

ORIGINAL

IN THE SUPREME COURT OF OHIO

In re: : Case No. 2012-0430  
:   
ROBIN LEIGH BURCH, :   
:   
Applicant. :

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APPLICANT'S OBJECTION  
TO THE FINDINGS OF FACT AND RECOMMENDATION  
OF THE BOARD OF COMMISSIONERS ON CHARACTER AND FITNESS  
OF THE SUPREME COURT OF OHIO

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Applicant Robin Leigh Burch ("Applicant"), by and through her undersigned counsel, respectfully submits the following objection, pursuant to this Court's Order of March 21, 2012 (the "Show Cause Order") and Gov. Bar R. I(12)(F)(2), to the Findings of Fact and Recommendation of the Board of Commissioners on Character and Fitness of the Supreme Court of Ohio (the "Board of Commissioners"). Specifically, Applicant objects on the grounds that the Board of Commissioners erred in its Findings of Fact and Recommendation when it failed to apply the Gov. Bar R. I(11)(D)(4) factors. In fact, Applicant has met her Gov. Bar R. I(12)(C)(6) burden. She has established by clear and convincing evidence her present character, fitness, and moral qualifications to practice law. Applicant incorporates herein the attached Brief in Support of this objection.

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Respectfully Submitted,

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IN THE SUPREME COURT OF OHIO

In re: : Case No. 2012-0430  
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BRIEF IN SUPPORT OF APPLICANT’S OBJECTION  
TO THE FINDINGS OF FACT AND RECOMMENDATION  
OF THE BOARD OF COMMISSIONERS ON CHARACTER AND FITNESS  
OF THE SUPREME COURT OF OHIO

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### III. Statement of the Facts.

Applicant attended the University of Cincinnati College of Law (“U.C.”) and graduated with her class in May 2010. (Hr’g Tr. 140:24-141:1). Applicant completed all required coursework. (Final Law School Certificate, Docket No. 4; Hr’g Tr. 140:18-20). She was never charged with a violation of U.C.’s honor code. (Hr’g Tr. 140:15-17).

Although she graduated on time, Applicant’s experience at U.C. was not without issue. U.C. identified what have become the main issues with Applicant’s application in an addendum (the “Addendum”) it submitted along with its Law School Character Certificate. (Law School Character Certificate, Docket No. 2, 3-4).<sup>1</sup> Specifically, U.C. disclosed that:

1. During the spring semester of her 1L year, Applicant was awarded the grade of Unauthorized Withdrawal, Failing in her Lawyering II, Advocacy class because of her failure to attend class regularly and to complete assignments in a timely manner. *Id.*
2. During the spring semester of her 2L year, Applicant was awarded an F in her Judicial Externship class. This was due to her failure to complete an assignment and inappropriate criticisms of the court that Applicant made while court was in session. *Id.*
3. During the fall semester of her 3L year, Applicant was awarded the grade of Unauthorized Withdrawal, Failure in her Wills, Trusts, and Future Interests class because of her failure to attend class regularly and recite an assigned case. *Id.*
4. During the spring semester of her 3L year, when Applicant requested to exceed the maximum semester course limit, she failed to disclose an outstanding assignment from the previous semester. *Id.*
5. During the spring semester of her 3L year, in conjunction with a legal externship with a local attorney, Applicant improperly signed the attorney’s name to an attorney designation form. *Id.*

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<sup>1</sup> The Addendum was also: (1) introduced as Exhibit C at the Board of Commissioners for Character and Fitness Panel hearing on October 27, 2011, *see* Docket Number 17, Exhibit C; and (2) attached to the Panel Report and Recommendation as Exhibit C, *see* Docket Number 19.

U.C. did not confront Applicant with the Addendum before filing it with this Court. (Hr'g Tr. 142:23-143:17). Applicant applied for the July 2010 bar examination. A panel of the Cincinnati Bar Association Admissions Committee (the "CBA Admissions Committee") interviewed Applicant on June 21, 2010. (Admissions Committee Report, Docket No. 7, 2). At that interview, Applicant first learned of the Addendum. (Hr'g Tr. 142:23-143:17). The CBA Admissions Committee panel recommended disapproval of her character and fitness.

In accordance with the CBA's recommendation, Applicant declined to appeal this denial to the full CBA Admissions Committee. She was advised to wait and enter into a contract with the Ohio Lawyer's Assistance Program ("OLAP"). Applicant entered into an OLAP contract in September 2010. Applicant substantially complied with this contract. (Hr'g Tr. 13:4-14).

On November 22, 2010, in anticipation of sitting for the February 2011 bar examination, another panel of the CBA Admissions Committee interviewed Applicant and again recommended disapproval. (Report of the Admissions Committee Interviewer, Docket No. 7, 16-27). Applicant again declined to appeal this denial and decided to wait until the July 2011 examination. In lieu of a third panel interview prior to the July 2011 bar examination, the CBA decided to conduct a full Admissions Committee hearing. On May 11, 2011, the full CBA Admissions Committee interviewed Applicant. It certified that Applicant possessed the character and fitness standards promulgated by the Supreme Court in Gov. Bar R. I(11)(D). (Admissions Committee Report, Docket No. 7, 1-3; Admissions Committee Report, Docket No. 9).

The Board of Commissioners exercised its *sua sponte* review authority. (Entry, Docket No. 12). A panel of the Board of Commissioners (the "Panel") held a hearing on October 27, 2011. (Hr'g Tr. 1). The panel issued a Report and Recommendation in which it recommended that Applicant be denied admission, but that she be permitted to apply for the July 2012 examination. (Report and Recommendation, Docket No. 19, 6). The panel framed the question before it thusly: whether Applicant

has become more willing; more willing to meet obligations, not just on those matters that she feels like doing; more willing to accept responsibility for her actions; more willing to be forthright and candid rather than self-justifying; more willing to understand that the rules apply to her whether she likes the particular rules or not.

(Report and Recommendation, Docket No. 19, 3).

The Panel concluded that Applicant “just does not seem to ‘get it.’” *Id.* at 6.

The full Board of Commissioners issued its Findings of Fact in which it adopted the panel’s Report and Recommendation, with the amendment that Applicant be permitted to apply for the February 2013 bar examination. (Findings of Fact and Recommendation, Docket No. 19). This Court then issued the Show Cause Order.

For the reasons that follow, Applicant respectfully requests that this Court sustain her objection to the Board of Commissioner’s Findings of Fact and Recommendation. She further requests that this Court find that she presently possesses character and fitness to practice law and that she be permitted to apply for the next bar examination.

#### **IV. Argument.**

##### *A. The Applicant’s Burden.*

“The applicant’s record must justify ‘the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them.’” *In re Wintering*, 2011-Ohio-4245, 129 Ohio St.3d 505, 954 N.E.2d 124, ¶ 9 citing Gov. Bar R. I(11)(D)(3). “The burden of proof in such hearings shall be on the applicant to establish by clear and convincing evidence the applicant’s present character, fitness, and moral qualifications for admission to the practice of law in Ohio.” Gov. Bar R. I(12)(C)(6). “Clear and convincing evidence” is greater than a “preponderance of the evidence” but less than “beyond a reasonable doubt.” *Disciplinary Counsel v. Russo*, 2010-Ohio-605, 124 Ohio St.3d 437, 923 N.E.2d 144, ¶ 6 quoting *Cross v. Ledford* (1954), 161 Ohio St. 469, 53 O.O. 361, 120 N.E.2d 118, paragraph three of the syllabus.

It is evidence “which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *Id.*

Here, Applicant must present sufficient evidence to create a firm belief that she deserves the trust of clients, adversaries, and courts. Because Applicant has met her burden, she respectfully requests that this Court find that she presently possesses the character and fitness to practice law and permit her to apply for the next bar examination.

*B. Weighing the Evidence.*

When determining whether an applicant has met her burden, the trier of fact “shall” consider the following factors in weighing 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).

That Rule emphasizes the applicant’s present character and fitness. The factors are designed to aid the trier of fact in the determination of whether an applicant’s past conduct indicates how they will act in the future.

*C. Applicant has Proved by Clear and Convincing Evidence that She Possesses the Character and Fitness to Practice Law.*

The facts before the Panel were mostly undisputed. Applicant admitted the vast majority of the conduct described in U.C.'s Addendum. (Hr'g Tr. 116:9-12; *see also, generally*, Stipulations of Applicant Robin Leigh Burch and Cincinnati Bar Association, Docket No. 17). Therefore, the question is whether Applicant's law school experiences, even in light of the other evidence Applicant has presented, indicate that Applicant *presently* possesses the character and fitness to practice law. Applicant respectfully asserts that the evidence she has presented taken together satisfies her burden to prove that she deserves the trust of clients, adversaries, courts, and others with respect to her professional duties.

*1. Clear and Convincing Evidence of Applicant's Character and Fitness.*

Applicant presented clear and convincing evidence that she now possesses the character and fitness to practice law. She called several witnesses who testified on her behalf, including Nancy Ent of U.C., who has known and worked with Applicant since 2007; Dr. Paul Droessler, Applicant's treating psychiatrist since 2007; and Megan E. Snyder of the Ohio Lawyer's Assistance Program ("OLAP"), who has interacted with Applicant since 2010. Applicant also submitted letters of recommendation from her current employer, Karen Eichert, and from her 3L legal externship supervisor, Aleshia Fessel, Esq.

The Panel, in its Report and Recommendation, focused on Applicant's shortcomings as described in U.C.'s Addendum. Such focus was proper because those incidents have a direct bearing on Applicant's character and fitness to practice law. However, in weighing Applicant's law school misconduct, the Panel failed to consider the Gov. Bar R. I(11)(D)(4) factors.

First, with respect to the Addendum's allegation that Applicant improperly signed her name to a discovery document, the Panel failed to consider: the reliability of the information concerning the conduct, the factors underlying the conduct, evidence of rehabilitation, and Applicant's candor in the admission process. Gov. Bar R. I(11)(D)(4) requires consideration of these factor when evaluating an applicant's prior conduct.

Applicant presented evidence relevant to these factors that the Panel and the Board of Commissioners failed to consider. The letter from Ms. Fessel is worthy of particular weight. Ms. Fessel is the attorney whose name Applicant improperly signed to the attorney designation form during her 3L legal externship. (*See* Addendum, Docket No. 2, 3). The Panel failed to mention Ms. Fessel's letter of recommendation. This letter was particularly important given the Panel's questions of Applicant about her legal externship with Ms. Fessel.

Despite Applicant's mistakes, Ms. Fessel wrote:

"Applicant made some mistakes while she worked for me. I confronted her about them, and I truly believe that she has learned from them. Applicant has a great deal of ambition, and was very eager to help. Although she may have made some poor decisions, I believe they were to her eagerness and enthusiasm. At this time, I believe Applicant possesses the character and fitness to be an attorney."

(Docket No. 16).

These statements give valuable context to one of the most serious issues in U.C.'s Addendum. When evaluating an applicant's character and fitness, the trier of fact must consider the factors underlying the misconduct. Gov. Bar R. I(11)(D)(4)(e). Ms. Fessel's letter shows that Applicant made this mistake out of a desire to help Ms. Fessel, not out of a selfish or evil motive. (*See also* Hr'g Tr., 158:22-159:3). Ms. Fessel's statements also show that Applicant has learned from her mistakes and that, even during the externship, Applicant took her professional responsibilities seriously. Ms. Fessel's letter suggests that Applicant can and has learned from her shortcomings. It concludes that Applicant presently has the requisite character and fitness to discharge the professional responsibilities of an attorney.

The Panel also failed to consider the evidence Applicant presented of her conduct since she graduated from U.C. This evidence would have the most direct bearing on Applicant's ***present*** character and fitness to practice law. The Panel's Report and Recommendation did not even mention the testimony of Ms. Snyder of OLAP. Ms. Snyder's testimony answered the questions the Panel raised in its Report and Recommendation: it showed that Applicant has

become more willing to meet professional obligations, to take responsibility for her actions, to be forthright and candid, and to understand that the rules apply to her.

Ms. Snyder testified that Applicant took her OLAP contract seriously and complied with it. (Hr'g Tr. 13:5-6: "Applicant has been very diligent with her contract"; 15:7-8: "She has been keeping up her duties"). According to Ms. Snyder, OLAP has no objection to Applicant's character or fitness. (Hr'g Tr. 13:20-25). Ms. Snyder's testimony is further evidence of Applicant's ability to meet deadlines, even those she finds unpleasant. Applicant's ability to meet her obligations under the OLAP contract shows that, since graduation, she has discharged her professional obligations.

The Panel's Report and Recommendation also failed to consider the letter of recommendation of Ms. Eichert, Applicant's current employer. Again, this evidence sheds light on the Panel's concerns about Applicant's present ability to discharge the professional responsibilities of an attorney. But the Panel evidently disregarded it. Applicant acknowledges that letters of recommendation are not entitled to as much weight as live testimony. But they do deserve some consideration. Ms. Eichert stated that Applicant "has met her responsibilities to students, families and the company on a regular basis, with unerringly accurate record keeping and with progress taking." (Docket No. 15). This evidence demonstrates that since graduating from U.C., Applicant has dedicated herself to meeting her professional responsibilities. It bears directly on Gov. Bar R. I(11)(D)(4)(g) and (h) in that it demonstrates that Applicant has rehabilitated herself from the law school misconduct. She also contributes to society through her employment as a tutor. The Panel and Board of Commissioners erred in failing to consider this evidence.

The Panel's Report and Recommendation also discounted Ms. Ent's testimony. This is despite the fact that the Panel found Ms. Ent to be an honest witness. (Report and Recommendation, Docket No. 19, 4). It is unclear why Ms. Ent's opinion of U.C.'s handling of Applicant's character and fitness issues would taint her opinion of Applicant's character and fitness.

Ms. Ent testified that Applicant's problems U.C. would not be repeated. Ms. Ent is a program manager for the Urban Morgan Institute at U.C. (Hr'g Tr. 46:20-21). Applicant worked for Ms. Ent at the Urban Morgan Institute. (Hr'g Tr. 47:18-48:2). During that time, Ms. Ent observed Applicant's work habits. According to Ms. Ent, Applicant met most deadlines while working for the Urban Morgan Institute. (Hr'g Tr. 49:14-16). This shows that even while Robin struggled to meet some law school deadlines, she was met many others. Ms. Ent stayed in touch with Applicant after she graduated. Ms. Ent testified that Applicant matured after she graduated. (Hr'g Tr. 51:12-13: "I think the greatest maturity has been since law school, absolutely"; 108:7-14 "...I think the maturity that I have seen since law school in Applicant and recognizing the things that I discussed with her many times during law school as to why these things were important, I think that maturity has finally taken place..."). Ms. Ent's testimony shed light on some positive attributes of Applicant's time at U.C. It also showed Applicant's maturity since graduation. The Panel expressed concern about whether Applicant has matured since graduating from U.C. Its failure to consider Ms. Ent's testimony about Applicant's progress since then is objectionable.

The Panel heard the testimony of Dr. Paul Droessler. The Panel focused on his statement that many of Applicant's shortcomings result from her unwillingness rather than inability. While focus on such relevant testimony is proper, it is improper to do so without considering Dr. Droessler's other testimony about Applicant's willingness to deal with adversity.

Dr. Droessler has been Applicant's treating psychiatrist since 2007. (Hr'g Tr. 68:3-8). He testified that Applicant has been able to deal with adversity since graduation, including meeting stressful obligations. (Hr'g Tr. 98:10-18). Dr. Droessler testified that Applicant has been diligent about seeking medical treatment. (Hr'g Tr. 72:7-9). He concluded that, although he couldn't guarantee Applicant's success as an attorney, he thought "it's very possible that Applicant will draw from her many strengths to do what she needs to do." (Hr'g Tr. 92:22-24). Dr. Droessler's testimony shows that Applicant possesses the tools to succeed as an attorney. She is committed to treatment of her ADHD and depression. She seeks help when overwhelmed.

And although there is no certainty that Applicant will succeed—just as there can be no certainty for any applicant—it is likely that Applicant will be able to discharge her professional responsibilities to her clients, her adversaries, the courts, and others.

Finally, the Panel failed to consider Applicant’s own testimony of her current character and fitness. Despite the Panel’s characterization, Applicant’s testimony does suggest she currently has the character and fitness to practice law. The Panel’s focus on the negative testimony without addressing the more current, positive evidence is objectionable.

Applicant testified that she has not repeated the mistakes she made in law school. (Hr’g Tr. 122:1-3; 136:1-3). Applicant testified that since law school, she has been able to meet professional obligations. She has substantially complied with her OLAP contract. (Hr’g Tr. 129:2-130:21). She has been employed in a non-legal job. (Hr’g Tr. 114:17-22). She has met her obligations with respect to the character and fitness process, despite the continued stress. (Hr’g Tr. 128:22-129:1).

Applicant’s testimony also demonstrated that she understands the significance of an attorney’s duty to her clients: “...it’s different when you have a client. Whether you think they will be convicted or not, it’s about a lot more than—I mean it’s about so much more, and not to mention it’s not about you. It’s about your client, and that’s the important thing.” (Hr’g Tr. 149:24-150:4; *see also* Hr’g Tr. 150:19-23: “But with a client, I mean, it’s not your life, your liberty, your property on the line, it’s theirs, so you can’t make those kind of decisions when you’re dealing with somebody else, and I’ve never felt any different about that.”). She testified that she would have no reluctance asking another attorney for help if she felt overwhelmed. (Hr’g Tr. 132:21-25). Applicant’s testimony shows that she is willing and able to bear the burdens of practicing law.

The Panel and the full Board of Commissioners must weigh all the evidence presented. Evidence of misconduct is particularly relevant to the character and fitness analysis. But evidence of acceptance of responsibility, rehabilitation, and progress is also relevant and should at least be considered. The Panel’s Report and Recommendation and the Board of

Commissioner's Findings of Fact and Recommendation erroneously failed to consider this evidence. All of this evidence shows that, although Applicant made serious mistakes at U.C., she learned from her mistakes and currently possesses the character and fitness to practice law. Applicant therefore respectfully requests that this Court sustain her objection to the Board of Commissioner's Findings of Fact and Recommendation and find that she presently possesses the character and fitness to practice law.

2. *Applicant's Demeanor at the Panel Hearing.*

At the hearing, Applicant did identify several minor factual discrepancies in the Addendum. The Panel concluded that this was evidence of Applicant's failure to accept accountability for her actions: "Disturbingly, the applicant did not seem to exhibit any insight into her behavior or to express any recognition that her actions may not have been proper." (Report and Recommendation, Docket No. 19, 4 (emphasis added)). Despite its observation, the record contains several instances where Applicant took responsibility for her misconduct. (*See, e.g.* Hr'g Tr. 121:17-122:3 (acknowledging impropriety of signing her name to attorney designation form); 135:9-11 & 157:19-22 (acknowledging impropriety of making comments in open court)). Furthermore, Applicant brought these factual errors to the Panel's attention to demonstrate that the Addendum was not completely accurate. Triers of fact are directed to consider the reliability of the evidence presented. Gov. Bar R. I(11)(D)(4)(c). Applicant identified these inaccuracies not in an attempt to hedge or avoid responsibility for her misconduct. Rather, she brought these problems to the Panel's attention to aid them in their evaluation of her character and fitness.

Applicant's demeanor at the Panel hearing was at times defensive, particularly when discussing the Addendum. Her defensiveness was largely due to the fact that her entire law school career has been overshadowed by the Addendum. All her other accomplishments—all the classes she did attend, all the assignments and projects she did complete on time, all the courses she did pass, and the fact that, despite all her mistakes and self-inflicted adversity, she was able

to graduate on time with her class—have been subsumed by the shortcomings outlined in the Addendum.

Applicant's testimony at the Panel hearing was also shaped by her feelings towards U.C. It submitted the Addendum without notifying her. (Hr'g Tr. 142:23-143:17). Applicant first learned of the Addendum at her first CBA Admissions Committee panel interview. *Id.* The submission of the Addendum particularly bothered Applicant because U.C. failed to confront her with these allegations beforehand. Had it done so, many of the admittedly small errors in the Addendum could have been eliminated. Notifying Applicant of the Addendum also would have allowed her to prepare for the character and fitness process. Instead, Applicant was caught off guard at her first CBA Admissions Committee panel interview. U.C.'s actions do not excuse or justify Applicant's misconduct while a student. But they do explain her defensiveness at the Panel hearing.

Applicant's defensiveness at the hearing and feelings towards U.C. do not outweigh the evidence she presented of her present character and fitness. The Panel and the Board of Commissioners rightly considered Applicant's misconduct at U.C. However, both failed to account for the evidence of Applicant's acceptance of responsibility for her errors, her accomplishments while at U.C., and her maturity since graduation. This evidence shows that Applicant has learned from the mistakes she made at U.C. and that she has the character and fitness to discharge the duties of an attorney.

*D. Conclusion.*

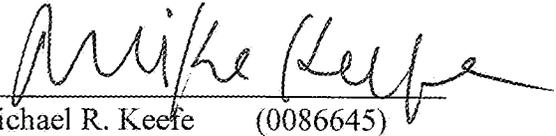
WHEREFORE, based upon all the evidence before this Court and for the foregoing reasons and oral arguments, if any, Applicant Applicant Leigh Burch respectfully requests:

- A. that this Court sustain her objection to the Findings of Fact and Recommendation of the Board of Commissioners on Character and Fitness of the Supreme Court of Ohio;
- B. that this Court find that possesses the character and fitness to practice law in the State of Ohio; and

C. that this Court permit her to sit for the next bar examination.

Respectfully Submitted,

Statman, Harris & Eyrich, LLC

A handwritten signature in black ink, appearing to read "Mike Keefe", written over a horizontal line.

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**V. Appendix.**

*Order* filed March 21, 2012.

FILED

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CLERK OF COURT  
SUPREME COURT OF OHIO

# The Supreme Court of Ohio

Case No. 2012-0430

In re: Application of Robin Leigh Burch

## ORDER

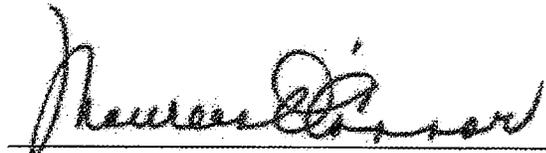
This cause came before the court upon the filing of a report by the Board of Commissioners on Character and Fitness. In this report, the board recommended that the applicant, Robin Leigh Burch, be disapproved and that she be permitted to apply for the February 2013 bar examination.

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 May 14, 2012, 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

# The Supreme Court of Ohio

BEFORE THE BOARD OF COMMISSIONERS

12-0430

ON CHARACTER AND FITNESS OF

THE SUPREME COURT OF OHIO

In re: Application of  
Robin Leigh Burch

Case No. 501

FINDINGS OF FACT AND  
RECOMMENDATION OF THE BOARD OF  
COMMISSIONERS ON CHARACTER AND  
FITNESS OF THE SUPREME COURT OF  
OHIO

This matter is before the board pursuant to its *sua sponte* investigatory authority. Gov. Bar R. I, Sec. 10(B)(2)(e).

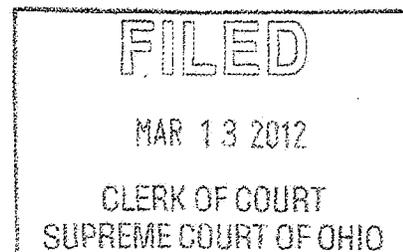
A duly appointed panel of three Commissioners on Character and Fitness was impaneled for the purpose of hearing testimony and receiving evidence in this matter. The panel filed its report with the board on February 1, 2012.

Pursuant to Gov. Bar R. I, Sec. 12(D), the board considered this matter on February 10, 2012. By unanimous vote, the board adopts the panel report as attached, including its findings of fact and recommendation of disapproval, with the amended recommendation that the applicant be permitted to apply for the February 2013 bar examination.

Therefore, the Board of Commissioners on Character and Fitness recommends that the applicant be disapproved; that she be permitted to apply for the February 2013 bar examination by filing an Application to Take the Bar Examination; and that upon reapplication, she undergo review and interview by the appropriate local bar association admissions committee.



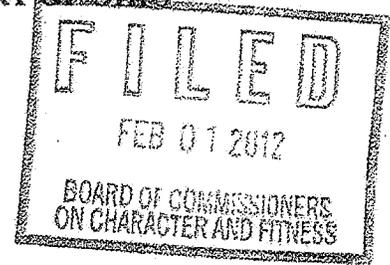
TODD HICKS, Chair, Board of Commissioners  
on Character and Fitness for the Supreme Court  
of Ohio



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

IN RE APPLICATION OF  
ROBIN LEIGH BURCH

Case No. 501



PANEL REPORT AND RECOMMENDATION

Introduction

The matter is before a panel of the Board of Commissioners on Character and Fitness pursuant to the Board's *sua sponte* authority under Rule I, Section 10. A panel, consisting of G. Scott McBride, Todd C. Hicks and Suzanne K. Richards, held a hearing on October 27, 2011, at which the Applicant was represented by Michael R. Keefe and the Cincinnati Bar Association was represented by Robert G. Hyland and Angela Stearns.

Statement of Facts

The Applicant is a 2010 graduate of the University of Cincinnati College of Law. She was interviewed by two teams of interviewers from the Cincinnati Bar Association in connection with her application to take the July 2010 bar examination. The focus of their questions was a report received from the law school discussing some incidents that the school felt reflected upon the applicant's fitness to practice law in light of Ohio's essential eligibility requirements. See Ex. C. The school's memorandum catalogued the following conduct:

- the applicant failed to comply with requirements in courses taken in the Spring of 2008, the Spring of 2009 and the Fall of 2009. Each of these failures resulted in her receiving an Unauthorized Withdrawal, Failing Grade;
- the applicant made comments during the field placement portion of a Judicial Externship class critical of the court process and its participants. These comments were made in the courtroom so that others in the courtroom could hear them;

- in seeking permission to exceed the 16 credit hour limit for a semester, the applicant failed to advise the Dean that she had not completed course work from the previous semester;
- the applicant, without permission, signed the name of the externship's lawyer/instructor to a court document; and
- the applicant looked up information in court files that she had access to by reason of the externship and shared it with others.

As reflected in the various reports of the interviewers, they were concerned not simply with the applicant's conduct, but more importantly with her attitude that the rules did not apply to her, her failure to accept responsibility, her "compulsive" need to excuse her behavior, and her difficulty being forthright when asked direct questions. For these reasons both sets of interviewers recommended that the applicant be disapproved. The applicant then appeared before an eight-member review panel pursuant to the internal procedures of the Cincinnati Local Admissions Committee. After questioning the applicant and her character witness, this review panel recommended the applicant be approved.

At the hearing before this panel, the issues addressed again arose out of the law school's memorandum. Additionally, there were questions regarding how the applicant's depression and attention deficit disorder contributed to her conduct or otherwise affected her fitness to perform as a lawyer. Subsequent to being disapproved and apparently at the recommendation of the Cincinnati committee, the applicant consulted with OLAP. Because she had already had a longstanding diagnosis of depression and attention deficit disorder, OLAP did not do any assessment of its own. The applicant did sign a two-year mental health contract with OLAP, and has substantially complied with the contract's requirements. Although OLAP had no

objection to her being admitted, it also candidly admitted that its only information regarding the applicant was what she self-reported to it.

The more significant information regarding applicant's mental health issues was presented by her treating psychiatrist, Dr. Paul Droessler, who indicated that he had been working with her since 2007. She began to see him when she first relocated to Cincinnati because she was in need of having her prescription depression medication refilled. Accordingly, in the beginning of their relationship he was simply doing medication management. However, after a few months, the applicant agreed to enter into psychotherapy. Dr. Droessler testified that the applicant was in need of continuing psychotherapy and medication; he described her prognosis as fair. He acknowledged that she had a tendency to be unfocused and to engage in rambling discourse rather than directly answer a question. However, he also stated that her issues in law school in failing to meet deadlines and other responsibilities were more a matter of choice by her than due to her depression or attention deficit disorder; that is, as he expressed it, she was "more unwilling than unable." Transcript, p. 88. So the more critical question becomes whether the applicant has become more willing: more willing to meet obligations, not just on those matters that she feels like doing; more willing to accept responsibility for her actions; more willing to be forthright and candid rather than self-justifying; more willing to understand that the rules apply to her whether she likes the particular rules or not.

The evidence on these questions was primarily presented by two witnesses, the applicant herself and a character witness, Ms. Nancy Ent, Program Manager for the Urban Morgan Institute affiliated with the University of Cincinnati. The Urban Morgan Institute is involved in projects relating to international human rights. Ms. Ent is responsible for its journal on human rights as well as running various internship programs. The applicant worked twenty

hours a week at the Institute, with her primary duties being to perform blue book cite checking. Ms. Ent is a strong supporter of the applicant. She said the applicant was a first-rate "blue booker" and responsibly performed her duties with the journal. Although she admitted that the applicant had some initial issues meeting deadlines, these problems were no different than other students and were resolved by Ms. Ent breaking down tasks and giving more specific deadlines. She thought that the applicant had matured since leaving law school and that her problems with meeting deadlines and taking responsibility would therefore not be repeated in the practice. Ms. Ent appeared to be an honest witness; nonetheless, the panel was not totally accepting of her opinion in this regard: because her experience with the applicant was positive, Ms. Ent was dismissive of the law school's issues, indicating she thought the school had overblown matters.

To some extent, however, the applicant's own testimony bears out the law school's and the interviewers' concerns. The applicant's disagreements with the facts set forth in the law school memo were minor and, these quibbles aside, she did not dispute the accuracy of the various events outlined in the school's report. In her testimony she vacillated from acknowledging that she had these issues to attempting to justify her right to, for example, not attend class or complete certain assignments because she was paying for law school and if she wanted to spend her time in what she considered more productive activities, she was entitled to do that. She also indicated that she was not aware that there would be such serious consequences for her actions, with the implication being that the consequences were unfair because she had no warning of them. Disturbingly, the applicant did not seem to exhibit any insight into her behavior or to express any recognition that her actions may not have been proper. Although she indicated that she would not conduct herself in this manner when a client's interests were at stake, this was not because she seemed to recognize that her behavior under the circumstances

was problematic, but rather that the circumstances of representing a client would necessarily cause her to act responsibly. The applicant expressed her view of the situation thusly:

So, I feel like, you know, there have been issue, but, I mean, I've done it. You know, I have a Bachelor of Science in math, a J.D. I mean I've been all over the world. I built a darkroom in my basement during my first year of law school.

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I mean, now is the time to be modest, but I am one of the most talented people you will ever meet. In fact, I've gotten to this point in my life and spent the last, you know, I mean, what, well over a year and a half stymied, for lack of a better term, because of two pieces of paper, you know.

And yeah, I take responsibility. I screwed up. I did some things that were stupid, not in my best interest. Of course, did I realize the consequences that were ultimately going to come? No. Did I realize some of the immediate consequence at the time? Yeah, some of them.

I agree with Nancy [Ent], some of them ended up being harsher than they should have been. You know, I'm not the only student to ever miss classes, but I am the only one who got called out for it so much.

So you know, I got on the wrong side of the wrong people. That's unfortunate, and it doesn't negate what I did. But, you know, it's just, you know, I messed up, but when it comes to — and I'll be the first to admit, I hated law school.

The difficulty with such vacillation by the applicant is that it fails to recognize that she did not just miss some classes; she repeatedly missed deadlines on significant course assignments and then because she probably would have failed the course, she withdrew from it. She conducted herself in an unprofessional manner during her judicial externship by making

untoward comments about court personnel and procedure. And, she without permission signed an attorney's name to a document to be filed with the Court. Moreover, throughout the entire process from her initial interviews through to this panel's hearing, she continued on one hand to say both "I'm responsible" but followed always by "I was treated too harshly" and "I got on the wrong side of the wrong people." At best, the applicant's attitude makes for an unattractive presentation; at worst it calls into question fitness to undertake professional responsibilities.

### Recommendation

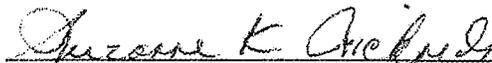
Rule I of the Rules for the Government of the Bar makes diligence, trustworthiness and reliability litmus tests for fitness to be admitted to the practice of law. A candidate must demonstrate that she meets this standard by clear and convincing evidence. The panel does not believe that applicant has met her burden. To state it colloquially, the applicant just does not seem to "get it." Perhaps, Ms. Ent is right: that what will prevent the applicant from being disregardful of professional obligations in the future is simply to mature. In the hopes that this is true, the panel thinks that a little more time to mature is appropriate. It therefore recommends that the applicant not be approved for admission at this time, but that she be able to apply for the July 2012 bar examination.



G. Scott McBride, Panel Member



Todd C. Hicks, Panel Member



Suzanne K. Richards, Panel Chair



We report here incidents we find to reflect on the ten enumerated Essential Eligibility Requirements for the Practice of Law adopted by the Board of Commissioners on Character and Fitness (herein the "Board Requirements").

1. In the spring semester of 2008, Robin's Professor in the class Lawyering II, Advocacy, awarded Robin the grade of UWF (Unauthorized Withdrawal, Failing) because the Professor concluded that Robin had been irregular in attending the class and failed to complete assignments on a timely manner. We find this incident to potentially reflect on Board Requirements 7 and 9.
2. In the spring semester of 2009, Robin's Professor in the Judicial Externship class awarded her a grade of F for the field placement portion of the class. The Professor assigned this grade because the supervisor of her field placement, a Judge for a Juvenile Court, had recommended this grade after rating Robin as unacceptable on all work habits. Further, Robin had failed to submit a paper that was part of her assigned duties for the Court. The Judge reported to the supervising Professor that Robin had made inappropriate comments in the courtroom about court process, and uninformed criticism of the Court, the judges, the magistrates, and procedures. We find this incident to potentially reflect on Board Requirements 3, 7, and 10.
3. In the fall of 2009, Robin's Professor in the Wills, Trusts, and Future Interests class awarded Robin the grade of UWF (Unauthorized Withdrawal, Failing) after she missed many entire class sessions, was tardy for several other class sessions, and failed to participate in class. He further reported that she failed to recite an assigned case, all in violation of the statement of policies for the class without an adequate excuse for this behavior. We find this incident to potentially reflect on Board Requirement 9.
4. At the beginning of the spring semester of 2010, the Associate Dean for Curriculum and Student Affairs granted Robin permission to take 18 credit hours, the number of credits she needed in order to graduate at the end of the semester. Students must obtain such permission when they seek to exceed 16 credits. The Associate Dean granted this permission despite her concern that Robin would not be able to successfully complete such a heavy load given her past problems with attendance, tardiness, and completing work assignments. Robin made the following representation to the Associate Dean:

I know that it is my responsibility to attend all of my classes and if something comes up to communicate with my professors before problems arise. I also know that it is my responsibility to complete my assignments on time. I know that I have had problems in the past, but I will do my best to get on top of things from the beginning.

Several weeks after she granted Robin's request to take 18 credits, the Associate Dean saw Robin's transcript on the day they were released. She learned that Robin had been awarded an Incomplete in a 3-credit class for the fall semester because she had not completed the required course project. Robin had not told the Associate Dean that she had not completed the required project, and in fact she had not even completed the first draft of this project. The Associate Dean would not have granted permission to Robin to take 18 credits in the spring had she known that Robin had not completed a major project from the fall semester that would add significantly to her work load in the spring. When Robin was asked why she had not disclosed such a relevant fact to the Associate Dean, Robin responded that she didn't think of it. This project remained incomplete as of this writing on March 8, 2010. Because we found Robin's response implausible, we find this incident to potentially reflect on Board Requirement 4.

5.

On March 17, 2010, Robin's legal externship supervisor contacted the instructor for the legal externship course and conveyed the following:

- Robin utilized an office template to create a discovery document, and signed the supervisor's name to it without her permission;
- Robin is keeping a public blog <http://criminaldefenseweekbyweek.blogspot.com/>
- Robin utilized a password that her extern supervisor created so that Robin could access detailed information on the Clerk of Courts website. Robin used the password, while with a group of friends, to look up information about other people she knew 'for fun.'
- Robin took individual client files home to work on them;
- Robin didn't show up for work last Friday, and is supposed to come in next week and go to court with the extern supervisor on March 24, 2010.

The legal externship instructor also indicated that during the initial course meeting the student/externs are informed that they should never sign a pleading and, therefore, Robin's action was inappropriate.

Further, each extern is required to submit a journal chronicling the first half of their externship placement. Instead of the Word document submitted by all other externs Robin submitted screen captures of her blog. The instructor requested that Robin comply with the course requirements. We find these incidents to potentially reflect on Board Requirements 3, 4, and 5.



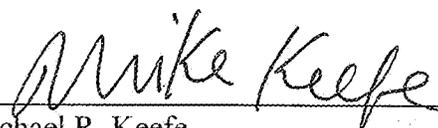
**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a true and accurate copy of the foregoing *Applicant's Objection to the Findings of Fact and Recommendation of the Board on Character and Fitness of the Supreme Court of Ohio* and the *Brief in Support of Applicant's Objection to the Findings of Fact and Recommendation of the Board on Character and Fitness of the Supreme Court of Ohio* were served upon the following via regular U.S. mail on this 17<sup>th</sup> day of April, 2012:

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Michael R. Keefe