Per Curiam:

Michael C. Farber

No. 17986 vs.

The Committee on Legal Ethics of
The West Virginia State Bar, etc., et al.

Michael C. Farber, a Braxton County attorney, petitions for a writ of prohibition to prevent further disciplinary proceedings against him upon grounds of misconduct by members of the Committee on Legal Ethics. We issued a rule to show cause on September 24, 1987, which was made returnable on November 4, 1987. We now deny the writ.

On April 25, 1985, the relator was jailed by Elmer D. Strickler, Judge of the Twenty-Eighth Judicial Circuit, for contemptuous conduct during a criminal hearing. He promptly petitioned this Court for a writ of habeas corpus and for writs to prohibit further punishment arising out of the contempt. The petitions accused Judge Strickler of involvement in an arson ring in Nicholas County and averred that the contempt citation had been issued in retaliation for the relator's attempts to expose the ring. They further alleged that Judge Strickler was under investigation by the Office of the United States Attorney for possible arson charges. A writ of prohibition was issued by per curiam order on July 9, 1985, the text of which appears in Farber v. Strickler, ___ W. Va. ___, ___ n. 1, 332 S.E.2d 629, 629 n. 1 (1985).

After the decision in the Farber contempt case, a Kanawha County attorney, James S. Arnold, filed an ethics

complaint against the relator. That complaint was predicated upon the accusations contained in the relator's various petitions for extraordinary relief. No action was taken on the complaint, as it was not properly verified in compliance with State Bar Rules, ch. 3, ¶ 5.

Two instances of misconduct are cited by the relator. First, he contends that the Arnold complaint was "reactivated" by the State Bar in retaliation for his criticism of the Bar in another disciplinary case. The relator actively assisted the State Bar in bringing disciplinary charges against James W. Douglas, the Prosecuting Attorney of Braxton County. He vehemently protested the handling of the Douglas matter by special counsel for the State Bar, and accused her of withholding evidence in the case. It is his contention that counsel threatened to "get back at [him]" for his criticism in the case.

The second charge of misconduct stems from an alleged breach of confidentiality. Robert B. King, chairman of the Investigative Panel, was a partner in Arnold's law firm and therefore immediately recused himself. In September, 1986, the State Bar's assistant counsel met with King to discuss the status of open disciplinary cases. At that meeting, King inquired about the Arnold complaint and was advised of the lack of a verification. Upon request by counsel, King communicated to Arnold the status of the complaint. Within a few days, the complaint was properly verified and transmitted to the State Bar. It is said that the conduct of King, after recusal, violated the relator's confidentiality in the Arnold complaint.

A Notice of Hearing and Statement of Charges was served upon the relator on November 20, 1986. Lengthy hearings were held before a Hearing Panel of the Committee, during which the relator was permitted to develop his defenses of retaliation and breach of confidentiality. This petition for a writ of prohibition was filed on September 16, 1987, after the hearings and post-trial briefing had been concluded.

Our rules on the issuance of writs of prohibition are by now well settled. Two rules are relevant here. First, we have repeatedly observed that prohibition cannot be substituted for a writ of error or appeal, unless a writ of error or appeal would be an inadequate remedy. E.g., State ex rel. Maynard v. Bronson, 167 W. Va. 35, 277 S.E.2d 718 (1981); Handley v. Cook, 162 W. Va. 629, 252 S.E.2d 147 (1979); State ex rel. Casey v. Wood, 156 W. Va. 329, 193 S.E.2d 143 (1972). Second, a writ of prohibition is principally addressed to exclusively legal questions. Where the questions raised in a prohibition case are factual, or are mixed questions of law and fact, it is preferable to allow the lower tribunal to make its findings, subject to our direct review. E.g., State ex rel. Williams v. Narick, 164 W. Va. 632, 264 S.E.2d 851 (1980); Hinkle v. Black, 164 W. Va. 112, 262 S.E.2d 744 (1979).

We believe it would precipitous to issue the writ of prohibition sought by the relator. The questions raised by his defenses are factual, and are best resolved in the first instance by the Committee. We are particularly hesitant to issue a writ where, as here, the record and post-trial briefing have been completed and the case is awaiting decision

by the Committee. The relator has preserved and developed his defenses below, and his rights will be fully protected through our review of the matter upon a full record. We, therefore, decline to interfere with the disciplinary case against the relator by the issuance of a writ of prohibition.

We would, however, stress that the relator's statements were subject to protection under the Petition Clause of the First Amendment. While that clause does not confer absolute immunity for communications within its reach, its protections are coterminous with other First Amendment rights. McDonald v. Smith, 472 U.S. 479, 86 L.Ed.2d 384, 105 S.Ct. 2787 (1985). The premiere cases of New York Times Co. v. Sullivan, 376 U.S. 254, 11 L.Ed.2d 686, 84 S.Ct. 710 (1964), and Garrison v. Louisiana, 379 U.S. 64, 13 L.Ed.2d 125, 85 S.Ct. 209 (1964), teach that criticism of a public official for discharge of his duty may be punished, consistently with the First Amendment, only where the statements (1) are false, and (2) are made with knowledge of their falsehood or reckless disregard of their truth or falsehood. The Committee should be mindful of these principles in its consideration of the matters raised in the Arnold complaint.

It is, therefore, Adjudged and Ordered that the writ of prohibition prayed for be, and the same hereby is, denied.