

ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE: APPLICATION OF BYRON : Case No. 2014-1552
LOUIS HARPER :
: :
: :

RESPONSE TO APPLICANT'S MERIT BRIEF AND OBJECTIONS

Michael A. Creveling, (0062916)
3045 Smith Road, Suite 450
Fairlawn, Ohio 44333
(330) 665-1100
(330) 665-1101 (fax)
Email Mcrevlaw@gmail.com

COUNSEL ON BEHALF OF THE AKRON BAR ASSOCIATION

Daniel D. Wilt, Esq. (0023735)
35000 Chardon Rd. #125
Willoughby Hills, OH 44094
(440) 942-8886
(440) 942-8893 (fax)
Email dwilt@nacs.net

COUNSEL FOR APPLICANT, BYRON LEWIS HARPER

RECEIVED
DEC 01 2014
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
DEC 01 2014
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

	Page
Table of Authorities	iii
Statement of the Case	1
Statement of the Facts	2
Argument	3
Conclusion	6
Certificate of Service	7

TABLE OF AUTHORITIES

CASES	PAGE
<i>Bd. of Regents v. Roth</i> , 408 U.S. 564, 569-70, 92 S.Ct. 2701 (1972)	4
<i>Cleveland Bar Assn. v. Cleary</i> , 93 Ohio St.3d 191, 198, 754 N.E.2d 235 (2001)	5
<i>In Re Application of McKinney</i> , 134 Ohio St.3d 260, 212-Ohio-5635, (2012)	5
<i>LRL Properties v. Portage Metro Hous. Auth.</i> , 55 F.3d 1097, 1108 (6th Cir.1995)	4
<i>State ex rel. Edwards v. Toledo City School District Board of Education</i> , 72 Ohio St. 3d 106, 108 (1995)	4

STATEMENT OF THE CASE

In January of 2011, Mr. Harper was interviewed by the Akron Bar Association character and fitness committee. The required two (2) members of the committee interviewed Mr. Harper and recommended that he not be allowed to take the 2011 bar examination. The recommendation was based on numerous issues including a recent felony conviction, several bankruptcy filings and repeated failures of Mr. Harper to fully disclose these issues in both the current and past interviews. Mr. Harper had applied for the bar examination several times in the past and was not able to score a passing grade. On January 31, 2011 the chair of the committee certified a disapproval. On March 25, 2011, Mr. Harper appealed the decision, but did not obtain a hearing on his appeal until May of 2014.

The undersigned counsel was an interviewer of Mr. Harper in the January 2011 interview, and as such was assigned to argue the Akron Bar Association's position upon Mr. Harper's appeal to the Board of Commissioners on Character and Fitness. A hearing was held on May 28, 2014 before a duly appointed panel with Todd C. Hicks as chairperson. The panel filed its report on July 7, 2014, recommending Mr. Harper not be allowed to apply for admission to the practice of law in Ohio. On July 11, 2014 the board adopted the panel's recommendation.

Mr. Harper through counsel filed objections on October 22, 2014. On behalf of the Akron Bar Association, the undersigned submits this response.

STATEMENT OF FACTS

Mr. Harper was a graduate of the University of Akron School of law in 1999. He applied for and took the bar examination numerous times from 1999 to 2011. He failed to obtain a passing score. On or about May of 2007, Mr. Harper's accounting business was investigated by the Internal Revenue Service for criminal activity. (Tr. 32). Mr. Harper hired a lawyer the next day. (Tr. 66) . Mr. Harper then subsequently applied for the Ohio bar examination in October of 2007 but failed to advise the bar about the pending criminal investigation. (Tr. 67). Mr. Harper repeatedly failed to advise of his criminal investigation until after he was indicted and convicted in 2010.

Mr. Harper further failed to provide the bar with updated information about his financial problems. In 2007, 2008, 2009 and 2010 Mr. Harper's applications reflected that he had no past due debts beyond 90 days. (Tr. 69). As to the issue of debts, Mr. Harper testified at the hearing that he did not "owe debt to anybody." (Tr. 110). The panel requested a current credit report from Mr. Harper to verify his current debts as sworn to by Mr. Harper. (Tr. 89).

ARGUMENT

Mr. Harper has identified six (6) separate objections to the findings of the board. It is understood that the undersigned counsel represents the Akron Bar Association, and has no authority to speak directly on behalf of the Board of Commissioners of Character and Fitness ("the board.").

Objection Number One: Byron Louis Harper objects to the fact that the Board of Commissioners on Character and Fitness based the findings of fact not on the current character and fitness of Mr. Harper but events and circumstances that are in the past.

In all issues addressed, the board looked at the current testimony of Mr. Harper and compared that testimony with the known facts. In regards to Mr. Harper's criminal conduct, the board concluded that they were "not convinced that the Applicant's role was as he described and the Panel believes the Applicant is attempting to minimize his wrongdoing." (Report and Recommendations page 2). As to the issue of financial responsibility, the board stated that "the Applicant places the blame for all of these issues on his various bankruptcy attorneys rather than himself." (Report and Recommendations page 2). Further, the board specifically requested the current credit report of Mr. Harper which was reviewed by the board prior to issuing its report. The board then noted a number of past due debts on the report and concluded that Mr. Harper was either "not being forthright with the Panel, or he does not possess knowledge of his own financial obligations." (Report and Recommendations page 2).

Objection Number Two: Byron Louis Harper objects to the fact that the Board of Commissioners on Character and Fitness exceeded the recommendations of the Akron Bar Association and recommended that Byron Louis Harper be barred from the taking [of] the Ohio Bar Examination forever.

The authority of the Akron Bar Association committee does not extend beyond that of investigation and recommendation. Conversely, the board is not constrained by the Akron Bar Association's recommendation any more than this Court is restrained by the recommendation of the board. Therefore, Mr. Harper's objection is without merit.

Objection Number Three: Byron Louis Harper objects to the fact that the Board of Commissioners on Character and Fitness based its recommendation in part on a credit report that was submitted after the hearing and Byron Louis Harper had no opportunity to respond.

This objection appears to be based wholly on procedural-due-process. To succeed on a procedural-due-process claim, Mr. Harper must establish a constitutionally protected property or liberty interest and show that such an interest was deprived without appropriate process. *Bd. of Regents v. Roth*, 408 U.S. 564, 569-70, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972); *LRL Properties v. Portage Metro Hous. Auth.*, 55 F.3d 1097, 1108 (6th Cir.1995).

Assuming in argument only that Mr. Harper has a property right to take the bar examination, Mr. Harper must show that he was deprived an appropriate process to protect that interest. Mr. Harper cites *State ex rel. Edwards v. Toledo City School District Board of Education*, 72 Ohio St. 3d 106, 108 (1995) in support of his due process argument. In *Edwards*, the Plaintiff's civil complaint was dismissed sua sponte by the trial court pursuant to Civ.R. 12(B)(6) prior to notice being issued to the parties of the court's intentions. *Id.*

Unlike *Edwards*, Mr. Harper had been provided notice as to the issues for his hearing and he was provided the opportunity to respond. In fact, Mr. Harper testified at length regarding his knowledge of his financial obligations. (Tr. 69, 89,109, 110). In fact, the testimony of Mr. Harper wherein he stated he did not "owe debt to anybody," was subsequent to the board's request for the credit report and was responsive to the prior questions about his debts. Since the issues of debt were discussed in great detail at the hearing, the request for and subsequent reliance upon Mr. Harper's credit report do not deny him procedural-due-process.

Objection Number Four: Byron Louis Harper objects to the fact that the Board of Commissioners on Character and Fitness based its recommendation in part on an application for disability discharge of student loans that was submitted after the hearing and Byron Louis Harper had no opportunity to respond.

Again as it relates to the disability discharge paperwork, the board did not deny procedural-due-process by obtaining documents containing information which was discussed at the hearing. (Tr. 26, 81, 82).

Objection Number Five: Byron Louis Harper objects to the fact that the Board of Commissioners on Character and Fitness made a finding that the Board did not accept the testimony of Byron Louis Harper as to the income tax activity without setting forth the facts upon which this finding was based.

This author notes that objection number five is essentially challenging the credibility assessments of the board. The Ohio Supreme Court has previously stated that the board is in a unique situation to weigh credibility from the testimony at the hearing. See *In Re Application of McKinney*, 134 Ohio St.3d 260, 212-Ohio-5635, (2012). citing *Cleveland Bar Assn. v. Cleary*, 93 Ohio St.3d 191, 198, 754 N.E.2d 235 (2001). "In admissions matters, the panel of the Board of Commissioners on Character and Fitness is, likewise, in the best position to assess the credibility and weight of testimony because it hears the testimony firsthand and can evaluate a witness's demeanor, tone, and inflection, which are not preserved in the record. Therefore, we find that the credibility determinations of a panel of the Board of Commissioners on Character and Fitness should receive the same deference."

Although the reviewing court is not required to accept the findings of the board, it does give those findings deference unless the record weighs heavily against them. *Findlay/Hancock Cty. Bar Assn. v. Filkins* (2000), 90 Ohio St.3d 1, 734 N.E.2d 764. Mr.

Harper fails to address where the record weighs heavily against the findings he objects to. This author notes that Mr. Harper failed to take personal blame for his conduct both in the initial Akron Bar Association interview, and again at the board hearing. Mr. Harper blamed his clients for getting him into criminal trouble. (Tr. 53 to 59, 83). Mr. Harper even failed to admit he had criminal culpability. (Tr. 73). The board's finding seems well supported.

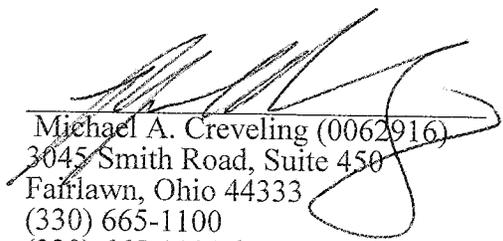
Objection Number Six: Byron Louis Harper objects to the fact that the Board of Commissioners on Character and Fitness made a finding that Byron Louis Harper did not obey court orders or comply with deadlines without setting forth the court orders that Byron Louis Harper did not comply with or the deadlines that Byron Louis Harper missed.

The record reflects that Mr. Harper filed numerous personal bankruptcy cases. (Tr. 23). None of the filings have been discharged and no cases are currently pending. One of the bankruptcies discussed was dismissed while Mr. Harper was either ill or serving time for his criminal conviction. (Tr. 23, 24). According to testimony, Mr. Harper was even at one time permanently barred from discharge. (Tr. 24). Mr. Harper also testified that he also had been charged with an assault on a Sheriff's Deputy which criminal charge had subsequently been dismissed as part of a diversion program. (Tr. 99). He further admitted under questioning by a panel member that he had failed to appear for a hearing in that matter and that his bond was forfeited. (Tr. 99). Mr. Harper was removed from the diversion program, but eventually allowed to rejoin. (Tr. 100, 101). Again showing a tendency to color the truth, Mr. Harper failed to advise the bar at that time that the case was ultimately dismissed through a diversion program, not for lack of merit. (Tr. 101).

CONCLUSION

Based on the foregoing, the undersigned believes the objections of Mr. Harper are without merit and should be denied in their entirety.

Respectfully Submitted,



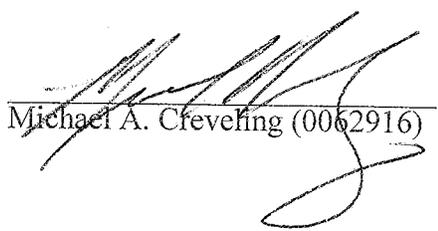
Michael A. Creveling (0062916)
3045 Smith Road, Suite 450
Fairlawn, Ohio 44333
(330) 665-1100
(330) 665-1101 fax
Mcrevlaw@aol.com
Attorney for Appellant,

Certificate of Service

A copy of the foregoing responsive brief has been sent to:

Daniel D. Wiilt
35000 Chardon Road #125
Willoughby Hills, OH 44094

via regular U.S. Mail postage pre-paid on this 26th day of November 2014.



Michael A. Creveling (0062916)