petitioner in a reinstatement proceeding are of little evidentiary value," *In re Brown*, 164 W.Va. at n.1, 262 S.E.2d at n.1, Justice Cleckley previously noted that, in certain circumstances, such testimony can provide evidence of a petitioner's integrity and

⁸ Petitioner's addiction counselor, William B. Webb, Ph.D., stated that "[m]odern addiction research indicates that once a person has been sober for 5 years, the risk of relapse approaches zero." (Joint Exhibit 51at 001382-83.)

moral fitness for reinstatement. *Lawyer Disciplinary Bd. v. Vieweg*, 194 W.Va. 554, 559-60, 461 S.E.2d 60, 65-66 (1995). In *Vieweg*, Justice Cleckley pointed out that persons who had significant and frequent contact with a former lawyer who was recovering from addiction were in a good position to provide “objective” testimony as to that former lawyer’s present moral character and fitness for readmission to the Bar.⁹ *Id.* The testimony of Mr. Albury certainly meets this criteria, as does the testimony of most of the other witnesses who testified before the HPS as to their ongoing and day-to-day relationships with the Petitioner.

In its denial of Petitioner’s previous Petition for Reinstatement, this Court expressed concern that the record failed to demonstrate that Petitioner had expressed remorse and accepted responsibility for unethical conduct he engaged in 2005, which had not been the subject of his disbarment, *i.e.*, Petitioner’s actions in signing his client’s name to a bank loan and depositing a portion of said loan into his own personal account, as well as borrowing money against the same client’s brokerage account. *In re diTrapano*, 233 W.Va. at 771-72, 760 S.E.2d at 568-69. Petitioner addressed this issue head-on in his pending Petition and before the HPS. As discussed above, and in the record, Petitioner requested that his former law firm report to the ODC regarding this matter. Petitioner’s former firm indicated that Petitioner has been candid, accepted full responsibility for and expressed complete remorse for his bank crime and his misappropriation of client funds. Panel Member McCamic commented on this specific issue during the Hearing and acknowledged that Petitioner had been forthright in his testimony on these matters:

⁹ In *Vieweg*, such testimony provided a basis for this Court’s decision to reinstate the law license of a former lawyer and recovering addict who had fraudulently obtained a bank loan (a felony) and engaged in a “wide-ranging” practice of financial misconduct, including misappropriating client and trustee monies while in the throes of alcoholism. 194 W.Va. at 556, 559-60, 461 S.E.2d at 62, 65-66.

And I guess the only other area that I think you cleared up is as ODC counsel was talking about, this sort of rationalization of the last time coming forth trying to explain some of these things, that frankly disturbed me, too, when I read through that and I also saw the Court's comments. And I just want to say I think you cleared that up for us during this proceeding to use the parlance of criminal court, you didn't dance around – you didn't dance around the stuff, you know, I mean you just laid it out. So I just wanted to make that comment. I think you straightened it out on the record. That's all I have.

(Tr. at 338-339.)

The record is clear that Petitioner diTrapano has made a complete transformation of his life and is not the same person whose relapse and subsequent conduct during that relapse ultimately caused his disbarment. Under these circumstances, there is very little likelihood that Petitioner would again participate in unprofessional conduct. By all accounts, the exemplary and dedicated nature Petitioner's rehabilitation is reflective the high moral character and integrity required of members of the West Virginia Bar.¹⁰

2. The Reinstatement of Petitioner Upon Completion of his WVJLAP Monitoring Agreement Will Not Adversely Affect Public Confidence in the Administration of Justice

The HPS concluded that Petitioner's misconduct prior to his disbarment was extremely serious, but also found that such misconduct was the result of behavior associated with Petitioner's disease of addiction. Given this fact, the HPS concluded that the public confidence in the judicial system would not be undermined upon Petitioner's reinstatement, given Petitioner's exemplary history of rehabilitation to-date, coupled with Petitioner's completion of his WVJLAP Monitoring Agreement.

¹⁰ The ODC has never disputed that Petitioner presently possesses the competence and skill to practice law. This Court previously recognized that Petitioner was well-qualified in this respect. *diTrapano*, 233 W.Va. at 771, 760 S.E.2d at 585. Petitioner has continued to maintain CLE requirements since the Court's prior decision.

The HPS's conclusion that public confidence in the judiciary would not be undermined by the reinstatement of the Petitioner is consistent with this Court's ruling in *Vieweg*, where it reinstated a lawyer who had previously engaged in "wide-ranging" misconduct, including misappropriation of client funds, while suffering from addiction to alcohol, based on testimony that his rehabilitation had been successful and, as a result, he was a "fundamentally different person" who would serve as a positive example to others. *Vieweg*, 194 W.Va. at 560, 461 S.E.2d at 66. As discussed above, the testimony in this case from Robert E. Albury, Jr., and many other knowledgeable witnesses,¹¹ is strikingly similar to testimony from *Vieweg*. This is compelling evidence that the Petitioner diTrapanos's reinstatement would have no adverse effect upon public confidence in the administration of justice.

The HPS's conclusion that public confidence in the judiciary would not be undermined by the reinstatement of the Petitioner is also consistent with a goal of the WVJLAP's Monitoring Program, which is to ensure that a recovered attorney is closely monitored so that the public is protected and the integrity of the Bar is maintained. Mr. Albury testified that the Monitoring Program has specific accountability measures in place in order to protect the public in the event that an attorney relapsed:

[The Program] ... involves enough behavioral components from call-ins to testing to face-to-face with peer monitor, to attendance at meetings, to attendance support group, that it has been well established as a tool for both documenting compliance or identifying changes in behavior, resulting in non-compliance. And the changes in behavior once a record of compliance is established are easily identified and we are usually able to pick up on the

¹¹ For example, George Daugherty, Esq., the former director of WVJLAP, testified that he is personally familiar with Petitioner diTrapano's sobriety, that he unequivocally recommends that Petitioner be reinstated, and that he does not make such a recommendation lightly. (Tr. at 120-127.) Mr. Daugherty testified that Petitioner's reinstatement would serve a valuable purpose because Petitioner has remained sober and persevered despite this Court's prior denial of his 2012 Petition for Reinstatement and that he would serve as an example for other recovery attorneys. *Id.*

changes and intervene or report to the designated reporting party. In this case, it would be the board, usually prior to there even being a chemical relapse. If you all aren't aware, usually the change in behavior is proceed to actual chemical relapse. So it is extremely effective and a valuable tool for the court and the board in terms of protecting the public and maintaining the integrity of the profession.

(Tr. at 206.) Mr. Albury testified that based on Petitioner's professional and personal recovery, his involvement as a peer monitor, and his compliance with the Monitoring Agreement, Mr. Albury believes that Petitioner is mentally and emotionally fit to practice law.

Multiple jurisdictions have reinstated attorneys who have recovered from addiction and who have participated in monitoring programs like those run by the WVJLAP – even when the serious nature of their prior misconduct would have otherwise precluded reinstatement. By doing so, these jurisdiction have recognized, at least implicitly, that such monitoring programs safeguard the public's confidence in the judicial system when recovered attorneys are reinstated.

In *Bd. of Attys. of Prof'l Responsibility v. Linehan*, 364 Wis. 2d 296, 867 N.W.2d 806 (2015), the Wisconsin Supreme Court reinstated an attorney whose license had been revoked 25 years earlier due to misappropriation of client funds and chronic substance abuse. Following the revocation of his law license, and while still suffering from substance addiction, the attorney was convicted of multiple crimes over the next two decades. *Linehan*, 364 Wis.2d. at 297-304, 867 N.W.2d at 806-810. Eventually, the attorney actively began to work toward sobriety and voluntarily participated in a monitoring program run by WisLAP. *Id.*, 364 Wis.2d. at 304-306, 867 N.W.2d at 810-811. This program, like the similar program run by WVJLAP, required daily check-ins, regular attendance at sobriety meetings and other forms of monitoring, and the attorney's participation was deemed exemplary. *Id.* The Supreme Court of Wisconsin reinstated him to the bar, with the condition that he continue participation in the WisLAP monitoring

program. *Id.*, 364 Wis.2d. at 310-311, 867 N.W.2d at 813. In *Bd. of Prof'l Responsibility v. Love*, 2008 Tenn. 323, 256 S.W.3d 644 (2008), the Tennessee Supreme Court approved the reinstatement of an attorney (who had plead guilty to a felony involving the misappropriation of his mother's funds during a period he suffered from alcoholism) with conditions, including mandatory participation in the TLAP monitoring program for five years. Finally, the case of *In re Evans*, 380 S.C. 108, 669 S.E.2d 85 (1996), the South Carolina Supreme Court reinstated an attorney who had been disbarred after he was convicted of felony driving under the influence (DUI) causing death, possession of drugs, and making a false statement to an insurance adjuster under oath. In doing so, the court noted that the seriousness of the attorney's prior misconduct should not preclude his reinstatement because he had turned his life around following his incarceration and had addressed his under drug and alcohol addictions. *Evans*, 380 S.C. at 114-115, 669 S.E.2d at 88-89. The court reinstated the attorney with conditions, including a monitoring contract for a two-year period through the South Carolina equivalent of the WVJLAP. *Id.* Implicit in all of these holdings is the recognition that monitoring programs (like the one in which Petitioner diTrapano is currently enrolled) serve to buttress public confidence in the judicial system when attorneys who participate in such programs are reinstated to the bar.

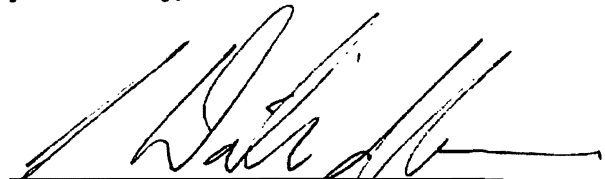
Finally, the HPS's conclusion that public confidence in the judiciary would not be undermined by the reinstatement of Petitioner diTrapano is also consistent the overwhelming record of support for Petitioner's reinstatement. All of the evidence before the HPS, and now this Court, is positive with respect to the expected public perception of Petitioner diTrapano's reinstatement. Such evidence arises from the testimony of respected members of the community and the Bar and not one word to the contrary is found in the record before this Court. Petitioner carefully examined the issue of the potential public and bar reaction to his reinstatement during

his two-day presentation of evidence to the HPS. Additionally, members of the bar and the community wrote letters to this Honorable Court expressing their desire that Petitioner diTrapano's law license be reinstated. The ODC received no objections in response to public notice related to either Petitioner's prior or his pending Petition for Reinstatement.

V. CONCLUSION

The Petitioner, Louis Danté diTrapano, respectfully urges that the full record in this proceeding, the applicable law, the Court's policies regarding reinstatement of impaired former attorneys and fundamental fairness all strongly support his request that this Court adopt the Hearing Panel Subcommittee Report and Recommendation as filed, for the reasons and upon the same facts of record and authorities presented here.

RESPECTFULLY SUBMITTED this 23rd day of February, 2018.



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SUPREME COURT OF APPEALS OF WEST VIRGINIA

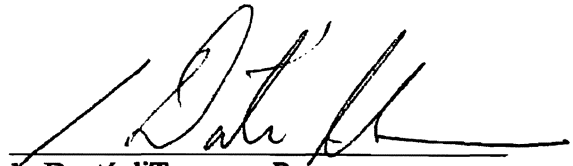
Re: Petition for Reinstatement of
L. Danté diTrapano

Bar No. 6778
Supreme Court No. 16-0869
I.D. No. 16-06-449

CERTIFICATE OF SERVICE

I certify that I have served a true and accurate copy of **Brief of Petitioner L. Danté diTrapano** upon the Office of Disciplinary Counsel by hand-delivery this 23rd day of February, 2018, as shown below:

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