

ORIGINAL

THE SUPREME COURT OF OHIO

In re Application of :
: Case No. 2014-1555
Joseph V. Libretti, Jr. :

FILED
DEC 18 2014
CLERK OF COURT
SUPREME COURT OF OHIO

CMBA'S RESPONSE TO

(1) MOTION FOR LEAVE OF APPLICANT JOSPEH V. LIBRETTI, JR. TO SUBMIT ANSWER BRIEF TO CMBA'S RESPONSE

AND

(2) MOTION FOR LEAVE OF AMICUS CURIAE CITIZENS INSTITUTE FOR LAW AND PUBLIC POLICY TO FILE ANSWER BRIEF IN SUPPORT OF APPLIEANT JOSPEH V. LIBRETTI, JR.

AND

(3) MOTION FOR LEAVE OF AMICUS CURIAE CURE-OHIO AND FIFTEEN ATTORNEYS ANP LAW PROFESSORS TO FILE ANSWER BRIEF IN SUPPORT OF APPLICANT JOSEPH V. LIBRETTI, JR.

AND

(4) MOTION FOR LEAVE OF AMICI CURIAE ROBERT L. TOBIK, et al., TO FILE REPLY BRIEF IN SUPPORT OF APPLICANT JOSEPH V. LIBRETTI, JR.

INTRODUCTION

CMBA does not oppose the Applicant's Motion to file a Reply Brief, even though it suffers from many of the same defects as the motions of his "amici." In his proposed reply, Libretti again concedes that he failed to carry his burden of proof and effectively abandons his

As a result, the only issue before the Court is whether to accept the

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recommendation of the unanimous Panel, which was adopted by the Board, that Libretti “not be permitted to reapply for admission to the practice of law in Ohio.”

CMBA does oppose the motions of Libretti’s existing and proposed new “amici” to file reply briefs. Reply briefs are not permitted under either this Court’s rules or this Court’s Order of September 14, 2014. Moreover, the motions fail to “state with particularity the grounds on which [they are] based.” S.Ct.Prac.R. 4.01(A)(1). The only grounds offered for such here are (1) a reply brief(s) is needed to respond to unidentified issues raised by CMBA in its response; (2) counsel mistakenly thought such was not prohibited; and (3) reply briefs have been filed in a handful of earlier cases. Those grounds are not sufficient, especially where, as here, none of the proposed reply briefs are truly reply briefs, but rather introduce entirely new amici and/or entirely different or new positions, and where, as here, nothing contained in those proposed reply briefs could not have been contained in opening briefs.

Accordingly, CMBA objects to the Motions of (1) CLIPP (and the co-signers, whose putative status is unclear), (2) CURE-Ohio (plus additional and new “amici”), and (3) proposed new “amici,” Robert L. Tobik, et al., to file reply briefs. Should one or more of these motions be allowed, CMBA respectfully requests that it be granted an opportunity to respond briefly by way of surreply.

I. CMBA’S RESPONSE TO APPLICANT’S MOTION

CMBA does not object to Libretti’s Motion to file his proposed “Answer Brief,” because its acceptance would reduce the number of issues before this Court. CMBA does object to certain of the attachments to Libretti’s proposed reply.

Libretti’s proposed “Answer Brief” again concedes that he failed to meet his burden of proof. Previously, Libretti made similar concessions before the Panel (Motion to Withdraw

Application (filed Feb. 13, 2014)). By doing so again now, Libretti abandons both his objections and much if not all of his Opening Brief to this Court. As in his earlier Motion to Withdraw, Libretti seeks an opportunity to reapply for admission at some unspecified future date.¹ The Board denied Libretti's Motion to Withdraw.

Second, Libretti attaches to his proposed Reply, a notice of dismissal (Reply Exhibit A); various letters of recommendation (Reply Exhibit B), some of which were offered and admitted before the Panel (as parts of Applicant's Hearing Exhibit M),² several of which are new and are not part of the record (listed below); and finally a letter from Emily Hensley (Reply Exhibit C), which is also not part of the record.

CMBA does not object to the Court's taking judicial notice of the existence of Reply Exhibit A, which was filed with the Sixth Circuit on December 6, 2014. The existence of such a motion does not, however, show contrition. It may well have been filed to avoid the perceived inevitability of an adverse outcome before the Sixth Circuit. *See* Audio of Oral Argument.³ Moreover, Libretti does not even claim to have filed a motion to dismiss his new D WY

¹ Libretti does not explain why he flip-flopped from conceding in February that he had failed to meet his burden of proof, to arguing the converse with vehemence in both his merits brief to the Panel and in his opening brief to this Court, and why he now flip-flops yet again to conceding that failure in his proposed reply. Moreover, the tone of his proposed reply is inconsistent with the adversarial arguments in the proposed reply of one of his so-called amici (CILPP). *See* below.

² CMBA Exs. 42, 43 & 44 include duplicates of those letters of recommendation available at the time of the hearing.

³ The audio of oral argument is available at:
http://www.ca6.uscourts.gov/internet/court_audio/aud2.php?link=http://www.ca6.uscourts.gov/internet/court_audio/audio/10-02-2014%20-%20Thursday/14-3266%20Joseph%20Libretti%20Jr%20v%20Steven%20Woodson.mp3&name=14-3266%20Joseph%20Libretti%20Jr%20v%20Steven%20Woodson (accessed Dec. 12, 2014).

complaint, which is largely redundant with his ND Ohio complaint, the dismissal of which is on appeal to the Sixth Circuit.. See CMBA’s Opening Brief at p. at 22

With respect to Reply Exhibit B, CMBA objects both to the regurgitation of letters which are not responsive to any arguments CMBA made in its response, and especially to inclusion of new letters – *i.e.*, those not even offered into evidence (Reply Exhibits B #22 and #23 below), and those submitted long after the hearing concluded, on the grounds that they are untimely and violate the Panel Chair’s pre-hearing ruling that new character evidence must be by way of testimony. The new exhibits in Reply Exhibit B are:

Exhibit B #22: Letter from Robert L. Tobik (Nov. 7, 2013)	Despite the gap in numbering – from Applicant’s Exhibit M-21 to M-24 – there is no explanation for why this was not offered at the hearing.
Exhibit B #23: Letter from Terence A. Check Jr. (June 4, 2013)	Despite the gap in numbering – from Applicant’s Exhibit M-21 to M-24 – there is no explanation for why this was not offered at the hearing.
Exhibit B: Letter from “AFS” to Todd Hicks (Jan. 28, 2014)	This letter was written after the conclusion of the hearing.
Exhibit B: Letter from Peter Sayegh (Aug. 14, 2014)	This letter by a “newly minted” lawyer was written long after the hearing was concluded, and is more advocacy than recommendation.

CMBA also objects to Reply Exhibit C, a letter from Emily Hensley who is represented to be the Emily of “Emily’s Story,” which is discussed in CMBA’s Opening Brief at p. 13. This letter purports to offer new “evidence,” but in fact it contradicts Libretti’s own testimony – Libretti twice testified that he (Libretti) became Emily’s cocaine supplier. Tr. 114:13-18; Tr. 456:5-11 (both parts of longer answers).

II. CMBA'S RESPONSE TO MOTION OF AMICUS CITIZENS INSTITUTE'S MOTION

This Court should deny the motion of one of Libretti's original amici -- Citizens' Institute for Law and Public Policy (CILPP) to file an Answer Brief. There is no provision in this Court's rules for an amicus to file a reply brief. Moreover, CILPP's so-called "Answer Brief" does not respond to that portion of CMBA's Opening Brief (at p. 42) which addresses CILPP's original arguments, which were focused exclusively on generic public policy arguments involving barriers faced by felons. Rather, CILPP's so-called "Answer Brief" consists entirely of unbridled (and frequently wrong) advocacy of Libretti-specific arguments abandoned in Libretti's own proposed reply. In short, CILPP has forsaken its role as a friend of the Court, and has become a pure apologist for Libretti. Perhaps this is because CILPP's counsel is Libretti's counsel, an untenable dual role that belies the independence of an amicus. Finally, the brief bears an additional signature page (perhaps intended for amicus CURE's motion), which suggests that brand new "amici" purport to join in CILPP's brief. *See* below.

III. CMBA'S RESPONSE TO MOTION OF AMICUS CURE-OHIO AND 15 ATTORNEYS

This Court should also deny the motion of another one of Libretti's original amici, CURE-Ohio, to file an Answer Brief. As above, there is no provision in this Court's rules for an amicus to file a reply brief. Furthermore, as above, Libretti's own counsel filed this brief on behalf of CURE-Ohio and other brand new "amici."

Finally, the purported joinder of 15 attorneys as amici is impermissible. Their answer is untimely, since they failed to appear and file briefs at the time Libretti submitted his merits brief. S.Ct.Prac.R. 16.06 ("If the amicus brief is in support of an appellant, the brief shall be filed within the time for filing allowed to the appellant to file a merit brief, the amicus curiae may file

a reply brief within the time allowed to the appellant to file a reply brief. “). See Rule 17, Ohio R. App. Proc. As newcomers,⁴ they are not replying to support any argument they previously made, since they made none, and thus they necessarily are not replying to anything CMBA argued in response.⁵

IV. CMBA’S RESPONSE TO MOTION OF ROBERT L. TOBIK, et al.

This Court should also deny the motion of purported amici Robert L. Tobik, *et al.*, to file a reply brief. None appeared as amici or filed a brief at the time of Libretti’s merits brief. S.Ct.Prac.R. 16.06; *see* Rule 17, Ohio R. App. Proc. One did, however, testify at the hearing (Hricko), and several submitted letters of recommendation (*e.g.*, Maher, Hricko, Sweeney).

In addition, the proposed reply does not reply to any argument that CMBA raised in its Response to Libretti’s brief, and necessarily does not reply to any argument Tobik, *et al.* raised in their opening brief, since there was none. Rather, the proposed reply seeks to introduce new “evidence” of a commitment to mentor Libretti, but fails to explain how such mentoring would be more effective than either Libretti’s five years of federal Supervised Release or his previous 18 months under “amici’s” supervision.

CONCLUSION

CMBA does not object to Libretti’s motion to file a reply brief, because he again concedes that he failed to meet his burden of proof, and thus reduces the issues this Court needs to decide. Of course, he could do as much at oral argument. But, CMBA submits that the multiple motions for leave to file reply briefs by Libretti’s “amici” should be denied. Should one

⁴ Two of the 15 newcomers testified at the hearing (Lazarus, O’Neil), some submitted letters of recommendation (*e.g.*, Lazarus, Dropko, Maher, O’Neil, Kalir, Kowalski). Also *see* Table at p. 2, *supra* (Libretti’s Reply Exhibit B includes advocacy letter from Sayegh).

⁵ Note that CURE-Ohio’s attachments are exhibits in the record.

or more of these motions be allowed, CMBA respectfully requests that it be granted an opportunity to respond briefly by way of surreply.



Paul G. Crist (0011894)

2233 Wellington Circle

Hudson, Ohio 44236

Phone: (234) 380-1588

pgcrist@yahoo.com

Attorney for Cleveland Metropolitan Bar Association.

CERTIFICATE OF SERVICE

The undersigned certifies that the original and 10 copies of the foregoing were sent by Federal Express this 17th day of December, 2014 to:

Office of the Clerk
Supreme Court of Ohio
65 South Front Street, 8th Floor
Columbus, Ohio 43215-3431

And a copy was emailed and mailed this 17th day of December, 2014 to each of the following:

Deborah Zaccaro Hoffman, Esq. (0071599)
Law Office of Deborah Zaccaro Hoffman
5001 Mayfield Road
The Jefferson Centre - Suite 201
Lyndhurst, OH 44124
Office: 216-381-3400
Fax: 216-381-3865
E-mail: dzh@dzh-law.com
Counsel for the Applicant,
and Counsel *Amici Curiae* Citizens' Institute
for Law and Public Policy and CURE-Ohio
and 15 proposed new amici

Jospeh V. Libretti, Jr.
c/o Deborah Zaccaro Hoffman, Esq. (0071599)
Law Office of Deborah Zaccaro Hoffman
5001 Mayfield Road
The Jefferson Centre - Suite 201
Lyndhurst, OH 44124
Applicant

Rob Wall, Esq. (0082356)
Ohio Justice and Policy Center
215 East Ninth Street, Suite 601
Cincinnati, Ohio 45202
Counsel for Amicus Curiae
Ohio Justice and Policy Center

And a copy was mailed this 17th day of December, 2014 to the following:

Robert L. Tobik (0029286)
John T. Martin (0020606)
Erika Cunliffe (0074480)
Jeffrey M. Gamso (0043869)
Linda Hricko (0077012)
Paul Kuzmins (0074475)
Christopher Scott Maher (0055318)
Cullen Sweeney (0077187)
310 Lakeside Avenue, Suite 200
Cleveland, Ohio 44113
(216) 443-7583
ecunliffe@cuyahogacounty.us

A handwritten signature in cursive script, reading "Paul G. Crist", positioned above a solid horizontal line.

Paul G. Crist