**No. 30090—** ***Lawyer Disciplinary Board v. John A. Scott, a member of the West Virginia State Bar***

**FILED**
**April 8, 2003**
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

McGraw, Justice, dissenting:

I dissent because I believe that a fixed term for suspension is inappropriate in this case. I agree that the Bar and this Court have a duty to protect the public. However, I also believe that where illness is the basis for limiting an attorney's practice, the period of limitation should be determined by the duration of the illness, rather than by some arbitrary standard. As the majority observed, "[d]isbarment of an attorney to practice law is not used solely to punish the attorney but is for the protection of the public and the profession." Syl. pt. 2, *In re Daniel*, 153 W. Va. 839, 173 S.E.2d 153 (1970).

I agree that the attorney here should not practice law until he can show that his condition has improved. However, I would permit reinstatement of the attorney's law license upon a showing that his illness is under control and will not adversely affect the public interest. Furthermore, I believe that my position is consistent with the logic of the majority opinion.

The majority opinion adopts the ABA's list of mitigating factors to consider in lawyer disciplinary procedures. After analyzing the mitigating factors in this case, the majority concludes that the suggested penalty of annulment of his license was an inappropriate sanction.

I feel that a logical extension of the majority's reasoning is that the attorney should have his license reinstated once he can demonstrate that his illness is under control. Therefore, I must respectfully dissent.