ORIGINAL

The Supreme Court of Ohio

BEFORE THE BOARD OF COMMISSIONERS

ON CHARACTER AND FITNESS OF

THE SUPREME COURT OF OHIO

15-0543

In re: Application of
John David Tynes

Case No. 576

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 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 February 3, 2015.

Pursuant to Gov. Bar R. I, Sec. 12(D), the board considered this matter on February 6, 2015. By unanimous vote, 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, John David Tynes, be disapproved, and that he not be permitted to reapply for admission to the practice of law in Ohio.

TC Hicks

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

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SUPREME COURT OF OHIO

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FEB 03 2015
BOARD OF COMMISSIONERS
ON CHARACTER AND FITNESS

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

IN RE:	**CASE NO. 576**
APPLICATION OF JOHN DAVID TYNES	**REPORT AND RECOMMENDATION**

STATEMENT OF THE CASE

This matter is before the Board following a disapproval by the Cincinnati Bar Admissions Committee.

The Supreme Court of Ohio appointed a panel consisting of Todd C. Hicks, Esq. as Chairperson, Oliver J. Dunford, Esq., and G. Scott McBride, Esq. to hear this matter. A hearing was conducted on January 27, 2015. The Applicant was represented by George D. Jonson, Esq. and the Cincinnati Bar Association was represented by Paul W. McCartney, Esq

BACKGROUND

The Applicant is 64 years old. He spent most of his life in the military. In 1998, the Applicant began frequenting online sexually oriented chat rooms. In those chat rooms, he introduced himself to at least four females that he believed to be minors under the age of 15. He then privately communicated with them using e-mail and instant messaging. He sent them pictures of himself (1) in his army uniform, (2) nude or with his penis exposed, and/or (3) of himself masturbating. He requested and received similar pictures from the minor females.

The Applicant sent numerous e-mail messages to a 13 year old girl in Louisville, Kentucky. He told her that he wanted to meet her and that he "desperately wanted to make love" to her. The Applicant also called her on the telephone. She discouraged the Applicant from coming to Louisville, Kentucky by telling him that she had been grounded by her parents.

During this time period, the Applicant was living in Virginia, near Washington, D.C. However, the Applicant traveled due to his work in the military. On his way home to Virginia from temporary duty in Texas, the Applicant traveled 300 miles out of his way to Birmingham, Alabama, to meet a female he believed to be a minor. The Applicant rented a hotel room and

then contacted her by e-mail. He tried to convince her to sneak out of her home and meet him at the hotel so they could engage in sex. After considerable e-mail discussion, the minor female declined to meet him.

Three months later, the Applicant was scheduled to travel by plane from Virginia to Las Vegas on official Army business. The Applicant arranged a layover in Chicago. He rented a hotel room to meet with a female he believed to be a minor so that he could engage in sexual activities with her. He brought a video camera to film these activities. The Applicant spoke to her on the telephone to make final arrangements and they planned to meet outside his hotel. When the Applicant appeared for that meeting, he was arrested by agents from the Federal Bureau of Investigation. The Applicant fully cooperated with the FBI. He indicated he became interested in younger girls about a year prior. He found the idea of having sex with them exciting. The Applicant also informed the FBI that he had pornographic images of children under the age of 18 at his home. FBI agents searched the Applicant's home and found these images on his computer hard drive as well as many computer discs.

Since the Applicant was in the military, he was charged under the Uniform Code of Military Justice and a Court Martial proceeding was held. The Applicant was charged with conduct unbecoming of an officer, four counts of attempting to persuade a minor to engage in sex, two counts of traveling interstate with the intent to have sex with a minor, one count of knowingly possessing child pornography, and one count of knowingly receiving child pornography.

The Applicant was convicted of the charges. He was sentenced to confinement in the U.S. Disciplinary Barracks for a period of 30 months. He served 19 months.

At the hearing in this matter, the Applicant described these events as the most devastating thing that had ever happened to him. At the time this conduct occurred, the Applicant was married with four children living at home, including three daughters. He indicates there was significant family strife. He had become isolated from his wife. His children had behavioral problems and he often had to play the role of the "heavy." The internet was new and the Applicant apparently viewed this conduct as an escape from his everyday life.

The Applicant takes full responsibility for his actions although he did attempt to minimize the scope of the conduct at the beginning of the hearing and many of the details were only brought out during questioning by the Panel Members.

The Applicant struggled following his release from incarceration. His wife stood by him and they remain married. However, they felt forced to move from their home in Virginia due to the attention that the Applicant's criminal charges had garnered. They moved to Arkansas for a period of time but then the Applicant was harassed by a group called "Bikers Against Child Abuse."

The Applicant then decided he wanted to go to law school and he applied to more than 20 law schools. Northern Kentucky University's Salmon P. Chase College of Law was the only law

school that accepted the Applicant (after initially rejecting him). The Applicant made full disclosure of his conviction and his incarceration on his law school applications.

The Applicant was required to register as a sex offender in the various states where he lived since his release from incarceration. However, he is no longer required to register as a sex offender in the State of Ohio due to changes in that law. He received confirmation that his Ohio sex offender registration requirements had expired in November of 2011.

The Applicant has had no issues since being released from incarceration. He has never been charged with any other offenses. He did admit that sometime after his release from incarceration, he did enter an adult, sexually oriented chat room online. He indicates that was more than 10 years ago and it did not involve sex with minors or images of minors. He indicated that he has not engaged in that conduct since. The Applicant was interviewed by the Admissions Committee for the Cincinnati Bar Association. The Cincinnati Bar Association disapproved the Applicant's character and fitness. Their determination was based on his criminal conviction/Court Martial. In addition, the Cincinnati Bar Association expressed concern that the Applicant was not receiving any type of counseling or therapy to help insure that this pattern of conduct would not be repeated.

The Applicant was assessed by a forensic phycologist, Dr. Jeffrey L. Smalldon, in 2013. The assessment was based on two meetings Dr. Smalldon had with the Applicant in March and April of 2013 along with some testing, including the Beck Depression Inventory-II and the Personality Assessment Inventory. Dr. Smalldon concluded that there are no mental health related reasons why the Applicant would not be able to engage in the responsible practice of law and he also concluded that members of the public would not be jeopardized in any way if the Applicant were permitted to practice law. Dr. Smalldon did characterize the Applicant as "someone who marches to his own drummer," but Dr. Smalldon also indicated that he is not a habitual rule violator.

The Applicant also started psychotherapy with Daniel Watson in November of 2013. The Applicant typically has one session a week although sometimes once every two weeks. Daniel Watson testified at the hearing. He indicated that he has no meaningful concerns about the Applicant's ability to function as an attorney. He does not believe there is a risk of recidivism of the prior conduct. He believes the Applicant is not the same person as he was in 1998. He is much healthier from an emotional standpoint.

The Applicant did enter into a five year OLAP Mental Health Recovery Contract in September of 2013.

During the hearing, the Applicant's counsel urged the Panel to make a recommendation of approval because the offenses occurred more than 15 years ago, the Applicant did not actually engage in sexual activity with any minor, the Applicant is rehabilitated, and deserves a second chance.

CONCLUSION AND RECOMMENDATION

An Applicant to the Ohio Bar must prove by clear and convincing evidence that he "possesses the requisite character, fitness, and moral qualifications for admission to the practice of law." See Gov. Bar R. I (11)(D)(1). The Applicant's record must justify "the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them." Gov. Bar R. I (11)(D)(3). An Applicant must establish that he has the ability to exercise good judgment and conducts himself with a high degree of honesty, integrity and trustworthiness. An Applicant must also avoid acts that exhibit disregard for the health, safety, and welfare of others. Finally, an Applicant must conduct himself professionally and in a manner that engenders respect for the law and the profession. See Definitions of Essential Eligibility Requirements for the Practice of Law.

In the present case, the Applicant has failed to satisfy his burden. He engaged in conduct that demonstrates a disregard for the law and, more importantly, a complete and utter disregard for the health, safety and welfare of others – namely, vulnerable, female children.

The Applicant was convicted of a number of felony offenses. Under the Felony Rule, we must also consider a number of other factors, including how approval of the Applicant would impact the public's perception of, or confidence in, the legal profession. See Gov. Bar R. I (11)(D)(5)(a)(iv). Attorneys hold a position of trust. Many attorneys come in contact with vulnerable people on a daily basis, including children. Allowing a convicted sex offender to hold this position of trust would clearly undermine the public's perception of and confidence in the legal profession.

Given the foregoing, the Panel recommends that the Application of John David Tynes be disapproved and that he not be permitted to apply for the Ohio Bar examination in the future.

Todd C. Hicks, Esq., Chairperson

Oliver J. Dunford, Esq.

G. Scott McBride, Esq.