

IN THE SUPREME COURT OF OHIO

In re: Application of John David Tynes

Case No. 2015-0543

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RELATOR'S ANSWER BRIEF TO APPLICANT'S OBJECTIONS TO THE FINDINGS OF  
FACT AND RECOMMENDATIONS OF THE BOARD OF COMMISSIONERS ON  
CHARACTER AND FITNESS OF THE SUPREME COURT OF OHIO

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PAUL W. McCARTNEY (0040207)  
Cincinnati Bar Association  
*Counsel for Relator*  
225 East Sixth Street  
Cincinnati, Ohio 45202  
Phone (513) 381-9234  
Email [pmccartney@bsphlaw.com](mailto:pmccartney@bsphlaw.com)

GEORGE D. JONSON (0027124)  
Montgomery Rennie & Jonson  
*Counsel for Respondent*  
36 East Seventh Street, Suite 2100  
Cincinnati, Ohio 45202  
Phone (513) 241-4722  
Email [gjonson@mrjlaw.com](mailto:gjonson@mrjlaw.com)

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**I. INTRODUCTION**

In his Objections to the Findings of Fact and Recommendations of the Board of Commissioners on Character and Fitness of the Supreme Court of Ohio, Applicant, John David Tynes (“Applicant”), does not dispute the findings of fact of the hearing panel and adopted by the Board of Commissioners on Character and Fitness of the Supreme Court of Ohio (“Board of Commissioners”). Rather, Applicant’s sole objection is on the recommendation that he not be allowed to sit for the bar at this time and not be permitted to apply for the bar in the future also. The essence of Applicant’s objection is that the hearing panel and hence the Board of Commissioners “relied too heavily” on subsection D(5)(a)(iv) of Gov. Bar R. I, §11. This subsection mandates that the Board of Commissioners consider, when an applicant has been convicted of a felony as here, “How an approval of the applicant would impact the public’s perception of, or confidence in, the legal profession.” Applicant seeks to have this Court ignore, or at least marginalize, this extremely important consideration. Instead, Applicant attempts to shift the focus to the length of time since his felony convictions and other matters

personal to the applicant. However, in doing so, Applicant has failed in his burden to establish by clear and convincing evidence that he “possess the requisite character, fitness, and moral qualifications for admission to the practice of law.” Gov. Bar R. I, §11(D)(1). For these reasons, Relator, Cincinnati Bar Association, urges this Court to overrule Applicant’s objections and adopt in their entirety the Findings of Fact and Recommendations of the Board of Commissioners of the Supreme Court of Ohio.

## **II. STATEMENT OF FACTS**

As noted above, the pertinent facts in this matter are not in dispute and Relator adopts by incorporation by reference the facts of the hearing panel as outlined in pages 3-5 of Findings of Fact and Recommendations of the Board of Commissioners of the Supreme Court of Ohio (“Board Findings and Recommendations”). Specifically, Applicant was arrested in a sting operation in Chicago in 1998 when he attempted to meet with whom he believed to be a minor under the age of 15 for the purpose of engaging in sex. For several months prior, Applicant frequented “chat rooms” where he communicated with multiple individuals who he believed to be females under the age of 15. He sent pictures to several of these contacts of himself in uniform, of him nude or with his penis exposed and of him masturbating. Before his Chicago arrest, he had attempted to induce a 13 year old female in Louisville, Kentucky (Applicant lived in Virginia 20 miles south of Washington, D.C.) to meet him. This meeting failed because the female refused to meet him. He then traveled 300 miles out of his way to attempt to meet another underage female in Birmingham, Alabama. That female declined to meet him. Board Findings and Recommendation, pages 3-4.

Applicant was prosecuted through the Uniform Code of Military Justice. He was convicted of conduct unbecoming an officer; four counts of attempting to persuade a

minor to engage in sex; two counts of travelling interstate to have sex with a minor; one count of knowingly possessing child pornography; and one count of knowingly receiving child pornography. He served 19 months of a 30 month sentence. Board Findings and Recommendation, page 3.

Subsequently, Applicant decided to attend law school. He applied to over 20 law schools but was only accepted at Salmon P. Chase Law School at Northern Kentucky University (after initially being rejected). Board Findings and Recommendation, pages 3-4. While Applicant was required to register as a sex offender in the past in states he lived, he is no longer required to do so in Ohio. Board Findings and Recommendation, page 4.

From his release from prison until November 2013, Applicant neither received nor sought out any professional counseling. Board Findings and Recommendation, page 4; January 27, 2015 hearing transcript, page 42. He only sought counseling after his initial hearing with the Admissions Committee of Relator and only because of reservations expressed by that hearing panel about his application. January 27, 2015 hearing transcript, page 28. While Applicant expresses contrition and states he accepts full responsibility for his actions, he still attempts to minimize his actions. For instance, Applicant acknowledges he attempted to persuade the 13-year-old female in Louisville, Kentucky to meet him for the purpose of engaging in sex. However, at the January 27, 2015 hearing Applicant testified as follows:

- Q. Okay. You were very unlikely to travel to Louisville, Kentucky?
- A. That was - -yeah. That was never going to happen.
- Q. Why?
- A. That was just - -just - - well, I - -the whole thing was rather strange. She was a rather strange person to start with. And just stuff - - I said stuff, but I never really had any intention

of following through. And I'm saying that now and, you know, you can believe me or not, but I would never have followed through on that.

January 27, 2015 hearing, page 50, lines 8-19. He gave this testimony even though he traveled to both Birmingham, Alabama and Chicago, Illinois to meet with whom he believed to be females under the age of 15. Further, he testified, without any corroborating proof, that the Birmingham, Alabama meeting was part of a sting operation, as if that somehow alleviated his responsibility. January 27, 2015 hearing transcript, page 51, lines 13-22.

### **III. ARGUMENT**

#### **1. Applicant's Felony Convictions Warrant Denial of Applicant from the Practice of Law in Ohio.**

The burden is on Applicant to prove by *clear and convincing evidence* that he “possess the requisite character, fitness, and moral qualifications for admission to the practice of law.” Gov. Bar R. I, §11(D)(1). Pursuant to Gov. Bar R. I, §11(D)(3)(a), one of the factors to consider in determining in applicant's character, fitness and moral qualifications is whether an applicant has been convicted of a crime. In assigning weight and significance to prior conduct, some of the factors to consider are the age of the applicant at the time of the conduct; how recent was the conduct; the seriousness of the conduct; factors underlying the conduct; evidence of rehabilitation; and the candor of the applicant in the admission process. Gov. Bar R. I, §11(D)(4). If an applicant had been convicted of a felony, Gov. Bar R. I, §11(D)(5) sets forth additional criteria to consider:

- The amount of time since the conviction.
- Whether the applicant has had his rights and privileges reinstated in Ohio or would be eligible to do so in Ohio

- Whether the applicant is disqualified from holding office of public trust.
- How the approval of the applicant would impact the public's perception of, or confidence in, the legal profession.

In this matter, the two of these factors at issue are the length of time since Applicant's conviction and how approving the Applicant would impact public perception and confidence in the legal profession.

Not surprisingly, Applicant emphasizes the time lapse of now 17 years since his convictions and the evidence of his rehabilitation. While both of these mitigate towards allowing Applicant to sit for the bar, other factors overwhelmingly support the Board of Commissioner's recommendation to preclude Applicant from sitting for the bar both now and in the future. At the time of his actions and convictions, Applicant was 50 years old; his actions cannot be attributed to indiscretions of youth. Further, his conduct was of the utmost seriousness. As the Board of Commissioners hearing panel eloquently stated, "[Applicant] engaged in conduct that demonstrates a disregard for the law, more importantly, a complete and utter disregard for the health and safety and welfare of others-namely, vulnerable, female children." Board Findings and Recommendations, page 6. Applicant's own testimony reveals his convictions arose not from an isolated incident but a pattern of misconduct over several months. But for his arrest, it is likely that Applicant would have taken his conduct further from the mere soliciting of sex from minors to the actual act.

Moreover, while Applicant has expressed contrition and acceptance of responsibility of his actions, his testimony reveals an ongoing attempt to minimize his actions. This is evidenced by two aspects of his testimony: his claim he never would have traveled to Louisville, Kentucky to meet an underage female even if she had not

refused his entreaties; and that the Birmingham, Alabama situation was a sting and somehow minimizes its significance.

In addition, allowing Applicant to become a lawyer undoubtedly would have a deleterious impact on the public's perception and confidence in the legal profession. Assuming *arguendo* Applicant has been rehabilitated with no risk of recidivism does not remove the overwhelming likelihood of a negative public reaction of allowing a convicted sex offender to hold the position of trust as a lawyer. There are simply some actions that should preclude an individual from ever practicing law in the State of Ohio. Applicant's case is the poster child for such a situation.

Applicant seeks to overcome the extremely likely negative public perception by arguing allowing Applicant to sit for the bar to become a lawyer will enhance the public perception of the legal profession by setting forth an example of rehabilitation. This Pollyanna argument defies common sense of how the public will perceive Applicant being allowed to practice law. Applicant is not precluded from proceeding in learning from his mistakes to help others, but he should find some outlet other than the practice of law.

Applicant cites to two cases involving applicants with convictions being potentially allowed to sit for the bar in the future. These cases, though, are distinguishable as neither involved a felony conviction for a sex offense. The holdings in those cases also do not overcome the facts in this specific case and the clear justification in denying the applicant from ever becoming a lawyer in Ohio. More importantly, in each case this Court upheld that the applicant failed to sustain their burden at the time of the decision they had the requisite character, fitness and moral qualifications to become a lawyer.

For instance, *In re Application of Bagne*, 102 Ohio St.3d 182, 808 N.E.2d 372, 2004-Ohio-2070 (2004), the applicant was convicted of aggravated assault, a misdemeanor and not a felony, for shooting a jogger with a BB gun. In addition, the incident had occurred 13 years before when the applicant was only 19, not 50 as in this matter. This Court determined that the applicant had failed to sustain the burden by clear and convincing evidence that he possessed the requisite, fitness and moral qualifications to become a lawyer. While this Court allowed the applicant to reapply for the bar the next year, the case did not involve a crime of moral turpitude as here and preying on vulnerable, teenage females.

Likewise, *In re Application of Davis*, 61 Ohio St.2d 371, 403 N.E.2d 189 (1980) lends Applicant no support. This case arose out of a prior Supreme Court review of this applicant in *Application of Davis*, 38 Ohio St.2d 273, 313 N.E.2d 363 (1974). The primary issue in the decision was whether any felony conviction barred an individual from the practice of law. This Court found a felony conviction was not an absolute bar. This Court remanded to the Board of Commissioners for further findings of whether applicant possessed the appropriate moral character to sit for the bar. Following such a hearing in 1979, the Board of Commissioners again recommended against allowing applicant to sit for the Bar. This Court disagreed and allowed the applicant to sit for the bar. However, the facts in that case are inapposite to this matter. The underlying crime was breaking and entering, not a sex crime. That case also was before the adoption of the "felony rule" outlined in Gov. Bar R. I, §11(D)(5). Further, the applicant's felony conviction had been expunged.

Thus, not only has Applicant failed in proving by clear and convincing evidence he possesses the requisite character, fitness and moral qualifications to practice law in

Ohio, the clear and convincing evidence is he does not. This Court should overrule Applicant's objections to the Board of Commissioner's Findings of Fact and Recommendations.

**2. Applicant's Reliance on Cases Involving Attorney Discipline do not Support Allowing Applicant in the Future to Apply for the Bar.**

The final arrow in Applicant's quiver relies on four cases involving practicing attorneys and their discipline for conviction of felonies including three involving sex crimes: *Disciplinary Counsel v. Goldblatt*, 118 Ohio St.3d 310, 888 N.E.2d 1091, 2008-Ohio-2458 (2008); *Disciplinary Counsel v. Pansiera*, 77 Ohio St.3d 346, 674 N.E.2d 1373, 1997-Ohio-93 (1997); *Disciplinary Counsel v. Andrews*, 124 Ohio St.3d 523, 924 N.E.2d 829, 2010-Ohio-931 (2010); and *Disciplinary Counsel v. Ridenbaugh*, 122 Ohio St.3d 583, 913 N.E.2d 443, 2009-Ohio-4091 (2009). Applicant is correct that in each case the attorney was given an indefinite suspension and not a permanent disbarment. However, those cases involved practicing attorneys and not applicants to the bar. The rules for handling those situations are different.

Furthermore, in each of those cases the attorney was *indefinitely* suspended. While each can apply for reinstatement, such reinstatement is not automatic.

Finally, the only salve these cases provide Applicant is he should be allowed to apply to sit for the bar in the future and not permanently be excluded from doing so. This Court should still follow the recommendation of the Board of Commissioner to deny the Applicant presently from doing so. As noted previously, there is, despite his statements to the contrary, a certain level of denial of the serious nature of his misconduct and an attempt to minimize it. He also only recently entered counseling

related to the actions leading to his felony convictions. Additional time should pass before allowing Applicant to sit for the bar.

**IV. CONCLUSION**

For the reasons outlined above, Relator, Cincinnati Bar Association, requests this Court to adopt the Findings of Fact and Recommendations of the Board of Commissioners of the Supreme Court of Ohio filed on April 9, 2015.

Respectfully submitted,



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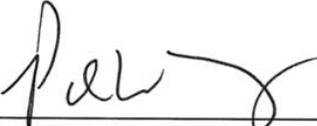
PAUL W. McCARTNEY (0040207)  
Cincinnati Bar Association  
*Counsel for Relator*  
225 East Sixth Street  
Cincinnati, Ohio 45202  
Phone (513) 381-9234  
Email [pmccartney@bspplaw.com](mailto:pmccartney@bspplaw.com)

**V. CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served by electronic and ordinary U.S.

Mail, this 2<sup>nd</sup> day of July 2015 upon:

George D. Jonson, Esq.  
Montgomery Rennie & Jonson  
36 East Seventh Street, Suite 2100  
Cincinnati, Ohio 45202  
Via [gjonson@mrjlaw.com](mailto:gjonson@mrjlaw.com)

  
\_\_\_\_\_  
Paul W. McCartney  
*Counsel for Relator*