

**THE SUPREME COURT OF OHIO**

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

**RESPONSE OF CMBA TO AMICI CITIZENS' INSTITUTE**  
**AND CURE-OHIO'S MOTION TO STRIKE**

The motion by “Amici Curiae Citizens’ Institute for Law and Public Policy and CURE-OHIO” should be denied. The motion is without merit.

First, bar admissions applicants have a continuing duty to supplement. Gov. Bar R. 1, § 3(F) mandates: “The applicant is under a continuing duty to update the information contained in the examination application, including the supplemental character questionnaire, and to report promptly to the Office of Bar Admissions all changes or additions to information in the application that occur prior to the applicant’s admission to practice.”

Here, Libretti has repeatedly failed to supplement his application with respect to litigation he brought in the United States District Court for the District of Wyoming. To date, Libretti has not disclosed to this Court either the March 27, 2015 dismissal of his complaint, or the June 11, 2015 denial of his Rule 59e motions to reconsider. Nor has Libretti supplemented his Bar Application to advise this Court that, on June 15, 2015, he filed a notice of appeal to the United States Court of Appeals for the 10<sup>th</sup> Circuit. The notice is attached hereto.

Do Amici really contend that the Court is not entitled to consider that which Gov. Bar R. 1, § 3(F) mandates the Applicant himself to disclose?

Second, CMBA has filed only decisions from federal district and appellate courts, and no pleadings (other than Libretti's two 59e motions). Further, CMBA's filings contain no advocacy by CMBA.<sup>1</sup> Thus, despite Amici's contention, CMBA's Notices – being entirely devoid of argument – simply do not constitute supplemental briefs within the meaning of S.Ct.Prac.R. 17.09. *Hoyle v. DTJ Enterprises Inc.*, 2015-Ohio-843 provides Amici no support. There, this Court rejected the submission of a new affidavit by the vice-president of one of the parties.

Third, as reflected in the unanimous Report of the Panel of the Board of Commissioners on Character and Fitness (at p. 15), “The panel believes the Libretti may have crossed the line into litigiousness, especially since many of the claims were duplicative and were dismissed on *res judicata* or collateral estoppel grounds.” Libretti's litigiousness was also of concern to this Court, as evidenced by questioning during oral argument.

Here, Libretti lost a challenge to search warrant affidavits filed in the Northern District of Ohio. Libretti appealed, but sought to withdraw his appeal after oral argument, perhaps to avoid the perceived inevitability of an adverse outcome before the Sixth Circuit. The Sixth Circuit first denied Libretti's motion to withdraw his appeal, and then affirmed the district court. *Libretti v. Woodson*, 2013 WL 6634249 (N.D. Ohio Dec. 17, 2013), *aff'd*, No. 14-3266 (6<sup>th</sup> Cir. Jan. 15, 2015).

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<sup>1</sup>CMBA did not even submit the United States' responsive pleadings, even though they are, of course, publicly available over PACER.

Before this Court, Libretti attempted to create the impression that his motion to withdraw his appeal evidenced that he had learned the litigiousness lesson.<sup>2</sup> But neither at that time nor since has he advised this Court that he filed an essentially identical complaint in the District of Wyoming challenging the sufficiency of identical or virtually identical search warrant affidavits.<sup>3</sup>

On March 27, 2015, the Wyoming District Court cited with approval the Sixth Circuit's decision, and dismissed Libretti's complaint. *Libretti v. Courtney & Woodson*, No. 14-CV-107-SWS (D. WY Mar. 27, 2015). Libretti then filed Rule 59e motions to reconsider, which were denied on June 11, 2015. *Libretti v. Courtney & Woodson*, No. 14-CV-107-SWS (D. WY June 11, 2015). As noted above, yesterday Libretti filed a notice of appeal to the 10<sup>th</sup> Circuit.

Fourth and finally, Amici lack standing to raise this motion. Amici are allowed to participate as friends of the Court, have no personal interest in the outcome, and are not the "parties" Amici claim to be (Amici's Motion at 2). Under Rule 3.11(D) of this Court's Rules of Practice, only a party may file a motion to strike. And, under that same Rule 3.11(D), neither Amici nor Libretti can claim that they were "adversely affected" by CMBA's disclosure to this Court of that which Gov. Bar R. 1, § 3(F) mandates Libretti himself to disclose.

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<sup>2</sup>See Motion of Libretti, *et al.* to file Answer Brief, and attached Exhibit A to Libretti's Proposed Answer Brief (filed Dec. 9, 2014); and Exhibit A to Libretti's Answer Brief (filed Jan. 27, 2015).

<sup>3</sup>The original District of Wyoming complaint even bore a Northern District of Ohio caption.

In conclusion, neither the Applicant nor his Amici is entitled to conceal Libretti's ongoing litigation, to chastise CMBA for bringing such to the Court's attention without advocacy, or to insist that this Court to disregard it.<sup>4</sup>

Respectfully Submitted,

/s/ Paul G. Crist  
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*Attorney for* Cleveland Metropolitan Bar  
Association.

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<sup>4</sup>Separately, Amici contend that CMBA failed to serve Amici's counsel with the April 27, 2015 and June 11, 2015 Notices of Supplemental Authority. If so, the undersigned counsel for CMBA apologizes. Such was not intentional. Indeed, predecessor counsel for both Amici was served. Hopefully, counsel for Amici received copies at or about the time of filing through another party, amici, and/or the Court's website.

**CERTIFICATE OF FILING AND SERVICE**

The undersigned certifies that the foregoing RESPONSE OF CMBA TO AMICI CITIZENS' INSTITUTE and CURE-OHI's MOTION TO STRIKE was e-filed this 16<sup>th</sup> day of June, 2015 with:

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

And a copy was emailed and/or mailed this 16<sup>th</sup> day of June, 2015 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  
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Counsel for the Applicant,  
and Counsel *Amici Curiae Citizens' Institute  
for Law and Public Policy and CURE-Ohio*

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

And a copy was emailed and/or mailed this 16<sup>th</sup> day of June, 2015 to each of the following amici or counsel for amici:

Rob Wall, Esq. (0082356) Ohio Justice and Policy Center 215 East Ninth Street, Suite 601 Cincinnati, Ohio 45202 <i>Counsel for Amicus Curiae Ohio Justice and Policy Center</i>	Avery Friedman, Esq. (#0006103) The City Club Building 850 Euclid Avenue Cleveland, OH 44114-3358 (216) 621-9282
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<p>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  <a href="mailto:ecunliffe@cuyahogacounty.us">ecunliffe@cuyahogacounty.us</a>  Amici</p>	<p>Pamela Daiker-Middaugh, Esq.  (#0041716)  Cleveland-Marshall College of Law  1801 Euclid Avenue  Cleveland, OH 44115-2223  (216) 687-6878</p>
<p>James F. Lentz, Esq.  Law Offices of James F. Lentz  P.O. Box 884  North Olmstead, Ohio 44070-0884  (216)-410-6345 (o)  (216)-803-1862 (f)  <a href="mailto:jfl@case.edu">jfl@case.edu</a>  Counsel for Amici Curiae Citizens'  Institute  For Law and Public Policy and CURE-  OHIO</p>	<p>C. Timothy Murphy, Esq. (#0091128)  5247 Wilson Mills Road # 211  1801 Euclid Avenue  Cleveland, OH 44143  (440) 941-3846</p>
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<p>Doron Kalir, Esq. (#0088894)  Cleveland-Marshall College of Law  Cleveland State University  2121 Euclid Ave. LB 138  Cleveland, OH 44115-2214  (216) 687-3948</p>	<p>Kenneth Kowalski, Esq. (#0024878)  Cleveland-Marshall College of Law  Cleveland State University  2121 Euclid Ave. LB 138  Cleveland, OH 44115  (216) 687- 3947</p>
<p>Stephen Lazarus, Esq. (#0014693)  Cleveland-Marshall College of Law  Cleveland State University  1801 Euclid Avenue  Cleveland, OH 44115-2223  (216) 687-2347</p>	<p>Kevin O'Neill, Esq. (#0010481)  Cleveland-Marshall College of Law  Cleveland State University  1801 Euclid Avenue  Cleveland, OH 44115-2223  (216) 687-5282</p>

<p>John Plecnik, Esq. (New York #4465746)  Cleveland-Marshall College of Law  Cleveland State University  2121 Euclid Ave. LB 222  Cleveland, OH 44115  (216) 687- 2346</p>	<p>Peter Sayegh, Esq. (#0091547)  1175 Irene Road  Lyndhurst, OH 44124  (440) 821-5548</p>
<p>Daniel Dropko, Esq. (0075817)  (Retired) Manager, Academic Excellence Program  Cleveland-Marshall College of Law  2121 Euclid Ave. LB 138  Cleveland, OH 44115</p>	<p>Joseph Buckley, Esq. (#0041290)  Assistant Cuyahoga County Public Defender  310 W. Lakeside Avenue, Suite 400  Cleveland, OH 44113  (216) 443-7223</p>
<p>Christopher Maher, Esq. (#0055318)  Assistant Cuyahoga County Public Defender  310 W. Lakeside Avenue, Suite 400  Cleveland, OH 44113  (216) 443-3664</p>	<p>Dennis Terez, Esq. (#0024878)  Northern District of Ohio Federal Public Defender  Skylight Office Tower, Suite 750  1660 West Second Street  Cleveland, OH 44113  (216) 522-4856</p>

*/s/ Paul G. Crist*

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Paul G. Crist

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF WYOMING

FILED  
U.S. DISTRICT COURT  
DISTRICT OF WYOMING

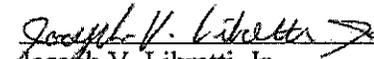
JOSEPH V. LIBRETTI, JR., )  
)  
Plaintiff, *pro se*, )  
)  
v. )  
)  
TAYLOR COURTNEY, et al., )  
)  
DEFENDANTS )

2015 JUN 15 10:07:53  
Civil Case No. 14-CV-107-34  
STEPHAN HARRIS, CLERK  
CHEYENNE

PLAINTIFF'S NOTICE OF APPEAL

Plaintiff Joseph V. Libretti, Jr., proceeding *pro se*, hereby files his notice of his intent to appeal, to the United States Court of Appeals for the Tenth Circuit, the final judgment entered in this case on April 17, 2015, the March 27, 2015 Order granting Defendant Courtney's motion for summary judgment, and the March 27, 2015 Order granting Defendant Woodson's motion to dismiss.

Respectfully submitted,

  
\_\_\_\_\_  
Joseph V. Libretti, Jr.  
Plaintiff, *pro se*  
1900 E. 30<sup>th</sup> St. Apt. 305  
Cleveland, OH 44114  
(224)355-6358

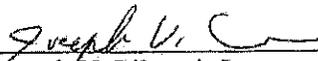
**CERTIFICATE OF SERVICE**

I certify that on June 9, 2015, I mailed a copy of the foregoing

**PLAINTIFF'S NOTICE OF APPEAL**

to the following parties, by depositing same, postage paid, in the U.S. Mails.

U.S. ATTORNEY  
PO Box 668  
Cheyenne, WY 82003-0668

  
\_\_\_\_\_  
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