

ORIGINAL

The Supreme Court of Ohio

BEFORE THE BOARD OF COMMISSIONERS

ON CHARACTER AND FITNESS OF

15-1362

THE SUPREME COURT OF OHIO

In re: Application of
Matthew Paul Mikulin

Case No. 614

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 its *sua sponte* investigatory authority. Gov. Bar R. I, Sec. 10(B)(2)(e).

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 July 9, 2015.

Pursuant to Gov. Bar R. I, Sec. 12(D), the board considered this matter on July 10, 2015. The board adopts the panel report as attached, including its findings of fact and recommendation of disapproval, with the amended recommendation that the applicant be permitted to apply for the July 2016 bar examination.

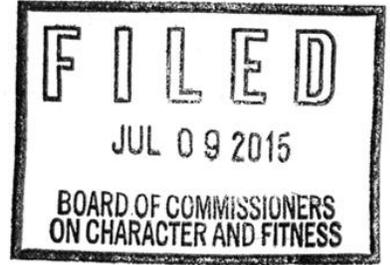
Therefore, the Board of Commissioners on Character and Fitness recommends that the applicant be disapproved; that he be permitted to apply for the July 2016 bar examination by filing an Application to Take the Bar Examination.



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

FILED
AUG 17 2015
CLERK OF COURT
SUPREME COURT OF OHIO

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



IN RE: APPLICATION OF)
MATTHEW PAUL MIKULIN)
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CASE NO. 614

REPORT AND RECOMMENDATION
OF PANEL

The Applicant, Matthew Mikulin, is a thirty-one year old 2015 graduate of Case Western Reserve University School of Law. The Board decided to review his application *sua sponte* for three reasons: (a) concern regarding his addiction for a number of years to oxycontin and heroin and the criminal charges that arose from such conduct; (b) concern regarding his financial responsibility; and (c) concern regarding multiple traffic violations over a ten-year period.

I. Drug Addiction Issues

Mr. Mikulin grew up in a comfortable, middle class environment in Geneva, Ohio. According to the accounts of both his father and Mr. Mikulin, he was a good student who liked school and who also enjoyed and excelled at sports. This was the situation until about his

junior year in high school when, for reasons that are not entirely clear, he began to change. He attributes this in part to the "crowd" with whom he began to associate. Regardless of the reason, at this time Mr. Mikulin began to drink alcohol and smoke marijuana on a regular basis; he lost interest in school; and his grades fell. He went from being the MVP on the school's junior varsity basketball team and starting during his junior year to being dropped from the team his senior year. While the school told him it was because he received a grade of C+ and thus was ineligible to play, he said he always believed it was because of the basketball coach's reluctance to have as part of the team a player the coach believed was drinking and using marijuana. Mr. Mikulin described this as his losing the last best thing about high school; nonetheless, he did not stop his daily alcohol and marijuana use or otherwise change his conduct.

After graduating from high school in 2002, Mr. Mikulin described his options for colleges as limited because of his poor grade average. He and his family had spent time in Florida while he was growing up so he decided to attend Florida Atlantic University in Boca Raton, Florida. By his own admission, he was at college to party and his developing substance abuse "took off" once he arrived at Florida Atlantic. He continued to drink and smoke marijuana and then "progressed" from marijuana to Percocet and Vicodin and then to Oxycontin. Pills, especially Oxycontin, were expensive and eventually he began to buy and use a cheaper drug, heroin. In the beginning he snorted it, but eventually he would move to shooting heroin. As one would expect in these circumstances, school was an incidental part of his being at Florida Atlantic; using alcohol and drugs was his self-described real interest. This resulted in his receiving an academic warning in 2002, academic probation in 2003 and ultimately academic dismissal in 2005. During his time at school and after his dismissal, he continued on a daily basis to use various substances until May 2006 when he hit bottom — at least for the first time.

After his dismissal from school he worked, primarily using his earnings to fund his drug use. But he was terminated from his job in late 2005 for walking off his shift. This triggered a downward spiral. He was broke; he was sick; he was an addict in need of help. He said he called his father who immediately came to get him. This was the occasion of his first treatment at Glenbeigh Hospital. Mr. Mulkin was enrolled in an outpatient program that required his attendance every week day for about a month followed by attendance on a gradually reduced number of days each week. During this time he also began to attend Narcotics Anonymous meetings. However, while apparently not using drugs, Mr. Mikulin admitted that he continued to drink and, as he expressed it, "I don't think that I had stayed a hundred per cent sober." [Transcript, p. 130]. Nonetheless, he felt he was doing better. Apparently, because he felt this way, he stopped going to Narcotics Anonymous and began to live as if he did not have an addiction problem.

While his lapsing back to drug use was perhaps not totally precipitated by the tragic death of his younger brother, this sad incident for the family had its effect. The family was on its way to a relative's for Thanksgiving dinner. Mr. Mikulin and his younger brother, Michael, were in one car followed by his parents and grandmother in another. The car that Michael was driving was hit by a car that ran a stop sign and he was killed. Michael was attending Berry College on a soccer scholarship and his death and the circumstances in which it occurred devastated the family. Mr. Mikulin described himself as feeling guilty and resentful. Apparently feeling that it was unfair that Michael who was doing well should die while he continued to live, however, did not cause Mr. Mikulin to turn his life around; to the contrary, he began regularly to use Oxycontin and heroin again. He described a time when with a friend he began to shoot up heroin instead of snorting it. His depiction of the incident is revealing:

And I remember that — I don't remember a lot during this period but I remember that day. I remember that moment very clearly . . . I remember falling back on the bed and just, again, saying now this is what I want to do as much as I can, you know, from now on.

Transcript, p. 133. His testimony seemed to indicate that he made a conscious decision to continue to use heroin. And unfortunately he did in fact follow through with this pledge to use drugs. From this time in late 2006 until about 2012, Mr. Mikulin's life was a roller coaster of addictive drug use followed by periods in a treatment program. He would come out of such treatment programs, not use for perhaps several months and then begin to use again. As a result, he was admitted to treatment programs at Glenbeigh several times in 2007 and 2008. Eventually, in November 2008 he was arrested for possession of heroin in Willoughby; in November he was also arrested and charged with possession of heroin in Ashtabula. This latter charge resulted in his entering in January 2009 the Ashtabula County Drug Court program, a relatively new program of the Common Pleas Court of Ashtabula County. He was in a lock down program for approximately three months. Under the program he said that each time he began to use drugs again, he would be recommitted to jail for up to a week and then go into a treatment program. And he did lapse a number of times, certainly more than are indicated in his registration application. He used again in January 2009 shortly after completing his incarceration; lapsed again in the Spring of 2009; was in treatment for a while and then began using again in early 2010. Each time he entered treatment programs under the auspices of the Ashtabula Drug Court program. Finally, after the 2010 treatment program, an in-patient program at the Lake Area Recovery Center, Mr. Mikulin testified that things changed for him. He stated that he decided that he had to change and he "just set my mind on doing that at that point I think." [Transcript, p. 151]. He completed his undergraduate degree at Cleveland State University, graduated from the Drug Court program in June 2010, and stayed drug free for about

14 months. Then in March 2011 he began to use heroin again for several weeks. Realizing how bad it was becoming he sought the help of his mother who through a friend got him into a 5-day detox program. Since leaving that detox program in 2011 he testified that he has not used pills or heroin again. He explained that he is the type of person who once they decide to do something does it a hundred per cent and now he decided to commit himself to being drug free. While he has not used heroin since 2011, Mr. Mikulin continued to drink thereafter; because he stopped drinking August 22, 2012, he counts that as his sobriety date. Although he stated that he never abused alcohol, he came to believe that he should not use any drug, including alcohol.

During the time period from 2002, Mr. Mikulin had other problems and issues of concerns that may have been related to but not necessarily caused by his addiction. In addition to his job termination in 2005 in Florida mentioned above, he was terminated from Outback Steakhouse in 2008 for fighting at the restaurant with his girlfriend. He lost his job with Progressive Insurance in 2008 because of the need to enter a treatment program. In 2009, he was terminated from another restaurant for repeatedly calling off work. For purposes of our review of his character and fitness, the most problematic termination was from the Cheesecake Factory in 2009; he dishonestly altered a customer's credit card slip so as to increase his tip. He said he probably did it because he needed money. It appears that the money he earned during these years was primarily used to buy drugs. In fact, his need for money also caused him to steal from his parents.

Despite still having relapses, Mr. Mikulin as noted began to attend Cleveland State in August 2009, finishing his undergraduate degree in May 2012. He then entered Case Western Reserve University School of Law in August 2012. In October 2012, apparently at the

suggestion of a dean at Case Western, he entered into a three-year contract with OLAP (Ex. B) with which he has complied.

II. Financial Responsibility Issues

Since his return to Ohio Mr. Mikulin he has incurred various debts. In June 2012 a default judgment was entered against him for a car loan he obtained in 2008. No payment has been made on the judgment nor has any payment plan been established by Mr. Mikulin. In January 2013 another default judgment was entered against him for unpaid rent. Again no payments have been made on the judgment nor has he tried to set up any payment plan. Finally, it appears that he had another bank loan on which he defaulted; however, following the hearing he advised the panel that he had paid off this debt. While he also had unpaid bills for various medical services dating back to 2011 and for a gas bill he left unpaid when he moved out of his apartment several years ago, he has recently paid off these bills with money he borrowed from his father. See Exhibit C.¹ Mr. Mikulin initially testified that he was told he might not have to repay past due debts if the creditor did not make collection efforts on the debts for a certain period of time. He also justified his lack of attention to the debts by indicating that money was tight in light of the expenses of finishing his undergraduate degree and then attending law school. Interestingly, his failure to address his financial affairs occurred despite having discussions about his debts with his AA sponsor and a mentor, Mr. Carmen Naso, an Ohio lawyer and senior instructor of law at Case Western Reserve Law School. From his testimony, it is clear that Mr. Naso impressed upon Mr. Mikulin the importance of paying debts:

¹ Following the hearing Mr. Mikulin provided the panel with a credit report that appears to show other "adverse" accounts placed in collection in the last couple of years.

Q. Have you had any occasion to discuss with Mr. Mikulin issues concerning his debts

A. . . . My opinion about debt is if you owe the debt you pay it. If it's \$5 a month and it takes you the rest of your life, then that's the amends you have to make. And so the discussion we've had about debt is a part of this, obviously, I read the letter, and that's how I feel about it.

Transcript, p. 30. The letter to which Mr. Naso refers appears to be the correspondence sent to Mr. Mikulin by the Admissions Office identifying the issues to be explored in this hearing. Even during the time since he discontinued his drug use, Mr. Mikulin has not addressed his obligations.

III. Multiple traffic violations

The third area of concern arose because of Mr. Mikulin's various traffic violations. While not serious on an individual basis, multiple and repeated violations become a concern because they appear to evidence a disregard for the law, especially when other behavior such as the illegal use of pills and heroin also reflect a disdain for the law. Mr. Mikulin's violations include:

01/2004	speeding
09/2005	improper turn
02/2006	speeding
03/2006	driving while license suspended/revoked/cancelled
05/2007	speeding
06/2007	speeding
07/2007	speeding
10/2008	speeding (reckless operation and stop sign violation dismissed)

10/2008	speeding
01/2009	reckless operation (driving with suspended license dismissed)
01/2009	failure to stop at red light
04/2010	driving without valid license
08/2013	speeding
11/2013	speeding
03/2015	fourth degree misdemeanor charge for speeding

With regard to this final entry, Mr. Mikulin indicated that he was planning on contesting this ticket at a trial set for June 18. If convicted it would be a misdemeanor because, we were told, he was going fast enough that it was apparently not considered a traffic offense. In short, for the period 2004 to March 2015, Mr. Mikulin has reported 15 violations for which he was convicted (there were several others that he got dismissed).

CONCLUSION

As Rule I makes clear, the character and fitness review is to determine whether an applicant for admission to the bar has a “record of conduct [that] justifies the trust of clients, adversaries, courts, and others” Factored into such a determination under the Rule are whether the applicant has committed any crimes, has had a chemical dependency, evidenced a disregard for the law, or neglected his or her financial responsibility. All of these are or have been issues for Mr. Mikulin. The Rule also specifies provides that in adjudging the “weight and significance” of the conduct consideration should be given to such matters as the age of the applicant, the recency of the conduct, the seriousness of the conduct and evidence of rehabilitation.

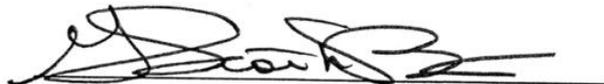
Using these factors and consideration to assess Mr. Mikulin's overall record in the past 10 years or so leads the panel to conclude that he should not be approved for admission at this time. From the time he was 18 until he was about 28 — 2002 until at least 2011 — Mr. Mikulin engaged in the illegal use of opiates and heroin. Aside from the addiction issues, this involved him in illegal activity of buying and using illegal drugs as well as involving him in other dishonest conduct such as fraudulently altering a credit card slip and stealing from his parents. The panel recognizes that Mr. Mikulin has stopped his use of heroin and opiates. And indeed, we recognize the very difficult process he must have endured to end his addiction. That is certainly to his credit. But the hard question must be asked: does the fact that a candidate has stopped being addicted to illegal drugs in itself evidence rehabilitation. To be fair, however, were this his only issue, the panel might be inclined to recommend approval because he has been, as he would express it, sober for some three and one-half years.

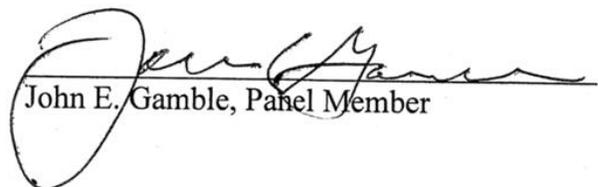
But this is not his only issue. Most concerning is the attitude he displayed towards his debts, an attitude that reflected financial irresponsibility towards those obligations. It is clear from his testimony and from his conduct up until right before and after this hearing that he had decided to pay no attention to what he owed. It is not simply that he did not pay off the debts; that is not what is necessarily expected. But Mr. Mikulin made no effort since incurring those obligations to address them in any fashion, even during periods when he was working. He allowed two default judgments to be entered against him, one in 2012 just before entering law school and one in 2013 after he was in law school. Throughout the period when he ignored these debts he did have various jobs as reported in his application. Perhaps most significantly, he has worked the past two summers while in law school at Nationwide Insurance as a law clerk. While we admittedly have no specific information regarding his compensation, the panel has to believe

that he was at least in a position to contact creditors and discuss payment plans. But until this hearing was upon him, Mr. Mikulin undertook no such efforts. He has recently addressed some of his obligations seemingly only because essentially forced to do so by this process. Again, the panel wants to stress that the issue is not whether a candidate has paid off past due obligations; the financial situation and circumstances of candidates are different and accordingly their financial responsibility needs to be assessed in light of a candidate's particular situation. But to simply ignore obligations over a period of years does not evidence financial responsibility.

As noted above, Mr. Mikulin's traffic violations are individually perhaps not terribly serious. For someone who is or should be attempting to demonstrate rehabilitation from a previous life of addiction and resulting criminal conduct, they are more bothersome. They seem to reflect a disregard for the law when Mr. Mikulin should be striving to be an exemplar of obedience to the law. Alone, they would not be preclusive, but in light of the other conduct, they also cannot be ignored completely.

For these reasons, the panel recommends that Mr. Mikulin be disapproved at this time but be permitted to apply for the February 2016 bar examination. In the interim, it is hoped that he will responsibly address his obligations, stop incurring traffic violations, and of course continue to be free from the use and abuse of illegal substances. That seems to the panel to be at least the minimum rehabilitative efforts required of him.


G. Scott McBride, Panel Member


John E. Gamble, Panel Member

Suzanne K. Richards

Suzanne K. Richards, Panel Chair