

IN THE SUPREME COURT OF OHIO
BOARD OF COMMISSIONERS ON CHARACTER AND FITNESS
CASE NO. 562

IN RE: THE APPLICATION OF THOMAS D. BAUDENDISTEL

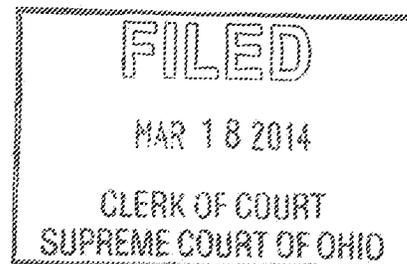
14-0424

BOARD REPORT

This matter is before the Board of Commissions on Character and Fitness pursuant to the board's sua sponte investigative authority. A hearing was held before a panel of the Board on December 18, 2013, at the Supreme Court of Ohio. The Panel consisted of G. Scott McBride, Bennett A. Manning and John E. Gamble, Chair. The Applicant appeared *pro se*. Jonathon P. Saxton appeared on behalf of the Cincinnati Bar Association (CBA).

EDUCATIONAL AND EMPLOYMENT HISTORY

The Applicant attended the University of Cincinnati from September 2006 until June 2010 graduating with a bachelor's degree in Finance and a minor in English. The Applicant began law school at the University of Cincinnati in 2010 and received his Juris Doctor degree in May 2013. He interned for the Hamilton County Municipal Court and the Tenth District Court of Appeals from June through September 2011 but remained unemployed, for the most part, while in law school. Mr. Baudendistel is twenty-five (25) years of age and currently works as a "contract specialist" at Wright-Patterson AFB; he is also self-employed developing an iPhone application.



BACKGROUND FOR REVIEW

In November 2011, Mr. Baudendistel registered as a candidate for admission to the practice of law in Ohio. His Application reports a September 2010 conviction for possession of an open container of beer in Franklin County Municipal Court and a March 2010 conviction for reckless operation in Kenton County, Kentucky District Court. The latter charge is reported as being reduced from driving under the influence of alcohol. The NCBE Character Report verifies these convictions.

The Applicant was interviewed by a two-person panel of the Cincinnati Bar Association Admissions Committee on June 5, 2012. The interviewers' reports are unremarkable and indicate the Applicant possesses the requisite character, fitness and moral qualifications for admission to the practice of law. No mention is made of the above offenses. Accordingly, the CBA Admissions Committee recommended provisional approval of the Applicant's registration application. The Applicant filed an Application to Take the Bar Examination on April 1, 2013, and the Admissions Committee recommended final approval of the bar application on May 16th. The Applicant, therefore, seemed destined to sit for the July 2013 bar exam.

On June 19th, however, the Applicant emailed to the Board an update to his Application reporting he was charged with failure to control a motor vehicle and leaving the scene of an accident after crashing his automobile into a parked car at approximately 3:30am on June 6, 2013. The Applicant pleaded not guilty to the charges at his Arraignment on June 18th. The charges were eventually dismissed according to Hamilton County Municipal Court Journal Entries dated August 20th.

THE JUNE 6TH 2013 CRASH AND DISCUSSION OF OTHER ALCOHOL-RELATED ISSUES

I. 2010 Reckless Operation conviction.

The Applicant testified that the incident giving rise to this conviction took place in December 2009 as he was "heading to pick up a friend who ironically couldn't drive because he had been drinking" He crashed his automobile into another vehicle and was charged with DUI. Although there was property damage to both vehicles, the Applicant indicates no personal injuries occurred. The DUI charge was later reduced and the Applicant was permitted to enter a guilty or no contest plea to the lesser offense of

reckless operation. He was ordered to pay a modest fine (\$274.00) but received no further legal punishment although he said his parents did not permit him to drive his car for six months. The Applicant reacted to this event by saying he probably should have been convicted of the DUI offense and was fortunate not to have been so punished and lucky he did not injure anyone. He candidly admitted that he previously drove after drinking alcohol but claimed that this incident was the last time he was ever impaired while driving.

II. 2010 Open Container conviction.

This incident reportedly took place during a bachelor party organized by the Applicant for his brother in August/September 2010 in Columbus. The Applicant, as best man in the wedding party, rented a bus to drive several friends to their destination(s); however, before boarding the bus he and several others were issued citations by an undercover policeman for having open containers of beer on the sidewalk in front of his brother's residence. The Applicant described the episode as a combination of bad luck and bad decision-making.

III. June 6th 2013 Crash.

The Applicant testified that this latest event took place after his graduation from law school as he and his friends were beginning to study for the bar exam. He told the Panel that he and several friends met for dinner at the home of a "friend of a friend" to celebrate graduating and at the party about five of them drank a twelve-pack of beer from 6:30pm until about 9:00pm. The Applicant admitted to drinking only "two, maybe three beers..." during this time. He explained that he had been getting inadequate sleep as a result of working two jobs and studying for the bar at the same time and, consequently, he fell asleep at the house sometime around midnight. Meanwhile, others left the party.

The Applicant testified that he awoke sometime between 3:00 a.m. and 3:15 a.m., then left to drive the approximately one-half mile to his home in the "pouring down rain." On the way, he said he swerved to avoid an oncoming car and stuck another vehicle parked on the street. He did not stop but drove on about 100 feet or, "about two houses down the street," but then stopped to be certain he had not struck a person or caused "serious damage to anything else." According to his testimony, the Applicant turned at the next intersection with the intent of returning to inspect the damage at the crash site. When he did so he discovered his automobile had become disabled and the transmission would not shift into the reverse gear. He apparently also sustained damage to a tire because he said

he also attempted to change one of the tires but could not do so because of the damage. The Applicant says he knows he should have called the police at that point or "called somebody to bring something so[he] could leave a note," but claims not to know why it did not occur to him to do either of those things. Later, in response to questioning from the Panel, the Applicant acknowledged that he did, in fact, think about calling the police but said, "I knew if I left a note, I wouldn't have to report it to the police. And, again, ironically and stupidly I didn't want to present any issues with the Board of Character and Fitness so I was going to take care of it through the insurance with that owner of the car."

So, with his car ostensibly immobilized and without the means to leave a written message on the damaged vehicle, the Applicant opted to walk the rest of the way home with the intention of writing a note, walking back to the crash site, and leaving it on the damaged automobile. He estimated that he was about a quarter of a mile from home at this point, which he said he shortened by cutting through two yards. When he finally reached home, inexplicably he decided to charge his telephone. Then he said he dried off and sat down at his desk to compose a note to leave on the car he struck; however he fell asleep. In subsequent testimony, the Applicant stated that he actually sat down, not at his desk, but at a "moon-shaped chair" in his room. He awoke some hours later in a panic and called his former mock trial coach who practices law in Kentucky asking his advice about what to do. His friend told him he should call the police and tell them what happened. Applicant estimated that he made this call to his friend sometime between 8:00a.m. and 8:30a.m.

Applicant then contacted the Cincinnati Police Department at around 9:00a.m. or 10:00a.m. to report the crash and learned, perhaps not surprisingly, that someone else had already reported it earlier that morning. He provided the police with his insurance information, told them what happened, and offered to take a blood test. The Applicant testified that he called the police twice more that day and several more times over the next few days but never received a call back from an investigator or received a visit from the police. Finally, on June 11th he spoke to an officer who asked him to come to the police department and provide a statement about the crash. He said he did so immediately and told the officer essentially what he testified to at the Panel Hearing. Following that interview, the officer served him with the failing to control and leaving the scene of an accident citations. Applicant hired legal counsel and, on the advice of counsel, entered a plea of Not Guilty to the charges. Despite his plea, the Applicant admitted that, in fact, he

was guilty of the offenses charged. The prosecutor, however, dismissed both of the charges on August 20th when, according to the Applicant, “their prosecuting witness did not show up” for a pretrial hearing. The Journal Entries of the same date indicate only “DWP” (dismissed with prejudice) and bear the signature of the judge/magistrate. No information is provided concerning the justification for the dismissals.

IV. Applicant’s history of use of alcohol

The Applicant advised he drank alcohol once during his sophomore year in high school but not again until his senior year. While in college he would drink about one day a week, usually on the weekend. At first he consumed mostly liquor because he did not like the taste of beer but, by his junior year in college, beer became his drink of choice. He admitted to drinking to excess occasionally while in college, but claimed that he changed that conduct when he began law school, apparently because of his class workload. According to the applicant, he typically drank only once or twice a month while in law school. Currently, he claims he occasionally drinks one or two beers but never drinks “to get drunk.” As the Applicant characterized it: whereas in college drinking was often the “feature event” at parties, drinking is now only “incident” to any event in which he participates.

On January 15, 2014 the Applicant met with Stephanie Krznarich, a licensed chemical dependency counselor and the Clinical Director for the Ohio Lawyer’s Assistance Program (OLAP). By letter to the Board and the Panel Chair dated January 16th, Krznarich indicates the Applicant has in the past abused alcohol, but appears now to understand the dynamics of his binge drinking and further has no chemical dependency that would warrant entering into a contract with OLAP.

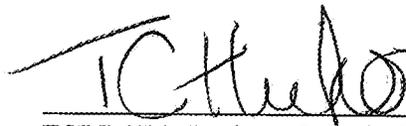
RECOMMENDATIONS OF THE PANEL

The alcohol related incidents reported since 2009 raise two issues under the standards set forth in Rule 1: First, a concern about whether Applicant is currently abusing alcohol and second a concern about his candor and forthrightness about the 2013 incident.

Based upon his assessment by OLAP, the Panel believes the Applicant is not any longer abusing alcohol and is also not dependent upon alcohol, although Applicant has apparently abused alcohol in the last year and a half. At the very least, he has until this

most recent incident had at least two incidents of drinking and driving impaired. The issue of Applicant's truthfulness is of more concern. His testimony concerning the June 2013 incident was disjointed and frankly in many respects not entirely believable, as he himself acknowledged. His conduct following the crash appears to have been an attempt to conceal the fact that he had been drinking before the crash and that this might have been, at least in part, the cause of the crash. His testimony at the panel hearing likewise seemed to be a continued attempt to downplay the role of alcohol. Additionally, his hearing testimony is, in important respects, inconsistent with his June 19, 2013 e-mail reporting the incident to the Admissions Office. The email provided a rather detailed explanation of the incident but, curiously, failed to make any mention of the fact that he had fallen asleep after drinking at a party with friends. Moreover, the June 19th email indicates his "head began to throb in excruciating pain so I walked home . . . intending to get medically checked out and to return to place a note on the car . . ." The Applicant made no mention whatsoever of excruciating head pain or of needing medical attention in his testimony before the Panel. While in themselves perhaps small details, they reinforce the belief by the Board that the Applicant has not been wholly candid and forthright in his testimony. As noted above, the Applicant admittedly was concerned about the incident and how it would impact the admission process for him and it appears to the Board that such concerns caused the Applicant to massage his testimony in a way that was not totally candid. Given the paramount importance of honesty and integrity for the legal profession and its primacy under Rule I in adjudging an applicant's character and fitness, the Board concludes that the Applicant has not shown by clear and convincing evidence that he currently possesses the requisite character and fitness.

For these reasons, the Board recommends that he not be approved at this time, but that he be permitted to reapply for the February 2015 bar examination.



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