

FINDINGS OF FACT

As noted, this is not the first time this applicant has been before the Board of Bar Examiners and this Board. The first incident that brought the applicant to the attention of the two boards occurred in 2003.

During the July 2003 examination, several other applicants reported that they had observed this applicant writing after time was called during the Tuesday and Wednesday sessions of the bar examination. The applicant was also observed writing for approximately five seconds after time was called during the Thursday morning essay session by Beverly Braskett of the Admissions Office, who was proctoring the examination. Despite being instructed by Ms. Braskett to stop, the applicant continued to write. As a result of his conduct, the Board of Bar Examiners determined that the applicant would be given no credit for the essays on which he had written after time was called; this caused him to fail the examination. The Board also referred him to this Board, and a Panel of this Board held a full hearing. Based upon the testimony at the 2003 hearing, including the forthright testimony of the applicant and some excellent character testimony, the Panel determined that the applicant had proven by clear and convincing evidence the requisite character and fitness to be admitted to the practice of law. Specifically, the Panel found that the applicant had not intended to engage in dishonest fraudulent or deceitful conduct, that he did not intend to gain any advantage and that he was candid in responding to inquiries from both Boards. It concluded that: "Rather than being reflective of his character, his thoughtless actions at the July 2003 examination appeared to be an aberration. [And] . . . it is unlikely that this type of conduct will happen again." At its July 2004 meeting, this Board accepted the report and

recommendation of the Panel and approved the applicant. The applicant then applied for and took the July 2005 bar examination. His conduct during this examination resulted in the 2007 hearing.

During the first morning of that examination another applicant, Lisa Myers, observed the applicant (although she did not know his name) appearing to write after time was called on an essay answer. She testified by deposition that the applicant appeared to pick his pen back up and make a small notation at the top of his examination, perhaps changing his exam number. At the end of the morning session, Ms. Myers reported what she had observed to Marcia Mengel who was supervising the examination.

In the afternoon Rosey Smith, a member of the Admission Office, was assigned by Beverly Braskett to watch the applicant to see if he continued to write after time as called. Ms. Smith positioned herself behind the applicant so he did not know that she was there. At 3:00 when Ms. Mengel called time, the applicant stopped and put his pen down. However, while Ms. Mengel continued to talk he then picked his pen back up and wrote something. Ms. Smith, who had a stopwatch, timed the applicant writing for approximately 4.45 seconds.

After the applicants were all excused for the day, Ms. Smith was in the proctor room, a restricted area. The applicant entered the room and walked through it, ignoring Ms. Smith's instructions to stop. When she finally caught up to him, she cautioned him that he was in an unauthorized area. He apologized, but asked if he could talk to someone about "his situation." When asked what his situation was, the applicant replied he had continued to write after time was called. Ms. Smith told him to speak

with Ms. Mengel, who was still in the front of the examination room. Despite initially having difficulty understanding what he was saying, Ms. Mengel testified that he said: "I did it again. I wrote after time was called." He explained that he had written the word "Thompson" at the end of his answer to an essay question when the word should have been "Thomas," and then had changed it after time was called. He indicated he had told an exam proctor what he had done and the proctor told him not to worry about it.¹ He apologized and told Mengel he did not want this to reflect badly on his law license. He wanted to know if he could change the name back to "Thompson" from "Thomas" so that the grader could deduct a point for using the wrong name. Mengel told him the mistake was probably so minor that it was unlikely that an entire point would be deducted. The applicant said he just wanted his exam to be perfect and that is why he changed the name after time had been called. Mengel explained to him that she was not authorized to allow him to change his answer back, but that he could write down what occurred along with any proposal for correcting his answer; his explanation would be given to the Board of Examiners. Ms. Mengel gave him until the following day to provide his written explanation. She again explained to him that her job was simply to compile the facts of the incident and to inform the Board of Bar Examiners. At that point in time the applicant became somewhat distressed. Several times he said he was appealing to her as a fair person and on a personal level. He just wanted an opportunity to change the name on the exam. His continued beseeching of her to allow him to rectify his mistake led Mengel to believe that he was attempting to get her not to report the matter to the Board

¹ The written report of Chris Wilhelm, the exam proctor, indicates that the applicant told her that he had misspelled a word in his last sentence and corrected it after time was called. She did not see him make the correction and told the applicant that it seemed to be a minor incident. She did not make any report of the incident until asked to do so the next day.

of Bar Examiners. She once more reminded him that she was just a collector of information, that the ultimate decision was up to the Board of Bar Examiners and that he could make his proposal to that Board in writing. Mengel testified at the hearing that her impression that he wanted her not to report the matter to the Board was buttressed by the written statement he gave her the next day. That statement did not mention any reference to changing the name back to "Thompson" from "Thomas" but was merely an explanation of what had taken place.

At the panel hearing, the applicant sought to explain this behavior. He stated that he arrived the day before the exam and spent that night sleeping in his car in the parking lot of the building where the exam was to be held. Because of his earlier problems, he had resolved that he was not going to write after time at this exam. To prevent himself from doing it he visualized that someone was standing behind him looking over his shoulder. When he entered the exam room, the oral instructions for the exam had begun. He took his place. He adamantly denied that he wrote after time during the morning session. At the end of one time period, he had his pen in hand and was twirling it around which he said could have been mistaken for writing. He also does not believe that Lisa Myers could have seen whether he was writing or not from her position. To support his contention that it was not him she had not been observing, the applicant pointed to discrepancies in the clothing that she says he had on. Ms. Myers testified in her deposition that he had yellow high top shoes and blue mesh shorts. He says he had dusty yellow work boots on and blue knit shorts. She also testified that he looked Italian. He is African-American.

There is no objective evidence of the applicant writing after time in the morning exam. However, one of his exam answers has his examination number written on it twice. On the line denoted examination number, "1177" is written with cross hatches through the sevens. Above that, "1177" is written again without cross hatches through the sevens. No one testified who wrote this second number, although as noted, Ms. Myers did think it was an exam number he was writing. The Board, in any event, does not believe that it is critical to determine whether or not the applicant wrote the number again after time was called, because no doubt exists that he did violate the exam rules by writing after time later that day.

The applicant admits that in the afternoon session he wrote after time expired. He testified that on each answer during the exam he tried to put his pen down twenty seconds before time to ensure he was not writing after time was called. Although it is not clear how this would help, he also said he had even bought himself a watch to make sure he was on time. On the particular answer in question, after he put his pen down, he noticed that he had misspelled the name. He said the compulsion to change the incorrect name was so strong that he would have either had to change the name or begin to yell out loud. He wanted the question to be perfect. He picked up his pen, scratched out "pson" and wrote "as" above it. When he had realized what he had done he called to a nearby proctor; this was Ms. Wilhelm who was picking up examination booklets. When she reached his table he told her what he had done and she said she did not see any problem. At the end of the day, he left the exam hall. But while waiting for the traffic to clear from the parking lot, the applicant began to ruminate on what he had done. He says that in his mind he did not want his law license to be tainted because he had gotten an

advantage from having changed the name. He thought about the matter so much he eventually felt compelled to return to the examination hall. He entered the building through the closest door and ended up in the proctor room where he was eventually directed to Ms. Mengel.

The applicant denied he was attempting to convince Mengel not to report to the Board of Bar Examiners. He reiterated that he only wanted to be able to change the exam so that his license would not be "tainted" and he would not have an unfair advantage. His testimony at the hearing was that he felt, if he could change the answer back, then she could do whatever she had to do "procedurally."

In addition to the concerns raised by the applicant's repeat conduct in ignoring instructions to cease writing when time was called, the special investigator raised several other issues.

The first issue involved the re-examination application filed in March 2005. According to the applicant, he attempted to file an exam application in October for the February 2005 examination, but the Admission Office staff rejected it. He filed the same application in March with only minor changes. He says was he in jail at the time, realized the application was due, and called his secretary to have her send it. That application was signed and notarized on October 26, 2004 and never re-signed or notarized prior to the March filing. As a consequence, the March 2005 filing did not properly reflect any conduct from October to March, including the fact that he had been arrested. Although he failed to update the application, the applicant did scratch off February and put July as the Bar examination to which he was applying.

The failure to update was significant. The applicant had two arrests in the interim for failure to provide proof of insurance when stopped for a traffic violation. On both of these occasions he had insurance but did not have proof in the car. The matters were dropped when he produced insurance at the Court hearing. One of these incidences was on March 22, 2005. This is the incident for which he was in jail when he had his exam application mailed in by his secretary.

On September 2, 2005 the applicant had yet another incident where he was arrested. While parking at a laundromat in Denver he saw a black cloth bag hanging on a telephone pole. He went to examine the bag. As he was examining the contents of the bag, several members of the neighborhood Guardian Angels accosted him about the bag. They asked him what he was doing. He replied he was being nosy just like they were. They took the bag from him and he went into the laundromat. A short while later more Guardian Angels appeared in the laundromat demanding he accompany them outside the Laundromat where they intended to hold him until the police arrived. He refused until, as he described it, an "Asian" Guardian Angel came up and asked him to go outside. He went outside where they handcuffed him and sat him on the curb awaiting the police. When the police came he identified himself as "Dr. Rahshann Blackwell." He told the officers that he was not a medical doctor but a law graduate studying for the Bar exam and that an arrest would hurt his opportunity to take the exam. Nonetheless, he was arrested, and charged with disorderly conduct and possession of the marijuana in the black bag. These charges were eventually completely dismissed on November 9, 2005. The applicant gave no particular explanation as to why they were dismissed. During his testimony about this incident the applicant became quite emotional and began to cry.

Although he normally speaks in a soft monotone voice, he also raised his voice almost to a shout several times, became extremely distraught and did not seem fully in control.

The applicant also failed to report a lawsuit filed against him. In August 2003, the applicant was sued by the University of Denver for \$6,200.00 for past due tuition incurred while a student in the LLM Tax Program at the University. In April 2004 the case was dismissed with prejudice after the applicant's father paid the money owed. This lawsuit, like the arrests, should have also been reported on his re-examination application filed in March 2005, but it was not.

The Special Investigator also questioned the applicant's conduct during the lengthy history of events leading to his 2007 hearing. Originally the applicant retained Attorney Bruce Comley French to represent him. After discussion with the Panel Chair and the Special Investigator (and somewhat at the suggestion of the Panel Chair), it was determined that the applicant would undergo a psychological evaluation. The applicant was supposed to provide a report to the Special Investigator by the first of April 2006 preparatory to a hearing to be held on May 25, 2006. However, the applicant did not even go to a psychologist until early May and it was not until May 22nd that a report was written. This was the primary reason the May 25, 2006 hearing was continued. On May 24, 2006, Mr. French requested that the hearing be continued because the expert could not be at the hearing. Special Investigator Trafford agreed primarily because she had not had any opportunity to see the report. After the Panel Chair agreed to continue the hearing, he learned the request for continuance was without the approval of the applicant who was extremely upset and discharged French.

The applicant then retained Dianna Anelli to represent him. Although he wanted a hearing before the July bar, that turned out not to be possible. The hearing was set for October 2006. Shortly before that hearing Anelli withdrew because the applicant had not paid her. Although the applicant claims he had money to pay her, he had clearly not paid her on time and seemingly had not paid her the agreed upon sum. The day of the October hearing, Panel member Richards² held a hearing to put on the record the applicant's request for a continuance because he again had retained French. While circumstances often justify requests for continuances, once again the hearing in this matter needed to be continued at the last minute because of the actions of the applicant.

The most significant issue about this applicant, however, is the psychological evaluation he underwent. The applicant was examined by Dr. Thomas Hustak, a psychologist in Lima, Ohio. Dr. Hustak interviewed the applicant for two-hours, had him fill out an extensive questionnaire, and gave him two tests, the MMPI-2 and the PF-16. It took the applicant four hours to complete the MMPI and even then there were twenty questions unanswered. Dr. Hustak noted that this was unusual because most people complete the test in 1 1/2 hours and because the applicant was specifically instructed that he needed to respond to all the questions.

According to Dr. Hustak, the applicant exhibits problems as a consequence of a combination of depression, anxiety and confused thinking, problems that are somewhat atypical in presentation. The applicant's concentration is poor, he tends to brood and become agitated because of long-term problems with feelings, chronic stress and peculiar cognitive thinking. Dr. Hustak diagnosed the applicant, in accordance

² The other members of the panel had agreed to the request for continuance and, with the consent of the applicant and Ms. Trafford, did not make the trip to Columbus to be present for putting the request on the record.

with the DSM-IV, with compulsive personality traits, depressive disorder not otherwise specified, passive/aggressive personality traits and some schizoid personality traits. This last diagnosis refers not to schizophrenia, but to detachment from his emotions and feelings. The applicant's insight into these problems is very limited and perhaps non-existent. He also has a lower level of efficiency and probably has had for some time in his life. Significantly, the applicant minimizes, if not rejects, the impact of these symptoms on his thinking and behavior, making it unlikely that he will address these problems. Dr. Hustak testified that, if the applicant does not address them, he is likely to have difficulty functioning both in life and as an attorney. Dr. Hustak is a forensic psychologist who has frequent contacts with attorneys and understands the stressors and pressures of an attorney's life. He believes that the applicant will have problems dealing with people and with time constraints.

Dr. Hustak was queried about the essential eligibility requirements for the practice of law. He opined that the applicant does not possess, or is otherwise impaired, with respect to five of these requirements: those numbered 1, 2, 4, 7, and 9. Requirement No. 1 is the cognitive capacity to learn, to recall what has been learned, to reason and to analyze. Requirement No. 2 is the ability to communicate clearly. Requirement No. 4 is the ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness. Requirement No. 7 is the ability to conduct oneself diligently and reliably. And Requirement No. 9 is the ability to comply with deadlines and time constraints. These are significant impairments for an applicant who is seeking admission to the practice of law. The Panel found, and this Board agrees, that Dr. Hustak's opinion

is worth great weight, and that his concerns that the applicant currently would have difficulty functioning as a lawyer are justified.

In his defense the applicant points out that he runs a tax preparation service and that he prepares income tax returns for some 400 individuals and businesses. He has never had any problems with the IRS and that he has been audited by the IRS three times, each time being given a clean bill. One of his clients testified, stating that she is very satisfied with his work. She noted that there was one small mistake the applicant made in a return, but she was happy with the way the applicant resolved it with the IRS. He actually went back to Colorado from Ohio on short notice to do this for her. The applicant stressed that he believes he takes his time with his income tax clients, is diligent and never misses deadlines. He pointed out that he has a good credit rating, that he graduated with a LLM from the University of Denver and he considers his clients his family. He chose to get into the tax business so he could keep himself current with tax law while awaiting the opportunity to get his law license. The applicant also works as a furniture mover during the off income tax season, and testified that he is likewise reliable in this work. The applicant contends that he did not do well on his interview with Dr. Hustak because he was distracted because his sister was flying to Colorado from Ohio to see him at the same time he was traveling to Ohio to meet Husak. His distraction caused him to take more time than normal for the MMPI-2. Additionally, he says he did not realize there was a time limit (in actuality there was no time limit).

Dr. Hustak advised the applicant to undergo treatment by a licensed person. He emphasized licensed person because the applicant apparently has what Dr. Hustak characterized as some "magical" thinking about being treated. It is worth noting

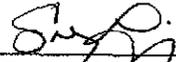
in this regard that the applicant had an herbalist listed as a potential expert witness. When asked if he would undergo treatment the applicant said that he did not agree with Dr. Hustak's diagnosis and wanted a second opinion. He stated he has made an appointment with a psychologist in Denver. However, despite having Dr. Hustak's report since May 2006, the applicant only made the appointment with the Denver doctor shortly before the January 2007 hearing. In his testimony, the applicant temporized as to whether he will follow whatever that psychologist says should be his treatment.

CONCLUSION

The Board finds that the applicant has not proved by clear and convincing evidence that he possesses the character and fitness to be admitted to the practice of law. The incident involving the writing after time, which was the precipitating event, perhaps could be characterized as minor if he had not done it before and did not have the psychological problems that underlay and explain this conduct. The applicant has obsessive and compulsive behavior problems that are likely to cause this conduct to occur again. The Board further concludes that the writing incidents were not aberrations, but are indicative of present problems that reflect on his fitness. The other incidents in his life, when seen in light of the psychological report, also indicate that he is a person who needs to address his problems in order to avoid more serious problems. The Board does not question the applicant's moral character, but it does find that the applicant lacks present fitness in light of his psychological issues.

It is the Board's recommendation that the applicant be disapproved, but that he be allowed to reapply for February 2009 bar examination. Before he reapplies, however, he must undergo treatment with a licensed professional in psychology or

psychiatry. After he has reapplied, the applicant must be reevaluated, at his expense, by Dr. Hustak and must file a copy of the reevaluation report with his reapplication.


SARA LIOI
BOARD CHAIR

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