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Further, mental health professionals have concluded that there are no mental health-related reasons that would preclude Tynes from engaging in the responsible practice of law, the public would not be jeopardized by allowing Tynes to practice law, and there is no risk of recidivism. Tynes respectfully submits that he has shown by clear and convincing evidence that, although almost two decades ago he engaged in conduct that was not appropriate for an attorney or applicant to the bar, he *currently* possesses the character and fitness required to apply for the Ohio Bar.

STATEMENT OF FACTS

John David Tynes is a retired military officer whose life has been relatively uneventful apart from a six-month period in 1998. (Transcript of the Character and Fitness Hearing of John D. Tynes, January 27, 2015 (“Transcript”), 28). Seventeen years ago, during a tumultuous time in his personal life, Tynes made a series of bad decisions that changed the course of his entire life. His family life was turbulent - his four children were exhibiting behavioral problems - and Tynes chose to escape into the virtual world of the newly-available World Wide Web. *Id.* at 17. There, he entered adult chatrooms where he engaged what he thought were underage girls in sexual messaging. *Id.* When he attempted to meet one of those girls, he was arrested, charged with, and found guilty of multiple felonies. *Id.* at 18-20. He never had any sexual contact with a minor. *Id.* at 18. He served a year and seven months at a military prison and was registered as a sex offender in several states after his release. *Id.* at 21, 34-35. He is not now, nor is he required to be, registered as a sex offender in Ohio. *Id.* at 37.

After his incarceration, Tynes rejoined his family in Virginia. *Id.* at 22. Tynes became involved in a website called PrisonTalk.com. *Id.* at 25. Prisontalk.com is a site that provides a community of support for people who have experienced prison directly

or indirectly through friends or family members. *Id.* Tynes chose to attend law school because he wanted to further support people affected by the prison system—to “[work] with the system to help make a change” and help people who “need help that don’t have it.” *Id.* at 26. Tynes later moved his family to Arkansas. *Id.* He eventually chose to live in Ohio to begin law school. *Id.* at 22-27. Tynes wants to live and practice law here for multiple reasons, including connections he made in the legal community before attending law school. *Id.* at 37.

As the Panel recognized, Tynes “has had no issues since being released from incarceration. He has never been charged with any other offenses.” (Report, p. 3.) He has been an upstanding citizen.

Further, Dr. Jeffrey L. Smalldon, a forensic psychologist who assessed Tynes, stated in his report to the panel that, after a thorough analysis of Tynes’s life history and mental state, he is “unaware of anything in [Tynes’s] psychological/emotional makeup that would prevent him from being able to practice law in a responsible, conscientious manner, or that would put members of the public at risk if he were practicing.” (Transcript, Ex. 4, 19.) Similarly, after months of counseling Tynes, licensed independent social worker Danny Watson testified that Tynes’s risk of recidivism is very low, if it exists at all, and Tynes is a different person than he was in 1998. (Transcript, 73-74.)

ARGUMENT

As Mr. Watson testified, Tynes is a different person than he was when he committed the underlying offenses in 1998. His character and fitness to practice law should not be permanently impacted by missteps he took some seventeen years ago. Applicants with previous felony convictions have been permitted to sit for the Ohio bar.

Attorneys committing similar sexually deviant acts are not permanently precluded from practicing law. Tynes should not be sanctioned greater than these similar individuals; he should not be permanently precluded from sitting for the Ohio Bar.

I. Tynes's felony conviction does not justify disapproval of his application for admission to the practice of law.

“The paramount concern in proceedings before the Board of Commissioners on Character and Fitness is whether the Applicant possesses those moral traits of honesty and integrity which enable him to fully and faithfully discharge the duties of our demanding profession.” *In re Application of Davis*, 38 Ohio St.2d 273, 274, 313 N.E.2d 363 (1974).

If an applicant has been convicted of a felony, the factors that should be considered in determining whether the applicant is eligible to apply for the Ohio Bar include “[t]he amount of time that has passed since the applicant was convicted of the felony;” “whether the applicant would be eligible to have his rights and privileges restored under the laws of Ohio;” “whether the applicant is disqualified by law from holding an office of public trust;” and “how an approval of the applicant would impact the public’s perception of, or confidence in, the legal profession.” Gov. Bar R. I(11)(D)(5).

The Panel and Board focused on the last element - how approval of Tynes’s application would impact the public’s perception of, or confidence in, the legal profession. Though the Panel concluded that the public’s perception of the legal profession would be negatively affected if Tynes were allowed to apply for the Ohio Bar, it did not consider the impact a reformed felon, who has bettered himself and is working to help others do the same, could have on the public’s perception of the legal field. The

penalties imposed by the criminal justice system are designed to serve the dual functions of punishment and rehabilitation. Tynes has been punished and all of the testimony at the hearing attests to his rehabilitation. Allowing Tynes to take the bar examination would demonstrate to the public that one can wipe the slate clean of a crime by serving the sentence and changing his life. Just as an individual who once possessed the character and fitness to practice law may become unfit to practice, so too can an individual who was once unfit become worthy.

Tynes is not the first person with a criminal past to apply for the Ohio Bar, nor would he be the first person with a felony conviction to change his life and become an attorney. Members of the Bar have committed felonies for which they were charged and convicted of prior to their Bar applications, and yet allowed to sit for the Bar.

In *In re Bagne*, 102 Ohio St.3d 182, 2004 Ohio 2070, 808 N.E.2d 372, the applicant was convicted thirteen years prior of aggravated assault for shooting a jogger in the neck with a BB gun. Through three character and fitness hearings conducted in Michigan regarding the applicant's desire to join the Michigan Bar, the applicant did not present a consistent story regarding his crime. *Id.* at 184. The applicant was "criticized in reports from [the Michigan] hearings for appearing to be willing to say anything for the sake of approval and for attempting to create false impressions as to the seriousness of and his responsibility for his crime." *Id.* at 183. Further, at the Ohio hearing, one of his character witnesses testified that even though the applicant claimed that he did not know the jogger was present when he shot the BB gun, the applicant told the witness that he was aware of the jogger when he discharged the weapon. *Id.* at 184. Despite the applicant's prior crime of violence and his lack of candor to both the Michigan and Ohio

hearing panels, the Ohio Supreme Court determined that while the applicant's current application was to be disapproved, he could reapply in three years.

In *In re Davis*, 61 Ohio St. 2d 371; 403 N.E.2d 189 (1980), this Court reviewed an applicant who had previously been charged and served time following an arrest for breaking and entering an inhabited dwelling at night and grand larceny. In reviewing his character and fitness to practice law, the Court noted that it was concerned, "with whether applicant has demonstrated by clear and convincing evidence that he has become fully and completely rehabilitated since his felony conviction in 1970, and whether his present moral character makes him worthy of admission to practice law in this state." *Id.* at 372 (internal citations omitted). Ultimately, the Court approved his application to sit for the Bar, finding among other things "that he has not subsequently been involved adversely in the criminal justice process." *Id.* He had been rehabilitated.

So too has John Tynes. His crime occurred in 1998. He has not been charged with or convicted of another crime since then. Forensic Psychologist Dr. Jeffrey Smalldon stated "there are no mental health related reasons why [Tynes] 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 [Tynes] were permitted to practice law." He further stated Tynes is "not a habitual rule violator." (Report, p. 3.) Psychotherapist Daniel Watson testified there is no risk of recidivism. *Id.*

In other words, Tynes has been rehabilitated. He poses no threat to the public. If he is permitted to apply for the bar and ultimately practice law, he will be an example to the public of just that—rehabilitation.

II. Attorneys found guilty of similar conduct generally receive an indefinite suspension; they are not foreclosed from ever being permitted to re-enter the practice.

The hope and potential for rehabilitation in the legal system can be seen in the handling of attorney discipline related to conduct similar to Tynes's conduct. In cases where lawyers have committed sex crimes targeting children or other vulnerable victims, the discipline ordered is consistently an indefinite suspension, not permanent disbarment.

In *Disciplinary Counsel v. Goldblatt*, 118 Ohio St.3d 310, 2008 Ohio 2458, 888 N.E.2d 1091, this Court indefinitely suspended a lawyer's license to practice following his two felony convictions for attempting to engage in sexual conduct with an underage victim after he attempted to meet the victim at the park and pay her for sex. The same was ordered in *Disciplinary Counsel v. Pansiera*, 77 Ohio St.3d 436, 1997 Ohio 93, 674 N.E.2d 1373, for similar conduct. In *Disciplinary Counsel v. Andrews*, the attorney received an indefinite suspension after being convicted on several counts related to online conversations he had with an adult posing as a 13-year-old girl in which he solicited sexual activity.

In *Disciplinary Counsel v. Ridenbaugh*, 122 Ohio St.3d 583, 2009 Ohio 4091, 913 N.E.2d 443, this Court adopted the Board's recommendation and instituted an indefinite suspension for an attorney after the attorney plead guilty to pandering sexually oriented matter involving a minor and illegal use of a minor in nudity-oriented material or performance. In issuing the indefinite suspension, this Court noted that, while the attorney would have to go through the reinstatement process to determine if and when he "is capable of practicing within ethical constraints * * *we also see no reason to prevent respondent from attempting to qualify for reinstatement beyond the

two-year bar imposed by *Gov. Bar R. V(10(B) * * **.” In 2012, Ridenbaugh was, in fact, reinstated to the practice of law in Ohio by this Court despite a Board recommendation that his petition for reinstatement be denied. *Disciplinary Counsel v. Ridenbaugh*, 2014 Ohio 1097, 2014 Ohio LEXIS 642 (Ohio, Mar. 24, 2014).

An attorney, charged with a current felony for similar conduct to that of Tynes can apply for reinstatement as early as two years after an indefinite suspension is ordered. Tynes’s misconduct occurred approximately 17 years ago. He has not had any further convictions or arrests since then and the testimony at the hearing was that there is no concern he will engage in similar conduct again. He has been rehabilitated and should be permitted to sit for the bar as requested or at least reapply to take the bar again in the future.

CONCLUSION

To adopt the Board’s Findings of Fact and Recommendation and disallow Tynes from taking the Bar and from reapplying to take the Bar would go against the weight of this Court’s previous decisions related to similar misconduct. Tynes cooperated completely with the application process and testified with candor and remorse about the circumstances that led to his criminal convictions. While public perception is a factor to be considered when deciding whether an applicant should be allowed to apply for the Ohio Bar, it is not the only factor, nor is it exclusively a negative factor. As a former prisoner who wishes to help current prisoners, the public with whom the Applicant would be interacting in his future legal career may see his former circumstances and current rehabilitated state as an asset, and not a detriment - *“If he can get his life together, so can I.”*

For these reasons, applicant John David Tynes asks this Court to reject the Findings of Fact and Recommendation of the Board of Commissioners on Character and Fitness of the Supreme Court of Ohio, and to allow him to apply for the Ohio Bar. In the alternative, Tynes respectfully requests this Court not permanently preclude him from reapplying in the future.

Respectfully submitted,

/s/ George D. Jonson

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by electronic mail and ordinary U.S. Mail, upon the following on this 29th day of May, 2015:

Paul W. McCartney
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/s/ George D. Jonson
George D. Jonson

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

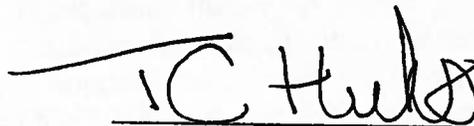
FINDINGS OF FACT AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON CHARACTER AND FITNESS OF THE SUPREME COURT OF OHIO

This matter is before the board pursuant to the appeal filed by the applicant in accordance with Gov. Bar R. I, Sec. 12(B).

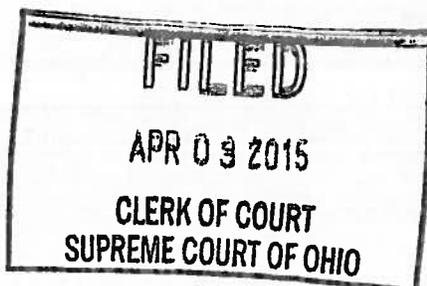
A duly appointed panel of three Commissioners on Character and Fitness was impaneled for the purpose of hearing testimony and receiving evidence in this matter. The panel filed its report with the board on February 3, 2015.

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.

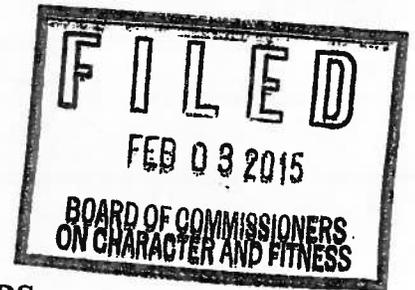
Therefore, the Board of Commissioners on Character and Fitness recommends that the applicant, John David Tynes, be disapproved, and that he not be permitted to reapply for admission to the practice of law in Ohio.



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



APPENDIX A



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

IN RE:

**APPLICATION OF
JOHN DAVID TYNES**

CASE NO. 576

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 psychologist, 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.

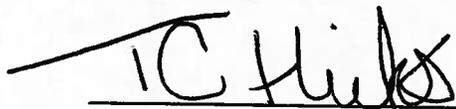
CONCLUSION AND RECOMMENDATION

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.

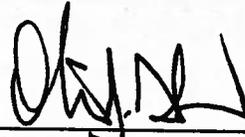
In the present case, the Applicant has failed to satisfy his burden. He engaged in conduct that demonstrates a disregard for the law and, more importantly, a complete and utter disregard for the health, safety and welfare of others – namely, vulnerable, female children.

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.