

LITIGATION UPDATE

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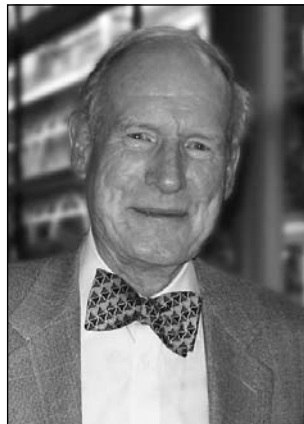
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CHARACTER AND FITNESS

Criminal charges and convictions; substance abuse

In re application of Corrigan, 2009 WL 2634579, 2009-Ohio-4183 (Oh. 2009)

John F. Corrigan applied to register as a candidate for admission to the Ohio Bar and to take the Ohio Bar Examination. The Board of Commissioners on Character and Fitness recommended that the Court not approve his character and fitness and moral qualifications because of his lack of maturity, his employment instability, his criminal history, and his lack of rehabilitation in regard to alcohol abuse.

Corrigan graduated from Cleveland-Marshall College of Law in May 2007 and applied to take the

February 2008 Ohio bar examination. The Joint Admissions Committee of the Cleveland and Cuyahoga County Bar Associations interviewed him but did not approve his character and fitness and moral qualifications. Subsequently, at Corrigan's request, the Cleveland Metropolitan Bar Association's Admissions Appeals Committee conducted a hearing on that disapproval but voted to deny his appeal. A three-member panel of the Board of Commissioners on Character and Fitness conducted a hearing in January 2009 and recommended that the board not approve Corrigan's application.

The board accepted the panel's recommendation and disapproved the application in February 2009.

There were three areas of major concern: Corrigan's employment instability, including his termination from the Medina County Public Defender's Office; his criminal history; and his ambivalence toward alcohol rehabilitation. Corrigan, who is now 32 years old, held more than 17 jobs between the ages of 20 and 30. Many were food-service positions and lasted only a few months. He stated that he left a number of his jobs because he did not like the work or because the jobs just did not work out. His longest employment was as a library assistant at a university library and as a law clerk in an Ohio law firm. The panel and the board felt that his employment history demonstrated a lack of maturity.

The panel and board were also concerned about Corrigan's "vague departure" from a job he held at the Medina County Public Defender's Office for a six-week period in 2005. It appeared that his termination arose out of allegations that he had falsified his time card. Corrigan claimed that he left the job because of a long commute and because he was getting ready to start school. A representative from the Public Defender's Office confirmed the termination and added that Corrigan would not be rehired.

Corrigan also had numerous arrests between 1996 and 2001 for minor incidents involving alcohol abuse and more serious incidents that occurred in 1996 and 1997. Some of these arrests involved disorderly conduct and physically and verbally abusing the arresting officers; DUI and fleeing from the scene of an accident; and assaulting two police officers. While Corrigan's bar application was pending, he met with an official at the Ohio Lawyers Assistance Program (OLAP) but decided that the program was not appropriate for him. Corrigan claimed to have

attended over 500 Alcoholics Anonymous meetings but admitted that he still drank "occasionally and moderately." He had attended three counseling sessions at Cleveland State but was terminated from the program after he missed a session and failed to respond to the counseling center's inquiry.

On review, the Ohio Supreme Court noted that Corrigan had given evasive answers to questions at his hearing, including questions regarding his termination from the Medina County Public Defender's Office. The Court said that his "pattern of disregard for the laws of this state and his dishonesty or deceit with respect to his termination from the Medina County Public Defender's Office call into question his claims that his record justifies the trust of clients, adversaries, courts and others." The Court added that Corrigan's behavior indicated a possible mental or psychological disorder which, if untreated, could affect his "ability to practice law in a competent and professional manner."

The Court adopted the board's findings as to Corrigan's character and fitness and its recommendation to disapprove his pending application. The Court said that Corrigan could reapply to take a future bar examination but must first submit to the board a psychiatric evaluation from a psychiatrist or psychologist approved by the board and licensed in Ohio as well as an assessment from an alcohol counselor certified in the state of Ohio.

Nondisclosure on bar application

In re Bilal, M.R. 22687, 05 CH87 (II. 2009)

Karris Bilal was licensed in 2000. It was determined that he had failed to disclose an arrest on his application for admission to the Illinois Bar. Bilal and a group of friends were arrested for attempting to solicit a sex act from an undercover Cook County Sheriff's Office officer who was working as a prostitute decoy. Bilal

and his friends were well dressed and were cruising in a white limousine in an unsavory neighborhood. The officer knew that in order to arrest the men she had to have a conversation with each one of them, and she talked with all of the men in the limousine about various sex acts and prices. They asked the officer if she could get several other girls to join in the transaction, and she called in two other undercover agents. The men agreed to pay \$300 for certain sex acts. After the agreement was reached, the officer gave a signal and the men were placed under arrest, taken to the police station, and processed. The matter was eventually dismissed, but because Bilal did not disclose this incident on his bar application he was suspended for a period of 18 months.

Substance abuse; financial irresponsibility

In re application of Grachanin, 122 Ohio St. 3d 537, 912 N.E.2d 1128, 2009-Ohio-3605 (Oh. 2009)

Stephen M. Grachanin applied to register as a candidate for admission to the Ohio Bar and to sit for the July 2008 Ohio bar examination. His application listed civil lawsuits, numerous past-due debts, and nine instances of criminal charges that included a disorderly conduct charge and a charge of operating a motor vehicle while intoxicated. Because he lacked final approval with respect to his character and fitness, Grachanin was not permitted to take the July 2008 bar examination.

In September 2008 an investigation was ordered by the Board of Commissioners on Character and Fitness, and a hearing was conducted by a panel in January 2009. The panel noted that Grachanin had successfully completed a two-year Ohio Lawyers Assistance Program (OLAP) contract but still expressed concerns and recommended that he not be allowed to take the February 2009 bar examination but that he be permitted to apply for the February

2011 examination. The board adopted the panel's findings but recommended allowing Grachanin to apply for the February 2010 exam. The matter was referred to the Ohio Supreme Court for review.

The Court stated that the incidents that called Grachanin's character and fitness into question, including his three suicide attempts in April and May 2006, appeared to relate to his substance abuse. His alcoholism had caused problems with employment and led to his being terminated from two different jobs. Grachanin also had a number of debts that he was unable to pay, including a \$12,000 credit-card debt on various cards and student loan debts in the amount of \$164,000. By the date of the hearing, Grachanin had filed for bankruptcy. In addition, he had failed to advise his university about the various criminal charges against him while in law school.

At the hearing, Grachanin expressed remorse in connection with his criminal violations and alcoholism, and he spoke of efforts to pay off his debts over time. Grachanin has one child by a former girlfriend, and he makes substantial child support payments each month. He is now married and at the time of the hearing he and his wife were expecting a child. As noted, Grachanin did enter into and complete a two-year OLAP contract requiring him to abstain from alcohol, contact his counselor regularly, submit to drug tests, and attend Alcoholics Anonymous meetings. Grachanin's Alcoholics Anonymous sponsor testified at the hearing that Grachanin had done "miraculously well" in his recovery efforts.

The Court disapproved Grachanin's present application, and agreed with the panel recommendation, rather than the more lenient recommendation of the board, that he should be permitted to apply for the February 2011 examination.

READMISSION

Florida Board of Bar Examiners re Webster, 3 So. 3rd 1058 (Fl. 2009)

David Webster was admitted to the Bar of Washington DC in 1968 and was later admitted to the Florida Bar. He was suspended from the Florida Bar in November 1988 for various trust account violations. This suspension was to be followed by two years of probation under certain terms and conditions. Since Webster did not inform the DC Bar of his disciplinary problems and suspension in Florida, he remained in good standing in DC. Then in 1990, without petitioning for reinstatement in Florida, he applied for admission to the Bar of the Federated States of Micronesia. In that application he stated untruthfully that he was not under any order of suspension or disbarment from any authority. Based on these misrepresentations, he was admitted to the Micronesia Bar and practiced as an assistant attorney general there.

In 1991 Webster filed an application for admission to the Palau Bar, stating that he was a member in good standing of the DC Bar but failing to reveal his prior membership in and suspension from the Florida Bar. In 1992 his petition for reinstatement in Florida was denied. Also in 1992 his employment in Palau was terminated. Later that same year the Supreme Court of Palau disbarred Webster for material omissions and misrepresentations in his bar application. Then in 1995 the DC District Court of Appeals disbarred him based upon his professional misconduct in Palau and his failure to notify the DC Bar of his suspension in Florida. Finally, in late 1995 the Florida Supreme Court disbarred Webster based on his professional misconduct in Micronesia, Palau, and the District of Columbia and on his intentional deception of those bars for his personal gain.

In December 2004 Webster filed an application for readmission to the Florida Bar and paid the application fee. The matter was referred to the Florida Board of Bar Examiners. Following a September 2006 investigatory hearing, the board filed specifications. Approximately four months prior to the date scheduled for a formal hearing, Webster was advised that the board had ceased processing his application on the grounds that he was and remained ineligible for readmission to the Florida Bar.

The matter was reviewed by the Florida Supreme Court under Florida's rule that a person who has been disbarred from the practice of law shall not be eligible to apply for a period of five years from the date of the order or such longer period as is set for readmission by the jurisdictional authority. The Court ruled that since Webster had not gained readmission in Palau, Micronesia, and the District of Columbia he was ineligible to apply for readmission in Florida. The Florida Court stated that Webster had committed several acts of professional misconduct in multiple jurisdictions, and his disbarments in these jurisdictions were based on instances of unethical conduct that were separate and distinct from the conduct for which he was originally suspended in Florida. If he had not lied to the foreign jurisdictions in regard to his member status in Florida, he would not have committed additional ethical violations in those jurisdictions.

Webster claimed that he should not be required to gain readmission in Palau because Florida is now his home state. The Court rejected his contention with regard to the meaning of "home state," explaining that for purposes of lawyer discipline the home state is the jurisdiction in which the misconduct occurred. Webster then claimed that the board should have known that he was ineligible to apply

for readmission and should not have accepted his application and filing fee. The Court stated that it could not fault the board's cautious approach to, and its interpretation of, the impact of earlier Florida decisions upon its duty to assess an applicant for readmission. The processing of an application or petition creates no right to readmission or reinstatement to the Florida Bar or even consideration of

such application if the applicant remains disbarred or suspended in the other jurisdictions. The Court concluded, "We should not allow the practice of law in Florida by one disbarred or suspended in a foreign state." The Florida Board of Bar Examiners' dismissal of Webster's readmission application was approved.

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National Council of Examiners for Engineering and Surveying v. Cameron-Ortiz, 626 F. Supp. 2d 262

The National Council of Examiners for Engineering and Surveying (NCEES) develops standardized examinations to help state boards determine the competency of individuals seeking to become licensed engineers and land surveyors. NCEES develops two examinations. The first is the Fundamentals of Engineering (FE) examination, which tests subjects that are taught in a typical accredited baccalaureate engineering curriculum. The second is the Principles and Practice of Engineering (PE) examination, which tests academic knowledge and knowledge gained in engineering practice and covers a wide range of engineering subjects. Both exams are required for a professional license in engineering.


The examination forms for the FE and PE are maintained in a secure manner because certain items from the examinations are reused on future exams for equating purposes. Both exams are registered for copyright protection pursuant to the Register of Copyrights' secure test procedures. Prior to taking the exams, all applicants are required to sign their names after language affirming that they will not copy or reveal any of the test materials.

On October 27, 2006, Bethzaida Cameron-Ortiz sat for the PE examination at the University of Puerto Rico in Mayaguez. During the afternoon session, a proctor observed Cameron-Ortiz engaging in unusual behavior. The proctor informed the Chief

Examiner, who also observed Cameron-Ortiz's behavior. The proctor and the Chief Examiner both suspected that Cameron-Ortiz was copying the contents of the exam. The Chief Examiner confronted Cameron-Ortiz, and while she was denying any wrongdoing, an electronic device was discovered in her jacket sleeve.

Cameron-Ortiz was escorted to a private room where her jacket and bag were searched. Numerous recording and transmission devices were found sewn into the pockets of her jacket and bag, including (1) a wireless audio/video transmitter module with a built-in microphone, (2) a mini video camera, (3) a receiver, (4) a pocket video recorder, (5) a cradle used to connect to a TV or computer with audio/video input, and (6) two battery packs which could be used to power the equipment.

Cameron-Ortiz used the equipment to videotape the PE examination. Further investigation revealed that she had also videotaped the contents of the FE exam when she took it at the same location a year earlier.

As a result of her conduct, Cameron-Ortiz was criminally charged and convicted of copyright infringement and breach of contract. She was ordered to pay damages in the amount of \$1,021,630.80 to NCEES, plus attorneys' fees. 

FRED P. PARKER III is the Executive Director of the Board of Law Examiners of the State of North Carolina.

JILL J. KAROFKY is the Director of Human Resources and Counsel for the National Conference of Bar Examiners.