

The Supreme Court of Ohio

BEFORE THE BOARD OF COMMISSIONERS

ON CHARACTER AND FITNESS OF

THE SUPREME COURT OF OHIO

In re: Application of
Byron Louis Harper

Case No. 494

14-1552

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 the appeal filed by the applicant, Byron Louis Harper, in accordance with Gov. Bar R. I, Sec. 12(B).

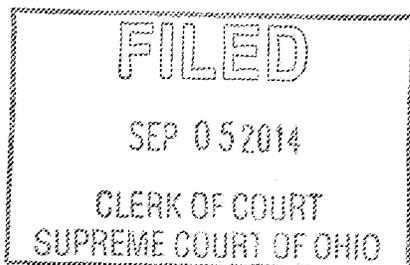
A duly appointed panel of three Commissioners on Character and Fitness was impaneled for the purpose of hearing testimony and receiving evidence in this matter. The panel filed its report with the board on July 7, 2014.

Pursuant to Gov. Bar R. I, Sec. 12(D), the board considered this matter on July 11, 2014. The board adopts the panel report, including its findings of fact and recommendation of disapproval with no provision for reapplication. The panel report is attached hereto and made a part of the board's report.

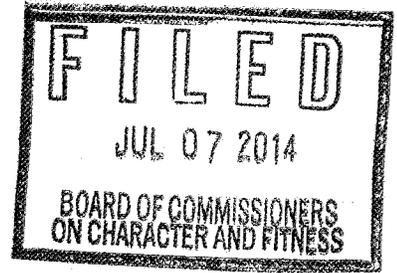
Therefore, the Board of Commissioners on Character and Fitness recommends that the applicant, Byron Louis Harper, be disapproved, and that he not be permitted to reapply for admission to the practice of law in Ohio.



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



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



IN RE:

CASE NO. 494

APPLICATION OF
BYRON LOUIS HARPER

REPORT AND RECOMMENDATION

STATEMENT OF THE CASE

This matter is before the Board based upon a disapproval of the Applicant's character and fitness by the Akron Bar Association.

The Supreme Court of Ohio appointed a panel consisting of Todd C. Hicks as Chairperson, Gregory L. Arnold, and Suzanne K. Richards to hear this matter. A hearing was conducted on May 28, 2014. The Applicant was represented by Daniel Wilt and the Akron Bar Association was represented by Michael Creveling.

BACKGROUND

The Applicant is a 1999 graduate of the University of Akron School of Law. He has taken but failed the Ohio Bar exam on numerous occasions, the first being in February of 2000. This matter came to the Board in connection with a bar application filed by the Applicant in 2010 for the February 2011 Bar examination.

The Applicant has owned and operated a tax preparation and accounting business called Byron L. Harper & Associates, Inc., for a long period of time. In 2009, the Applicant was charged in federal district court by way of an Information with aiding and assisting the preparation of false federal income tax returns in violation of 26 USC §7206 (2). These were felony charges, akin to a 5th degree felony under Ohio law.

On March 9, 2010, the Applicant pled guilty to Count I of the Information admitting that he had prepared at least 57 false and fraudulent income tax returns for at least 19 different clients resulting in false or inflated income tax refunds of \$112,130.00.

The Applicant was sentenced to a term of eight months in federal prison, followed by six months of house arrest. No restitution was ordered. When the Applicant filed a re-examination application in November of 2010, he did disclose his felony conviction and stated "I made an error in judgment by giving clients information to maximize their tax returns."

During the hearing, the Applicant described the circumstances surrounding his felony conviction. He indicated that two Internal Revenue Service agents showed up at his office unannounced in May of 2007 to interview him about individual tax returns he had prepared and filed, including his own. Following the visit by the IRS agents, the Applicant retained a criminal defense attorney. Shortly thereafter, a number of clients telephoned him indicating they had been visited or contacted by agents from the Internal Revenue Service. The Applicant insists he had no further contact with the Internal Revenue Service agents or any clients about the matter after July, 2007 until he was advised of the Charges when they were filed in November of 2009.

During the time period between July of 2007 and November of 2009, the Applicant did apply to take the Bar exam and he was interviewed by the Akron Bar Association, but did not advise them about his interaction with the Internal Revenue Service agents.

The Applicant's testimony concerning his role in the preparation of false federal income tax returns was troublesome. The Applicant made it sound as though he was a victim of unscrupulous clients and he was only unwittingly involved in illegal activities. He suggests that when he would first meet with clients, he would explain relevant tax code provisions such as the Child Tax Credit for a custodial parent. Armed with that information, the client would then provide the Applicant with personal information such as the number of children to prepare the tax return. Apparently, on many occasions, this information was false. The Applicant insists he was never aware that false information was being submitted and he paints his role as simply being too trusting of his clients and not having adequate safeguards in place to confirm information being provided. The Panel is not convinced that the Applicant's role was as he described and the Panel believes the Applicant is attempting to minimize his wrongdoing.

The Applicant's felony conviction is not the only issue to cause concern. Between 2006 and 2009, the Applicant has commenced at least seven separate personal bankruptcy proceedings. He has not received a discharge in bankruptcy and no case is presently pending. The reason for the multitude of cases is that the Applicant would not comply with various Court Orders, including deadlines. The Applicant places the blame for all of these issues on his various bankruptcy attorneys rather than himself.

The Applicant has also not taken care of his debts despite insisting otherwise. During the hearing, Panel Member Arnold questioned the Applicant extensively about various debts listed in bankruptcy petitions and whether they had been taken care of, or whether they remained outstanding. The Applicant insisted that all the debts have been taken care of and no debts are outstanding. Following that questioning by Panel Member Arnold, the Applicant's counsel asked him about various categories of debt, such as medical bills, credit cards, and utility bills, and to each question the Applicant indicated he had no outstanding debts. The Panel requested that the Applicant provide a current credit report for review by the Panel. The Applicant did provide the credit report and it identifies a number of debts that are past due and in collection, including many of the debts identified by Panel Member Arnold during his questioning of the Applicant. Thus, either the Applicant is not being forthright with the Panel, or he does not possess knowledge of his own financial obligations.

Finally, there is also a concern about the Applicant's fitness due to mental health issues. The Applicant's various exam applications indicate a history of depression. The extent of the Applicant's mental health issues became clearer after the hearing. During the hearing, the Applicant presented an exhibit that indicated he had received a discharge of certain student loans on the basis of a "total disability." The Panel requested that the Applicant provide a copy of the application that was submitted to obtain the discharge of the student loan along with any supporting documentation. Those documents were provided following the hearing. The Applicant and his doctor (Dr. Claudia Metz) prepared and signed a "Discharge Application: Total and Permanent Disability." The instructions to the application state:

"To qualify for this discharge (except for certain veterans as explained below), a physician must certify in section 4 of this form that you are unable to work and earn money because of a condition that is expected to continue indefinitely or result in death. This means that you must be unable to work in any capacity in any field of work. **If you are able to work and earn money in any capacity in any field of work at the time our physician signs this form, even if only on a limited basis, you are not eligible for this discharge.**"

In the certification prepared and signed by Dr. Metz, she provided a diagnosis for the Applicant of major depression, recurrent and chronic fatigue syndrome. She stated that his "chronic fatigue is quite severe, with debilitating fatigue, unrefreshing sleep, impaired memory and concentration." In describing his limitations on activities of daily living, Dr. Metz stated "requires a lot of help/reminders/supervision for many basic activities (e.g. eating, taking medication); easily overwhelmed." In describing his social/behavioral limitations, Dr. Metz stated "irritable, short-tempered, easily frustrated/overwhelmed, forgetful, difficulty concentrating, can't deal with stress." This certification was signed by Dr. Metz on April 12, 2010.

CONCLUSION AND RECOMMENDATION

At the conclusion of the hearing, the Akron Bar Association reiterated the position that the Applicant should be disapproved. Bar counsel noted the grievous and heavy mistakes made by the Applicant during the four years he prepared and filed fraudulent tax returns. Bar counsel also noted the Applicant's failure to take full responsibility for his acts and noted his tendency to blame his clients instead.

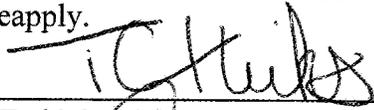
The Panel does not believe that the Applicant has met his burden in this matter. Standing alone, the Applicant's felony conviction serves as a basis for disapproval particularly given the Applicant's lack of candor in describing his role. The diagnosis and details provided by Dr. Metz in her 2010 certification to support the Applicant's request for a discharge of his student loans is also of paramount concern. Based on Dr. Metz's diagnosis and description, the

Applicant, does not satisfy some of the essential eligibility requirements to practice law in the State of Ohio, including:

- The cognitive capacity to learn, to recall what has been learned, to reason and to analyze;
- The ability to conduct one's self diligently and reliably in fulfilling all obligations to clients, attorneys, courts and others; and
- The ability to comply with deadlines and time constraints.

Finally, the Applicant's financial irresponsibility in failing to satisfy his debts, coupled with the numerous bankruptcy filings only serve to heighten the Panel's concerns.

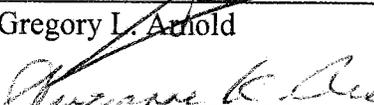
Accordingly, the Panel recommends that the Applicant's application be permanently disapproved and that he not be permitted to reapply.



Todd C. Hicks, Chairperson



Gregory L. Arnold



Suzanne K. Richards