

IN THE SUPREME COURT OF OHIO

In re:	:	Case No. 2011-1520
	:	
Application of	:	On Appeal from the Board of
	:	Commissioners on Character
Michele L. McKinney	:	and Fitness of the Supreme
	:	Court of Ohio
	:	

APPLICANT MICHELE L. MCKINNEY'S OBJECTIONS TO THE REPORT AND
 RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON CHARACTER AND
 FITNESS OF THE SUPREME COURT OF OHIO

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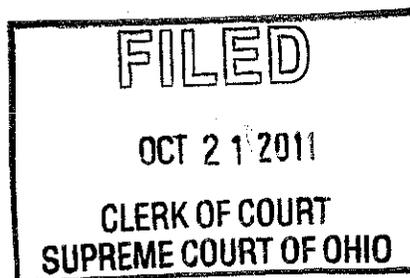


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II. INTRODUCTION

Now comes Respondent, Michele L. McKinney (“Michele”), and submits the following objections to the Report and Recommendation (the “Report”) of the Board of Commissioners on Character and Fitness of the Supreme Court of Ohio (the “Board”). The Hearing Panel (“Panel”) determined Michele’s application to take the Bar Examination should be disapproved but that she should be permitted to reapply for the July 2014 Bar Examination, provided that she demonstrates the requisite Character and Fitness for admission at that time.

The Board went against this recommendation and denied her application to take the Bar Examination and recommended that Michele not be permitted to reapply for admission to the practice of law in Ohio. The Board’s Report was certified to this Court, and an Order to Show Cause was filed on September 21, 2011. Michele submits these Objections to the Board’s Report and Recommendation.

Michele objects the adversarial nature of all previous hearings on this matter in light of this Court’s decision in *In re Application of Davis (1974)*, 38 Ohio St.2d 273.

Michele objects to the Board’s conclusion that the record of the applicant reflects a person who lacks the honesty and trustworthiness required to be permitted to the practice of law.

Michele objects to the Board’s finding that she has been repeatedly evasive and failed to be candid regarding her previous conduct.

Michele objects to the Board’s finding that prior testimony has been contradictory and evasive and lacked credibility.

Michele objects to the Board’s finding that she was evasive and dishonest while under oath.

Michele objects to the Board's finding that she is still disposed to the same dishonesty that caused her to be fired in 2008.

Michele objects to the Board's conclusion that she does not possess the character and fitness to be admitted to the practice of law in Ohio.

Michele objects to the Board's recommendation that she be disapproved and not be permitted to reapply for admission to the practice of law in Ohio.

Therefore, for the reasons more fully stated within the attached brief, Respondent respectfully requests the Board's Recommendation of a permanent ban to reapply for the Ohio Bar Examination be overturned.

III. STATEMENT OF FACTS

Appellant, Michele McKinney ("Michele"), maiden name Michele Rigdon, was employed at the firm of Lerner, Sampson and Rothfuss ("Lerner") as a title claim paralegal during her first year as a part-time law student at Chase College of Law ("Chase"). Michele worked in this position at Lerner until March 21, 2008 when she was terminated. That termination, and whether or not Michele fully disclosed the reasons for that termination in subsequent hearings and applications, is the main issue of this case.

In March 2008 Michele was in the middle of her first year at Chase. At the same time, her sister, who had primarily raised Michele as a child, became severely ill and had to undergo three separate surgeries. (*Transcript, p. 36, line 11*). This bond was extremely close between these two sisters. Michele spent every weekend in the hospital with her sister, travelling back and forth from Louisville to Cincinnati each week (*Transcript, p. 36, line 14*). The hospital bills financially devastated her sister, and left her unable to pay a lease which was in Michele's name. (*Transcript, p. 38, line 12*). Michele had two options to try to get out of the lease, sublet or be

transferred for work. When she contacted the apartment complex to ask them how long it typically took to find a sublessee, they indicated it typically took months. (*Transcript, p. 38, line 23*). In an exercise of very poor judgment, Michele allowed stress and exhaustion to persuade her to make a very poor decision. She drafted a letter on Lerner's letterhead stating she was transferred from Louisville to Cincinnati and therefore was eligible to terminate the lease. She contacted another sister and asked her to pose as a Lerner employee and verify the transfer. (*Transcript, p. 39 line 10*). However, Michele never sent that letter to apartment complex. Michele decided not to use the letter because it was unethical. (*Transcript, p. 41, line 6*). Instead, in March 2008, she contacted the complex and asked them to help her sublet. At the Michele's request, the complex ultimately found a sublessee in a short time period and the lease was terminated.

On, March 21, 2008 Michele was terminated from Lerner. In her termination interview, Michele walked into the office of Teresa Miller ("Miller"), office manager for Lerner, and , without any discussion or explanation, was informed she was terminated. (*Transcript, p. 47, line 18*). Miller then placed her hand on a stack of documents sitting on her desk and asked Michele if she wanted to go through them. (*Transcript, p. 47, line 23*). On top of the printed stack of materials was an email correspondence between herself and her then boyfriend, now husband, Michael McKinney ("Mike"), which contained personal and embarrassing content. This email was easily recognizable as Michele and Mike had alternated colors to make the email chain more easily read. (*Transcript, p. 48, line 5*). Michele replied that she would not like to go through the documents. (*Transcript, p. 48, line 13*). Miller then informed Michele that she would be escorted out of the building and Rachel Faris, the Human Resources Director for Lerner ("Faris"). Faris escorted Michele to her desk to gather her personal things, confiscated

her employee ID badge and escorted Michele to the lobby. (*Transcript, p. 48, line 15*). Neither Miller nor Fair ever gave Michele a concrete reason for her termination. (*Transcript, p. 50, line 24*).

Within minutes of these events, Mike was called to Miller's office and was terminated for excessive personal emails. In his termination interview, Lerner informed Mike that several people were involved and they are all being terminated. Lerner never mentioned any letters to Mike. Unknown to Michele, Mike had been terminated and escorted by Faris to his desk to obtain his personal items, his ID badge was confiscated and he was escorted out of the building. Michele had already exited the Lerner offices and headed toward the Government Square bus stop in order to get home. She called Mike and at that time discovered that he also had been terminated just minutes after her termination. Mike informed Michele that he had been terminated for misuse of company email. The two conversed about the terminations and recounted their termination meetings with each other. Mike had been informed that his termination was due to the emails he had exchanged with coworkers during working hours. It was a logical conclusion that they had both been terminated for the same reason. (*Transcript, p. 187, line 17*). That day, on March 21, 2008, the two walked away from their former place of employment together, discussed their misuse of their employer's emails, and came to the reasonable conclusion that their misuse of the emails had caused them both to lose their jobs. (*Transcript, p. 96, line 7, p. 97 line 5*). There had been no indication to Michele as to the actual reason for her termination other than the stack of emails shown to her in the termination meeting. (*Transcript, p. 53, line 8*). ~~Mike was given no other reason for his termination than his misuse of~~ the company email system. As a result of the information given to both of them by Miller in both of their termination meetings, and the discussions the two had on their way home together that

day, Mike and Michele walked away from Lerner, both believing that they had been terminated for the same reason: their emails. Neither one of them ever thought any more about the reason for termination nor did they have any cause to discuss it any further.

Over two (2) years later, Michele filled out an application to be a candidate for the Ohio Bar Exam. In her application, she stated that she was terminated from Lerner for misuse of company email. (*Transcript, p. 51, line 23*). Michele felt she was fully disclosing the reason for her termination on her bar exam application. Michele answered the question on the application truthfully (*Transcript, p. 51, line 23*).

Michele's Character and Fitness interview ("Interview") was held with the Cincinnati Bar Association ("CBA") on December 17, 2010. At the time of this interview Michele was six months into her first pregnancy, which was a very difficult pregnancy due to medical issues. However, Michele was dedicated to sitting for the exam in February 2011, and went forward with the interview. She was interviewed at CBA by attorneys Michael T. Mann and Chris Wiest ("Interviewers"). At this interview, the Interviewers asked Michele specific questions about a lease in Louisville, whether she was having financial difficulties paying for this lease, how this lease was terminated, and why she was terminated from Lerner. Michele answered all of these questions honestly and fully based on the information she had in her possession at the time. Then the Interviewers told Michele that they had conducted an investigation into her termination from Lerner. They asked her if she had forged a letter in an attempt to get out of a lease. Michele told them that she had only created a rough draft of a letter that she did not sign, mail, nor use in any manner. Understandably, Michele was shocked by this question. Michele had never made any connection between the unused draft letter and her termination from Lerner. (*Transcript, p. 71, line 17*). This revelation from the Interviewers left Michele wondering what the connection

was between her termination from Lerner and the letter. She called Mr. Mann and left a voicemail, making a clear effort to discuss the issue further, but her phone call was never returned. (*Transcript, p. 76, line 19*).

After leaving this interview, Michele realized that the string of questions that the Interviewers asked revealed that they had been mistakenly led to believe that the draft letter and the termination were related. As a result, Michele was not recommended to sit for the Ohio Bar exam. It must be stressed that on December 17, 2010, at the time of the interview, Michele was still under the impression that she was terminated for same reason as her husband - misuse of company email, as implied by Miller in the termination meeting.

After this initial rejection, Michele appealed the decision to the CBA. At the appellate hearing, Michele was interviewed by an eight member panel of the CBA's admissions committee ("panel") on January 26, 2011. Michele did not have the benefit of counsel. Also, eleven days prior to this hearing, Michele had given birth ten weeks prematurely after spending ten days in the high risk unit in Good Samaritan Hospital. Born at 3 pounds, 12 ounces, the baby boy was placed in the Neonatal Intensive Care Unit at Good Samaritan Hospital, where he was at the time of this second hearing. Michele had to leave her baby at the Hospital to attend the appeals hearing. Michele's focus was clearly elsewhere at the time. (*Transcript, p. 82, line 25*). Due to the baby's medical complications at the time, Michele was unable to review the personnel file that she had retrieved from Lerner in the interim between this hearing and the former interview. She was admittedly not focused on or prepared for this hearing, and, as a result, had a difficult time answering the panel's questions in a coherent manner. (*Transcript, p. 81, line 10*). She did, however, answer all questions truthfully. Furthermore, believing that she was simply going into this hearing to clarify a misunderstanding, Michele went into the hearing without

representation. Even in her weak medical and emotional condition, she sat through two hours of questioning by the panel regarding the events that resulted in her termination at Lerner. Michele, once again, freely admitted that she had created a rough draft of a letter and that she had decided to not use the letter. Michele admitted to the panel her remorse for even considering sending such a letter. Michele notes that she initially did not recall all of the details surrounding the letter, and, given her son's stay in the NICU, had not had the benefit of thoroughly performing discovery, nor to attempt to recall those events. However, once the panel members asked her about the details, she openly acknowledged her role, and even acknowledged that she had concocted a rather elaborate scheme. However, she had the honesty and integrity to not follow through with it; explaining that the creation of the scheme was out of a brief lapse in judgment resulting from her deep love and concern for her sister. (*Transcript, p. 91, line 2, line 15*).

Bear in mind that this brief lapse of judgment ended as quickly as it began and Michele rejected the idea of ever actually using the letter to break the lease. Michele understandably was worried over the predicament of her ailing sister and her financial obligation to pay the lease. Michele also explained to the CBA panel that Lerner did not disclose to her in her exit interview that she was being terminated for misuse of company letterhead. (*Transcript, p. 137, line 10*).

Michele's actual reason for termination, misuse of company email, was never addressed by the Panel and seemed to be ignored. The entire focus of the Panel for two hours was this "rough-draft" of a letter that was NOT the reason for her termination and a letter that Michele never used. The CBA panel agreed that Michele was remorseful for her brief lapse of good judgment, but did not recommend Michele be approved to sit for the bar.

Michele decided to appeal the decision of the CBA to the next level, being the Board of Commissioners on Character and Fitness for the Supreme Court of Ohio ("Board"). Michele did

hire counsel for this appeal. She expended a large sum to retain counsel, although she could ill afford it. Her strong commitment to the truth and the misunderstanding surrounding her reason for termination from Lerner motivated her to drive on in this process. An evidentiary hearing was set for June 30, 2011. At this hearing, a three member panel listened to several hours of testimony regarding, primarily, whether Michele had recited on her bar application the wrong "reason" for her termination from Lerner. This is now the third session of questioning, totaling nearly ten hours, that Michele has sat through primarily regarding whether she recited the wrong reason for her termination from Lerner. The issue, again, was the role of the drafted letter in her termination and the precise "reason" that Michele was terminated. Again, the sending of the personal emails to Mike received little to no attention at all, yet this was the reason Michele believed she was terminated for after she left her exit interview with Miller. For three years now, Michele had maintained that she was terminated for the same reason Mike was told at his exit interview with Miller. Mike was fired on the same day only minutes after Michele and was told he was being terminated for sending personal emails. Michele testified to the Board, now in front of her third tribunal, the same facts she told the CBA Interviewers and Panel. In this hearing, Michele, her counsel and witnesses stressed to the judges that, while she believed that the drafted letter for personal use during her work shift may be considered sufficient grounds for termination, she was not told that it was in fact the "reason" for her termination. Michele stressed, as she had done in the appeal to the CBA panel, that she left her exit interview with Miller believing that the personal emails were the reason for termination. Michele can only assume that either Lerner later changed the reason for termination in their file or that Lerner failed to convey that reason to Michele in the exit interview. The three-member panel who heard the testimony for several hours from the witnesses for both sides, recommended to the twelve-

member Board, that Michele be allowed to reapply to sit for the July 2014 Bar exam. The attorneys for the CBA recommended that Michele wait for two years and be allowed to sit for the 2013 Bar Exam. In its Report and Recommendation (“Report”), the full Board overruled the three member Panel and recommended that Michele be permanently barred from reapplication for the Ohio Bar Exam.

IV. ARGUMENT

In *In re Application of Davis*, the Supreme Court of Ohio noted that the “the paramount concern in proceedings before the Board of Commissioners on Character and Fitness is whether the applicant possesses those moral traits of honesty and integrity which will enable him to fully and faithfully discharge the duties of our demanding profession. We view such proceedings as being different from the adversary contest associated with, for example, disciplinary cases. A hearing to determine character and fitness should be more of a mutual inquiry for the purpose of acquainting this court with the applicant's innermost feelings and personal views on those aspects of morality, attention to duty, forthrightness and self-restraint which are usually associated with the accepted definition of ‘good moral character.’ ” *In re Application of Davis (1974)*, 38 Ohio St.2d 273, 274, 67 O.O.2d 344, 313 N.E.2d 363.

An applicant to the Ohio bar must prove with clear and convincing evidence that he or she “possesses the requisite character, fitness, and moral qualifications for admission to the practice of law.” *Gov.Bar R. I(11)(D)(1)*. The applicant’s record must justify “the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them.” *Gov.Bar R. I(11)(D)(3)*. Necessarily, “[a] record manifesting a significant deficiency in the honesty, trustworthiness, diligence, or reliability of an applicant may constitute a basis for disapproval of the applicant.” *Id.*

While Michele understands that it is her burden to prove character and fitness, she feels that she walked into to each hearing facing the presumption that she lacked the requisite character and fitness and facing an antagonistic atmosphere, rather than an atmosphere that fostered a “mutual inquiry” ... designed to illicit her “innermost feelings and personal views on... morality, attention to duty, forthrightness.” The Interviewers maintain that they gave Michele ample opportunity to be forthright about the letter prior to outright asking her about it. While that may have been their intention, they admittedly came into the hearing with a “game plan,” as they referred to it in the Board hearing, which felt adversarial in nature and served as a impediment in the lines of communication between Michele and the Interviewers (*Transcript, p.198, line 13*). This adversarial nature continued through the administrative process.

In making a determination as to whether or not the applicant possesses the requisite character and fitness, “the following factors shall be considered in assigning weight and significance to the applicant’s prior conduct: (a) Age of the applicant at the time of the conduct; (b) Recency of the conduct; (c) Reliability of the information concerning the conduct; (d) Seriousness of the conduct; (e) Factors underlying the conduct; (f) Cumulative effect of the conduct; (g) Evidence of rehabilitation; (h) Positive social contributions of the applicant since the conduct; (i) Candor of the applicant in the admissions process; (j) Materiality of any omissions or misrepresentations.” *Gov.Bar R. I(11)(D)(4)*. We will address each of these factors in turn to show that the recommendation made by the Board was in error.

A. Age of the Applicant at the Time of the Conduct

The Board of Commissioners recommendation specifically points out that Michele was 30 years old at the time of the conduct. While Michele did show a brief lapse of judgment when she drafted the letter, the Court should consider other mitigating factors,

including her sister's illness, the stress of being a first year law student, not yet having studied professional responsibility, and still being a relatively young woman in a big, unfamiliar city and trying to juggle law school, family problems and financial struggles all at the same time. Michele has matured greatly. Since this incident, she has gotten married, completed law school, had a baby, has a second child on the way, and has the possibility of an attorney job at the firm where she works. Most importantly, she has set significant boundaries between her family life and her career. One may argue that this is a lesson that Michele should have learned before the age of 30, however each person learns life's lessons at different points. Michele urges that facing the possibility of possibly losing a career, spending thousands of dollars on application fees and attorney's fees, voluntarily disclosing to her employers, family, professors, and friends why she has yet to sit for the bar exam, and enduring multiple hearings on this matter have had a profound impact on her. She has learned the necessary lessons and made the requisite changes to ensure that an event such as this would never happen again.

B. Recency of the Conduct

As stated above, the drafting of the letter took place over three and a half years ago. Moreover, this conduct took place in Michele's second semester of the first year of law school. Michele was under an extreme amount of stress juggling work, law school and the emotional stress of her sister's illness. At the time the letter was drafted, Michele had completed one semester each of torts, contracts, legal writing and legal research. However, since this incident, Michele has completed her legal education, including professional responsibility, and more fully understands the high ethical standards that attorneys must strive to meet. Furthermore, Michele has worked at Richards & Associates

Co., L.P.A. for nearly three years now, and, in this position, she has had the chance to see a first-hand account of how important honesty and integrity are to an attorney and in the legal profession. Michele has also earned the confidence and respect of the Attorneys with the Firm and is in a supervisory level position, where she is entrusted with handling law firm checks, deposits, cash, client payments, and working directly with clients as a law clerk and paralegal. The Attorney/Owner of the firm testified at the July 30th hearing that Michele was both trustworthy and should be allowed to sit for the Ohio Bar Exam.

C. Reliability of the Information Concerning the Conduct, Candor of the Applicant in the Admissions Process and the Materiality of Any Omissions or Misrepresentations

Rule 1, Section 11 (D)(4) of the Rules for the Government of the Bar of Ohio states “the admissions committee shall determine whether the present character, fitness, and moral qualifications of an applicant qualify the applicant for admission to the practice of law [by] assigning weight and significance to the applicant’s prior conduct” and considering “factors underlying the conduct,” the “cumulative effect of the conduct”...and the “materiality of any omissions or misrepresentations.” *Id.*

The Board and the Interviewers maintain that Michele was not fully candid and truthful throughout the Application process. This is based solely upon the “reason for termination” given to them by Lerner, which contradicts Miller’s implication on the day Michele was terminated. When Michele was asked if she was terminated from Lerner, both on the application and in the Interview, she said yes. When the Interviewers asked if she drafted the letter regarding a lease, she replied yes. When they asked how she dealt with the lease issue, she replied that she found someone to sublease the apartment, which was fully and honestly disclosing the facts.

The weight and significance of the “reason” for termination has been the focus of many hours of hearings and testimony and interviews. This deviation between what Michele was told as her reason for termination and the reason Lerner later maintained seems to be receiving much more attention than the underlying acts themselves, the personal emails, which is the “conduct” that led to her termination. Even hypothetically assuming that the drafting of the letter had some significance in the Lerner termination,, the letter was only a draft and it was attached to an “email.” Even the letter was part of a personal email, again leading Michele to understand that she was terminated for sending personal emails. Further, Michele rightfully opposed the CBA attempt to characterize her actions as a “forgery.” It was not a forgery as alleged by the CBA, as it was never printed out and signed, and it was never used nor sent to the addressee. Michele did not omit any material facts during her hours of testimony. She, being put on the defensive at all of these proceedings, was merely trying to fully disclose what she had been told was her reason for termination. She had not, prior to the initial CBA interview, made any connection between the drafting of the letter and her termination from Lerner. There was never any intent nor attempt by her to fail to disclose significant facts surrounding her termination. Michele has not omitted any facts that were within her knowledge surrounding her termination of employment from Lerner nor has she misrepresented any of the facts that were known to her.

Further, it is important to note that Michele does not agree with Lerner’s recount of the events surrounding her termination interview. While she concedes that drafting any letter on company letterhead could be ample grounds for termination, she upholds that it was not the reason communicated to her at the time of her termination. Armed with

the truth as she knew it at the time, she was being forthright with the Interviewers by fully disclosing the details of the lease, the letter, and the termination. Michele disclosed that she was fired for misuse of company *email*, rather than misuse of company *letterhead*. That one word difference has been the cause for much scrutiny over the past year. Throughout this process, Michele has maintained that her account of the exit interview and the discrepancy with the account by Lerner has been the result of a *miscommunication*, not a *misrepresentation*.

Michele admits that it appears that she disclosed the details of the termination and the letter in a piece-meal fashion. However, this was not intentional, nor was it done in an effort to be deceitful in any way. In hindsight, now that she has had a chance to review her Lerner personal file, and after attending the hearings and interviews over the course of the past year, Michele now fully appreciates the significance that has been given to the relationship between her termination and the letter. However, that was not the reason communicated to her at her exit interview by Miller.

Further, Michele notes that she was advised on more than one occasion that the panel members wanted and expected to hear her admit that she had lied in the initial interview, apologize, express remorse, and say she had learned her lesson. She acknowledges that this alternate version of the events would be more believable and palatable than saying a major Cincinnati law firm had not fully disclosed to her the full reason for her termination, and that any non-disclosure was the result of a misrepresentation. The cases where Applicants have admitted they lied, said their mea culpa, and vowed to change, are numerous. For example, in *In Re Application of Creighton*, the Supreme Court of Ohio ruled that because Mr. Creighton had admitted he

lied, expressed remorse, and learned his lesson, he was suitable for the practice of law, and he was ultimately allowed to reapply for the Ohio Bar exam. *In re Application of Creighton (2008), 117 Ohio St.3d 253*. However, in this case, for Michele to agree with the reason for termination communicated by Lerner would force Michele to actually “lie”. Michele must maintain the facts as she knows them to be true.

Much of the difficulty and uncertainty surrounding Michele’s bar application has been based on the he said-she said nature of the discrepancy between what Lerner offers as the reason for her termination, and Michele’s own understanding and report of the reason for termination. In its Report, the Board grappled with this very problem. They ultimately stated that they found Michele’s testimony to be less credible than the testimony and documentation of witness Faris, who did NOT conduct the exit interview and had no speaking role in the exit interview. Miller, who conducted the interview, was never called upon to testify at any of the hearings and further has failed to submit any factual statement at any part of this process.

While Michele does not deny that it is plausible that Lerner did terminate her for the exact reasons they set forth in that termination memo to the file, the fact remains that Teresa Miller failed to verbally express those reasons to Michele in the termination interview. In fact, Faris admitted that they did not show Michele any documentation regarding the falsified letter in the termination meeting (*Transcript, p. 162, line 16-18*).

Furthermore, Michele argues that Faris’ testimony has quite a few contradictions and ambiguities in it. Faris admitted several times while on the stand that she did not fully recall the events of Michele’s termination (*Transcript, p. 149, line 13*). As Michele’s counsel pointed out, when answering questions directed to her, Ms. Faris often

relied on what “standard procedure” would have been, or said what was “likely” to have occurred, but she could not be certain. (*Transcript, p. 150, line 1, line 4, line 9, line 15, line 18, p. 155, lines 5-6, 23-2, p.172, line 15*). She admitted that “she certainly [could] not confirm every word that was spoken at the [termination] meeting.” (*Transcript, p. 156, line 5-7*). At one point in her testimony, she notes that she remembered where everyone in the room was sitting, only to turn around in the next few lines and contradict herself by stating she couldn’t recall whether Michele was sitting at all. Any testimony of Faris as to what Miller said is Hearsay and unreliable. Yet so much of these proceedings have been based upon the vague recollections of Faris and her unreliable hearsay testimony. One has to wonder why Miller was not subpoenaed to testify in Columbus before the Panel on July 30th. Faris also admitted that Lerner is a large firm with a very high turnover rate. This makes it highly unlikely that she adequately remembers the details of one single low-level/entry- level employee termination that occurred three and a half years ago.

Further, Faris waivered on whether violation of the company’s email policy would result in termination. On one hand, she stated that excessive email use certainly would not be sufficient grounds for the termination of Michele, yet admits that Mike was fired for that exact reason. (*Transcript, p. 151, line 11, p. 170, lines 16-21, p. 158, lines 21-23, p. 171, lines 5-9*).

Another key point of concern in Faris’ testimony came when she admitted that it ~~was possible that certain factors are taken into consideration for employee terminations~~ that are not then communicated to that employee. Faris pointed out that while Mike’s receipt of the drafted letter was certainly a factor in his termination, they did not see fit to

mention that factor to him. (*Transcript, p. 158, lines 23-25, p. 159, lines 1-9, P. 171, lines 10-15*). If it was a factor in his termination, and yet not mentioned to him, is it not also possible that it was a factor in Michele's termination, and yet not mentioned to her? Faris then stated that the only thing included in the termination memo is what is in fact communicated to the employee. (*Transcript, p. 159, lines 13-21*). Yet, there are details in Michele's termination memo that Faris admitted were not relayed to her in the termination meeting, i.e. the fact that Lerner contacted the apartment complex (*Transcript, p. 174, lines 11-13*). She also admitted that the language "Later that afternoon" in Michele's termination memo could indicate that she wrote the memo at a later date, which brings into question the true contemporaneous nature of the letter. (*Transcript, p. 157, line 19-21*). Mike's exit interview was mere minutes after Michele's termination. Moreover, Faris admitted that sometimes letters are not written contemporaneously with the termination, and sometimes the letters are supplemented afterward. She also admitted that she "destroyed" the handwritten notes that she took during the actual termination meeting (*Transcript, p. 175, lines 12-22*). She admitted that she could not recall what documents were recovered *prior* to or *after* the termination meeting (*Transcript, p. 150, line 23*). In fact, she admitted that it is possible that some of the emails were recovered after the termination meetings with Mike and Michele (p. 151, line 23, p. 166, line 17-23). Retrieving the emails after the termination would render it impossible to have considered those emails and the attachments thereto, as a determining factor in the reason for termination, and therefore impossible to have relayed that factor to Michele.

Finally, Faris is at an unfair advantage over Michele as she was given the opportunity to supplement her testimony with documentation from the time of termination. She admits that she met with Lerner's attorney, conducted a post-termination review of the documentation, and drafted a summary of the events after consulting with said attorney, before turning over the file to either the Michele or to the CBA (*Transcript, p. 152, line 13, p. 154, lines 8-15, p. 168, lines 20-25*). She had to interpret and arrange Michele's file prior to presenting it to the CBA. Michele notes that she was not asked to sign any version of the documents at the time of termination, and therefore is unable to verify that the documents contained accurate information or an actual depiction of what occurred in the termination meeting. During her employment at Lerner, Michele met with supervisors on two other occasions, and was asked, on both occasions, to sign a summary of those meetings. The fact that that policy was not continued in the termination meetings further calls into question the accuracy of the documents found within Michele's employee file.

Faris' meeting with Lerner's attorney prior to delivering the employment file to the CBA Interviewers or Michele shows the strong possibility that Faris wanted to ensure that she placed her firm in the best light. Faris had the opportunity to rearrange the file and remove or alter some of its contents. Despite what was said in the termination interview, or what was not said, Faris wanted to ensure that it appeared Michele's termination was handled properly.

Further, the materiality of the omissions in the application process is minimal at worst. Michele openly disclosed she was terminated from Lerner and provided on her bar application the reason as it was told to her. Further, when asked about the drafted

letter that she "emailed" to Mike, Michele openly admitted that she had done that. The only possible omission that has occurred is an omission of the reason Lerner placed in Michele's personnel file for her termination, information Michele had no way of knowing. Michele did not omit why she believed she was fired. If the application had asked her to disclose every regrettable mistake she had ever made, then not disclosing the letter on the application would be a material omission. However, the application asked her why she was fired; she provided the truth as she knew it. In the long run, the omission that occurred is immaterial and was as a result of misunderstanding, not a purposeful misrepresentation. This process has gotten out of hand in focusing on the "reason" recited in the paper Bar Exam application rather than the "actions" that led to the termination itself. She disclosed she was fired. When asked, she disclosed that she wrote the letter. When these and all of the other admissions made by Michele are taken into consideration, a misunderstanding over what was said at a termination interview loses material significance.

Based upon this, we see that Michele has provided the initial Interviewers, the CBA and the Board with reliable information concerning the drafting of the letter and her termination from Lerner. Michele has candidly disclosed the truth throughout the application process to the best of her ability. Michele has openly admitted her conduct and shown great remorse. She is devastated that a simple misunderstanding of why she was terminated from Lerner has resulted in such a harsh recommendation from the Board.

D. Seriousness of the Conduct

While Michele admits that drafting a document on her employer's letterhead in an attempt to get out of an apartment lease is serious conduct, the seriousness of Michele's

behavior pales in comparison to the conduct found within *In re Application of Rogers* and *In re Application of Kohler*.

In *In re Application of Rogers*, Applicant was convicted of DUI, misdemeanor gross sexual imposition and was prone to fits of rage towards a female whose affection he was attempting to regain. Further, applicant had numerous old, unpaid debts and the initial interviewers were less than impressed with his efforts to pay his debts.

As a result of this conduct, the court found that "Respondent...has demonstrated two of the specified disqualifying characteristics for bar admission. He has shown some reluctance to be forthcoming about elements of his past, and he has neglected financial responsibilities...Moreover, though years ago, respondent has serious wrongdoing in his past, as shown by the charges of DUI and sexual imposition...For these reasons, we continue to have misgivings about the applicant's worthiness for admission to the practice of law. Thus, rather than allow him to immediately reapply for the bar exam, we are allowing him more time to show improvement in the areas of candor, financial responsibility, and lawful conduct. We therefore disapprove, for now, the applicant's character, fitness, and moral qualifications for admission to the Ohio bar; however, he may reapply...to take the bar examination to be administered in February 2009." *In re Application of Rogers (2008), 119 Ohio St.3d 43*.

In *Rogers*, Applicant was allowed to reapply for the bar exam two years after the exam he initially applied for. The court specifically stated that they would provide applicant with more time to demonstrate improvements in character and fitness, despite conduct that was significantly worse than that of Michele. The Board's recommendation in the case at bar cuts off Michele's opportunity to ever show improvement and

permanently prevents her from ever receiving a second chance as a result of conduct much less egregious than that of Rogers. Michele requests the second chance that Rogers received in his case.

Turning to *In re Application of Kohler*, in this action a bar applicant made numerous false representations to clients and to partners in a law firm where he worked as a law clerk. Kohler misled his clients and his supervisor from October 2005 until March 2006, by repeatedly lying and fabricating documents. *In re Application of Kohler, 115 Ohio St.3d 11*. The falsified documents included a court order that was complete with a forged signature purporting to be that of the bankruptcy court clerk. Essentially, Kohler lied, created false documents to support his lies, and presented those forged documents to clients. Mr. Kohler engaged in such conduct for months without once voluntarily regulating his own behavior. *Id.*

At the Panel hearing, Mr. Kohler admitted he had become overwhelmed by his family responsibilities, his work obligations, and the general pressures of taking the bar exam, and claimed he had allowed this state of mind to cloud his judgment. The Supreme Court ultimately ruled to allow Mr. Kohler to reapply, stating that they believed he had recognized the "gravity of his transgressions and had shown overwhelming contrition." *Id.*

Like Mr. Kohler, Michele fully grasps the magnitude of her momentary lapse of judgment in drafting the letter on Lerner's letterhead and has expressed great remorse for her actions. The Interviewers, CBA Appellate panel, the three-member Panel and the twelve-member Board all agree on this point. Also like Mr. Kohler, Michele admits that she allowed the stress of being a first year law student, family illnesses and

responsibilities momentarily cloud her judgment. However, Mr. Kohler committed actual fraud. He actually used the documents which he knew were false, with the intent of misleading others into relying upon it, and he presented those documents to the Firm's clients. Unlike Mr. Kohler, Michele immediately regulated her own behavior. She never even printed nor signed the letter, let alone presented it to the addressee. Her behavior falls far short of the entanglement and actual use of the document that Mr. Kohler allowed. Yet Mr. Kohler was allowed to reapply for admittance to bar. Michele never printed, mailed, or otherwise distributed or used the letter she drafted. Michele made the decision to not use the letter at a time when she thought no one at Lerner knew about it. She chose, on her own, to not use the letter simply because she knew it was wrong.

In both Rogers and Kohler, the court decided the applicant should be allowed to reapply. Michele's transgressions, while certainly wrong, were not as numerous, long-lasting, far-reaching or as hurtful to the legal profession (specifically Mr. Kohler's actions), yet the Board recommended a permanent bar on Michele's reapplication. That is not consistent with prior decisions of this Court.

In his closing, Mr. Wiest, on behalf of the CBA, specifically referenced *In re Application of Cvammen (2004), 102 Ohio St.3d 13*. He points to this case as justification for a possible permanent ban from reapplication. *Cvammen* is a case where an applicant accepted inappropriate secret payments from a client while he was an in-house leasing agent, failed to disclose income to the IRS, purposefully lied on his bar application and continued to defy his duty to be honest throughout the admissions process. The court stated that "applicant knew that his receipt of the \$5,000 payment was wrong, he disclosed the payment only because he feared exposure, he compounded his

deceit by deliberately failing to report the payment as income, and he then attempted to conceal the extent of his wrongdoing through evasive responses to legitimate questions.” As a result of these actions, the Supreme Court imposed a permanent ban on Cvammen.

In contrast to Cvammen, Michele created a draft of a letter that was never printed or used, a decision she made without any knowledge that Lerner knew of the draft. She disclosed, to the best of her knowledge, why she was terminated from her employment and maintained that truth, despite her memory needing some refreshing due to the momentous life events that have occurred since the incident in question and throughout the interview process, from the time of the initial interview, through the Panel hearing and to this day. Michele’s actions contrast greatly from that of Cvammen’s who purposefully lied and deceived while Michele’s discrepancy is at worst the result of a miscommunication as to why she was fired from a job. Michele has openly admitted throughout the application process that creating the draft of the letter on Lerner’s letterhead and the contemplation of using it to get out of a lease is wrong and for that momentary lack of judgment, Michele has expressed great remorse. This too is unlike Cvammen who continued to lie, skirt the truth and shirk responsibility for his actions throughout the application process. Michele can be found to be in stark contrast from Cvammen and does not deserve the same fate as someone who conducted secret side deals, committed tax fraud, shirked responsibility and consistently mislead interviewers and panel members throughout the application process, and purposefully conveyed false information on his bar application, in his initial interview, and before the panel of the Board of Commissioners on Character and Fitness.

Despite his egregious behavior, three Justices dissented, with Justice Lundberg writing, "I would permit the applicant to register as a candidate for admission in anticipation of taking the February 2005 bar exam. A permanent refusal is the equivalent of a disbarment. Had the respondent committed similar acts after becoming an attorney, we would have given him at most an indefinite suspension and permitted him later to demonstrate that he had rehabilitated himself before rejoining the bar. In this case, there was no theft involved and no clients harmed although the conduct involved dishonesty. While I do not condone his behavior, I believe it was such that respondent ought to be given a chance to rehabilitate himself and then be permitted to apply again for admission to the bar." *In re Application of Cvammen (2004)*, 102 Ohio St.3d 13. Three members of the court believed that Cvammen's punishment was too harsh at the time and now, with facts far less egregious, this court should find that the Board's recommendation of a permanent ban is too harsh as well.

E. Cumulative Effect of the Conduct

As seen above, Michele's conduct pales in comparison to the conduct in Kohler. Mr. Kohler forged documents, including one where he forged the clerk of the bankruptcy court's signature, and presented these documents to partners in the firm where he worked and clients of the firm. In comparison, Michele's conduct had very little effect on anyone other than herself. While she fully grasps the magnitude of the mistake she made and the betrayal of her employer's trust, the only person who was injured by the conduct was Michele herself. ~~The letter was never used and the apartment was eventually sublet~~ and Michele lost her job.

Michele's misunderstanding on the bar application and throughout the application process has had no real cumulative effect either. As stated above, Michele has admitted being fired and applicant has admitted drafting the letter. The cumulative effect of the difference between stating fired for misuse of company *email* and fired for misuse of company *letterhead* is not significant to this proceeding which is to judge Michele's character and fitness to sit for the Ohio bar exam. Michele has taken responsibility for what she has done and has always disclosed the truth to the best of her ability.

F. Factors Underlying the Conduct, Evidence of Rehabilitation, and Positive Social Contributions of the Applicant Since the Conduct

Michele had a difficult and abusive childhood. Without going into unnecessary detail, it is sufficient to say that Michele's sister often stood between her and the negative impact of her parents' addictions. The sense of gratitude and indebtedness that Michele felt for her sister definitely played into the brief momentary lapse in good judgment which allowed her to even draft the letter in question. In addition, at the time of incident, Michele's sister had undergone three back-to-back, invasive surgeries for what was initially described to the family as a life-threatening issue. In addition to the family trauma, Michele was trying to find a balance between weekends in Louisville hospitals, full-time employment and the demands of being in the first year of law school. This perfect storm of guilt, demanding life events and family trauma led Michele to momentarily use poor judgment and make a very poor decision, albeit for only a few moments while typing the draft. Michele wishes to offer no excuses, as she understands that no excuse can negate the unethical thought process which allowed her to briefly

even consider such a dishonest act. She offers the aforementioned factors only as an explanation of the mindset she was in at the time of decision.

Michele, as stated several times, has taken full responsibility for her actions. This is in stark contrast with *In re Application of Wagner (2008), 119 Ohio St.3d 280*. In this case, the Applicant received a DUI that she failed to disclose or to completely acknowledge her wrongdoing and directed disrespect toward the criminal justice system for holding her accountable for it. She sent an unduly defensive letter to her law school relating to the arrest and failed to pay her fines for the offense as agreed. *Id.*

As a result, the court found this activity brought into “question her trustworthiness, diligence and reliability.” While the conviction of the DUI itself does not necessarily reflect an untreated alcohol dependency, her conduct can be construed as reflecting dishonesty or at least a failure to provide complete and accurate information about her past. Her failure to pay her fines promptly suggests perhaps a neglect of financial responsibilities. The totality of the evidence presented suggests a failure to accept the responsibilities placed upon her and a lack of mature respect for the law.” Wagner was permitted to reapply for the exam one and a half years after the exam she initially applied for. *Id.* Wagner’s conduct was far worse than that of Michele’s, yet Michele has been told she can never take the Ohio bar exam, or in reality, any bar exam in any state as a result of the Board’s recommendation.

In comparison, Michele admits that drafting the letter was wrong and fully ~~understands the underlying factors that led her to make this decision.~~ Further, unlike Wagner, she takes full responsibility for her actions and has worked to move past the mistakes she has made. She has shown many signs of rehabilitation by setting

boundaries with both her family and friends. Further, family pressures and stress have presented the Michele with similar conditions that led to this initial mistake, but similar mistakes have not been made. With the lessons learned from this mistake, and the three years of law school, Michele now clearly understands that being an attorney means being able to make ethical decisions while under a tremendous amount of stress and pressure. Michele insists that the life changes she has made since the incident have equipped her with the resources to be able to deal with these types of decisions in a more ethical and professional manner.

Further, Michele has received glowing recommendations from two separate employers and multiple law school professors that demonstrate the candor, character and fitness and trustworthiness she has displayed since drafting the letter. This high moral standard is further illustrated by her current employer's willingness to hire her as an attorney if and when Michele sits for and passes the bar exam, his willingness to testify on her behalf in front of the Board, and his volunteering to represent her in front of this Court. A misunderstanding over the reason for a termination from a former employer should do little to overshadow the positive signs of rehabilitation that the Michele has put forth.

In addition to actual recommendations, Michele's actions since the incident speak for themselves. While at Chase, she was placed in a leadership position as the Student Director for the Chase Center for Excellence in Advocacy. In addition, she was the ~~President of the Chase Student Advocacy Society, was on the Chase Trial Advocacy~~ competition team, and was selected for the Chase Inn of Court as a student member. All of these positions required her to meet with local Judges and attorneys and help Chase

put its best foot forward in the community. She did not take these positions lightly, and did not disappoint Chase in any such representation. While working closely with these Judges and attorneys, she got an insider's glance of the importance of being ethical and maintaining an above-reproach reputation in the legal community. It was often stressed to Michele that it just took one unethical attorney to give the profession a bad name. This was one of the most important lessons she took away from these interactions. Magistrate Harry Sudman, and professors Barbara McFarland, Henry Stephens, and Richard Bales have submitted written support of the character and fitness of Michele which have been submitted to various panels and/or have become a part of the record in these proceedings.

V. CONCLUSION

Michele understands that drafting the false document was wrong. If Lerner had told Michele she was being fired for drafting the document, she would have remembered it and disclosed that information. As it happened, she thought she was fired for violating a rule about emails. She stresses the fact that the reason she gave on the application and in subsequent hearings for the termination was a result of a miscommunication, rather than a purposeful and deceitful misrepresentation. Michele understands how important the qualities of honesty, integrity and trustworthiness are in the legal profession.

Michele also notes that the Board's recommendation of a permanent bar is far more harsh than the CBA's recommendations up to this point. The CBA has recommended a two (2) year waiting period before reapplication in Michele's case. The three-member section of the Board recommended three years before Michele could reapply. Michele would like to request that this Court, when making their decision as to when she can reapply, consider that she has invested four years of law school, thousands of dollars in

student loans, application fees and attorney's fees. Michele originally applied to take the Ohio bar exam in February 2011. Michele has already spent one year going through this administrative process of appeals. Michele would humbly accept the two-year waiting period recommended by the CBA, particularly in light of the Board's recommendation. Michele respectfully requests that this Court, taking into consideration all of the factors in this case, determine that she be allowed to reapply to take the Ohio bar exam in February 2013. Considering her initial application was in February 2011, reapplication in 2013 would be a total waiting period of two years.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by regular U.S. Mail, postage pre-paid this 21st day of October, 2011.

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Thomas D. Richards

APPENDIX

1. Report and Recommendation of Board of Commissioners Character and Fitness
2. Order to Show Cause

ORIGINAL

THE BOARD OF COMMISSIONERS
ON CHARACTER AND FITNESS
OF THE SUPREME COURT OF OHIO

IN RE:

APPLICATION OF
MICHELE MCKINNEY



CASE NO. 495

11-1520

REPORT AND RECOMMENDATION

This matter came before the Board of Commissioners on Character and Fitness on July 8, 2011. The Applicant was disapproved by the Cincinnati Bar Association and appealed that disapproval. A three-member Panel of the Board of Commissioners conducted a hearing on June 30, 2011. The members of the Panel were Judge Michael L. Howard from the Fifth District acting as Chair; Judge Nancy Hammond from the Twelfth District; and John Fairweather from the Ninth District. The Applicant, Michele McKinney, appeared with her counsel, George Jonson. The Cincinnati Bar Association was represented by Attorney Michael Mann and Attorney Christopher Wiest.

The Panel recommended that the Applicant be disapproved but be permitted to reapply for the July 2014 Bar Examination, provided that she demonstrates the requisite Character and Fitness for admission at that time. For the reasons set forth in this report, the Board concludes that the Applicant's record is such that she should not be approved for admission.

STATEMENT OF THE CASE

1 In August 2007, Applicant began law school at Northern Kentucky University. She was thirty (30) years old at that time. In September of that same year she accepted a position with the law firm of Lerner, Sampson & Rothfuss (LSR) as a paralegal.

2 At approximately the same time, Applicant's older sister broke up with her partner and had to leave the residence that they shared. Applicant's older sister was on the mortgage and did not believe she could qualify financially for an apartment lease. In order to assist her, the Applicant signed a lease for an apartment. Her sister moved in and reimbursed Applicant for the rent. Shortly thereafter, Applicant's sister had severe health problems. She suffered from a perforated bowel which required two surgeries. As she was recovering, she developed gall bladder problems and underwent gall bladder surgery. She was off work for almost a year and was having difficulty paying the lease. Her former partner contacted her and offered to let her move back to the residence they had shared together. However, this left the apartment empty and Applicant was still responsible for paying the rent for the remainder of the lease term, approximately three to four months at \$800 per month.

3 Applicant called the landlord to inquire about an early termination of the lease. She learned that her only options were to sublet the property; or, if she was transferred by her employer, the lease could be cancelled.

4 Rather than attempting to sublease the property, the Applicant concocted a scheme to fake an employment transfer. Lerner, Sampson & Rothfuss has a small office in Louisville. Applicant fraudulently produced two documents on LSR letterhead. The first was a letter verifying that she was being transferred from the Cincinnati office to the Louisville office effective February 1, 2008. The second document, also on LSR letterhead, was titled Employee Transfer Acknowledgment Letter. It was quite detailed, indicating the balance in her vacation account would be transferred to the new office and advising her to meet with her supervisor to discuss the status of her task list. Both these letters were marked as signed by Kelly Richards, Human Resource Generalist for LSR. Kelly Richards does not exist.

5 The Applicant was concerned that the landlord would call LSR to verify the contents of the letters, and she knew that the landlord was familiar with her voice. She devised an additional scheme to change the voice mail message on a phone her sister used. The voice mail would say, "You have reached the desk of Kelly Richards at LSR." Her sister would then call back and pretend to be Kelly Richards.

6 LSR has a strict policy forbidding employees from using company e-mail for personal purposes. They came to believe that the Applicant was violating this policy and began monitoring her e-mail account real time. They noticed that she was sending e-mails and then immediately deleting them from her sent folder. They began to print off those e-mails before she could delete them and in the process found in one e-mail the words "I need a contact number for my fake human resources person." This caused them to be very suspicious. Upon further investigation of Applicant's sent emails, they found an e-mail with the fake letters on LSR letterhead attached.

7 The firm discovered this on March 21, 2008, in the morning. They immediately called the Applicant into the Human Resources office and fired her. Applicant's boyfriend, now her husband, also worked at LSR. He knew of the scheme and was using company e-mail to communicate with her about it. He was fired on the same day.

8 When Applicant filed her registration application with the Bar Admissions office, she listed her employment at LSR and, as a reason for leaving, stated "terminated/conflicted with school schedule." As an explanation for the termination she indicated "I was fired for using company e-mail for personal reasons."

9 When the Cincinnati Bar Association received Applicant's application for review, they were concerned about the LSR termination and contacted LSR for more details. At that time they learned of the scheme to defraud the landlord.

10 At the Applicant's initial interview with the Cincinnati Bar Association, Mr. Wiest and Mr. Mann were assigned as the interviewers. They devised a deliberate plan to ask some open-ended questions and give her the opportunity to be completely truthful about her termination. In spite of the open ended questions, Applicant did not voluntarily disclose that she had created a fictitious letter on LSR letterhead, nor did she acknowledge that this was the cause for her termination. When they told her they knew about the letters, she was evasive.

11 Subsequent to the interview Applicant became concerned about the falsified letters and left a voice mail for Mr. Mann saying that, if he had additional questions about the letters, he could call her. By that time Mr. Mann and Mr. Wiest had already made the determination that they were going to recommend disapproval of the Applicant.

12 The matter was then referred to a full hearing before the eight person committee of the Cincinnati Bar. Both the Applicant and the Cincinnati Bar obtained copies of Applicant's employment records from LSR prior to the full hearing. At that review hearing itself, Applicant also had the opportunity to review her LSR employment records. Having done so, she indicated she was aware of the elaborate scheme that she admitted she had planned and participated in. She excused her evasiveness at the time of the first bar interview by saying that she had forgotten many of the details. She also indicated that she did not recall being informed that the false letters on LSR letterhead were the reason for her termination, even though that is what LSR reported. She stated in the review hearing that she was not disputing the facts, but just simply did not recall the events. Applicant was contrite at the review hearing, expressing her understanding of the serious nature of her conduct. The review panel, however, felt that her lack of candor and poor judgment were still a concern and recommended that she not be approved.

13 At the June 30, 2011, hearing before the three-person Panel of the Board of Commissioners, Applicant indicated that she was never told that she was being fired for using firm letterhead to create fictitious letters. She indicated that she was called to the Human Resources office. Before she was fully seated, Teresa Miller, the Chief Operating Officer told her that she was being terminated. On Ms. Miller's desk there was a quarter inch stack of paper which appeared to be personal e-mails. Applicant said she recognized the top e-mail as one that she and her boyfriend had exchanged and which included embarrassing, lewd comments. She said that the Human Resources manager asked her if she wanted to go through the e-mails. In order to save herself the embarrassment of the lewd references, she said no. She was then escorted from the office and later the building.

14 Rachel Faris, Human Resources Director of LSR, memorialized the March 21, 2008, termination meeting in a much different way. According to the contemporaneously prepared memo, Teresa Miller had begun the meeting by telling Applicant that she was terminated. She indicated that Applicant was told they were very disturbed when they found she was falsifying documents on company letterhead in order to get out of a lease. They also mentioned her excessive use of personal e-mails on company time. LSR subsequently notified the landlord of the fictitious scheme. Ironically, however, the landlord subsequently worked with the Applicant to find a subleasee. Had Applicant only pursued that option in the beginning, she would not be facing her current situation.

15 Applicant's position at the hearing before the Board of Character and Fitness Panel on June 30, 2011, continued to be that she did not know that she had been fired for the fictitious creation of the letters on company letterhead. She believed that she had been fired only for excessive personal use of the e-mail system. This is consistent with what she reported on the registration application. It is not consistent, however, with LSR's version of the facts. Rachel

Faris, from LSR, testified at the June 30 hearing. The termination meeting, as she described it in her testimony, was consistent with the contemporaneously-produced memo of the event contained in Applicant's LSR personnel file.

16 Applicant's version of the firing meeting explains the way she reported her termination on her registration application. However, Applicant's version of the meeting is not consistent with LSR's version and the Panel found Rachel Faris and LSR's documentation to be more credible. The Panel believed the Applicant was told by LSR that she was being terminated for creating fictitious letters on letterhead as well as for the excessive personal e-mails.

17 The remainder of Applicant's record is unremarkable. She did have an OVI in 2001 and has had five speeding tickets. Two of those were not reported on her Bar application, but appear to be the result of lack of attention to detail rather than deliberate misrepresentation.

18 Applicant volunteered at the Domestic Violence and Sexual Assault Center and a Street Law Diversion program for Juvenile Court kids. She has volunteered at an animal shelter as well. She was involved in trial advocacy at law school and served as president of the Student Advocacy Society.

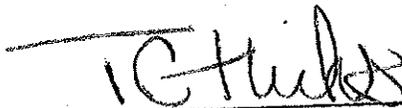
19 Applicant presented four character references, including three professors at NKU and a letter from Attorney Harry Sudman, who employed Applicant when he was in private practice. Applicant's current employer, Thomas Richards, an attorney from Cincinnati, testified on her behalf. He indicated that she had been with him since October 2008. She does excellent work. He wants to keep her there in his office. He would hire her after she is admitted to practice. He would feel comfortable with her taking his cases to court. He indicated that she was a thorough researcher, interacted well with clients and got good results. He believes she is honest, and he has no reason to doubt her word. He has no reservations about her sitting for the Bar. On cross examination he indicated that he was familiar with the circumstances of her dismissal from LSR. It became clear to the Panel, however, that he had gotten a "softer" version of that termination than the Panel believed to be the case. Ultimately he admitted he did not have much detail regarding the termination.

CONCLUSION

While the Board adopts the findings of facts made by the panel, it concludes that the record of the Applicant reflects a person who lacks the honesty and trustworthiness required to be admitted to the practice of law. When faced with a situation in which she could have acted honestly by paying off the remainder of the lease, subletting the apartment, or engaging in further negotiations with the landlord, the Applicant, despite being a 30 year old adult and in law school, concocted an elaborate and deceptive scheme. She prepared false documents on the letterhead of her employer; and she set up a false voicemail for a made-up person to confirm her subterfuge. Perhaps even more importantly, throughout the process for admission as a lawyer, she has repeatedly been evasive and failed to candidly disclose her previous deceptive

conduct. The Applicant was not forthcoming in her application. Despite being given ample opportunity, she was not forthcoming with the interviewers from the Cincinnati Bar Association. Finally, at the panel hearing, her testimony was contradictory and evasive, and she was not credible. In short, her lack of candor and honesty is evident in her registration application, in her two interviews with the Cincinnati Bar, and in her testimony before the panel of this Board.

What is perhaps most significant about her continued lack of candor is her willingness to be evasive while under oath and during the very process designed to assess an applicant's honesty and credibility. If an applicant engages in such conduct before an arm of the Supreme Court of Ohio while seeking admission to the profession of law, then perhaps there is no forum in which the applicant could be trusted. Her lack of candor during the admission process demonstrates that she is still disposed to the same dishonesty that caused her to be fired in 2008. Under these circumstances, the Board concludes that she clearly does not possess the character and fitness to be admitted to the practice of law in Ohio. Based on her history of deceptive behavior, including during the admission process, the Board concludes that it does not believe she will ever be capable of proving by clear and convincing evidence that she should be admitted to practice in Ohio. The Board is certainly cognizant of the seriousness of its conclusion and did not come to it lightly. But honesty and trustworthiness are essential qualities required in the legal profession, and the Board concludes that this applicant simply lacks these critical qualities. For these reasons, the Board recommends that the Applicant be disapproved and that she not be permitted to reapply for admission to the practice of law in Ohio.



Todd C. Hicks, Chair, Board of Commissioners on
Character and Fitness

FILED

The Supreme Court of Ohio

SEP 21 2011
CLERK OF COURT
SUPREME COURT OF OHIO

Case No. 2011-1520

In re: Application of Michele McKinney.

ORDER

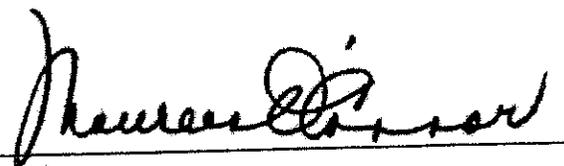
This cause came before the court upon the filing of a report by the Board of Commissioners on Character and Fitness. In this report, the board recommended that the applicant, Michele McKinney, be disapproved and that she not be permitted to reapply for admission to the practice of law in Ohio.

On consideration thereof, it is ordered by the court that the applicant and the Admissions Committee of the Cincinnati Bar Association may file objections to the findings and recommendations of the board within 30 days after issuance of this order. It is further ordered that any objections be accompanied by the original and 18 copies of a brief in support of the objections. It is further ordered that the original and 18 copies of an answer brief may be filed within 15 days after any objections have been filed.

After a hearing on the objections or if no objections are filed within the prescribed time, the court shall enter such order as it may find proper.

It is further ordered that, in accordance with Gov.Bar R. I(13)(C), the record filed with this court by the board shall remain under seal until November 5, 2011, after which date the record shall become public unless this court, on motion by the applicant or sua sponte, orders that the record or portions of it remain confidential.

It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings, and further that unless clearly inapplicable, the Rules of Practice shall apply to these proceedings. All case documents are subject to Rules 44 through 47 of the Rules of Superintendence of Ohio which govern access to court records. It is further ordered that service of briefs and other documents shall be made upon the applicant, the admissions committee, and all counsel of record.



Maureen O'Connor
Chief Justice