

be reasonably accommodated in this regard must be made to offset the direct-threat claim by an employer. In *Jarvis*, the only arguments made that Mr. Jarvis could be reasonably accommodated were his own suggestions that his co-workers be warned, speak in a normal tone, and not approach him from behind. Perhaps a more effective accommodation could have been suggested that would have satisfied the court had Mr. Jarvis undergone a forensic evaluation, which may have resulted in recommendations that would have reduced the risk. Moreover, the only professional evidence presented about his being a direct threat was his treater's letter, with a result contrary to the likely intent. A forensic evaluation might have contributed additional critical evidence concerning the implications of his psychiatric disability and whether it could have been accommodated in the workplace.

Character and Fitness to Take the Bar Exam

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Bar Applicant Failed to Meet His Burden of Proving by Clear and Convincing Evidence His Character and Fitness for Bar Admission

In *In re Application of Blackwell*, 880 N.E.2d 886 (Ohio 2007), the Supreme Court of Ohio reviewed the recommendation of the Ohio Board of Commissioners on Character and Fitness to disapprove Rahnann Blackwell's pending application to take the Ohio bar examination, because he was psychologically unfit to enter the practice of law.

Facts of the Case

Mr. Blackwell graduated from law school in May 2000, and had since failed the Ohio bar examination five times. During his last two attempts, in July 2003 and July 2005, he was charged with violating test

protocol by continuing to write on portions of the examination after time was called. The current case is related to the July 2005 test protocol violation, but to understand the events leading to the current case, it is necessary to outline the prior related incidents.

In July 2003, Mr. Blackwell took the test but was subsequently charged with violating test protocol by continuing to write on portions of the examination after the allotted time had expired. That October, the Ohio Board of Bar Examiners disqualified five of his essay answers that were completed after time was called, leaving Mr. Blackwell unable to achieve a passing score. The matter was referred to the Ohio Character and Fitness Board, which appointed a panel to conduct a hearing to investigate further. At the hearing, Mr. Blackwell provided clear and convincing evidence as to his good character and fitness and assured the panel that he would not violate test protocol in future examinations. Thus, the panel recommended to the Ohio Character and Fitness Board the approval of Mr. Blackwell as having the character and fitness to apply to take the bar examination again. In November 2004, he applied to take the examination, but his application was rejected as incomplete by the Office of Bar Admissions.

By March 22, 2005, Mr. Blackwell had acquired four traffic violations, for which he was arrested, charged, and detained in jail. In addition, he was sued by the University of Denver for approximately \$6,200 in past-due tuition. While still detained in jail, Mr. Blackwell applied to take the July 2005 bar examination by updating the re-examination character portion of the rejected November 2004 application and asking his secretary to submit it with a now-invalid notarized signature page. Although the character portion of the re-examination questionnaire clearly requires applicants to disclose "any civil or administrative action or legal proceeding" and "any criminal or quasi-criminal action of legal proceeding" (*Blackwell*, p 534), Mr. Blackwell failed to disclose this information in the application. Eventually, he disclosed his legal proceedings to the Bar Admission Office after dismissal of all but one of the traffic violations.

In July 2005, he took the bar examination and was again charged with violating test protocol by continuing to write on portions of the examination after the expiration of the allotted time. The Board of Bar Examiners disqualified his entire bar examination after receiving four witness reports of the alleged test-

taking improprieties and because Mr. Blackwell had been penalized previously for the same infraction. The Board of Bar Examiners referred the matter to the Ohio Character and Fitness Board, which appointed a panel in September 2005 for further review. After the panel's appointment, Mr. Blackwell requested numerous continuances to obtain a promised psychological evaluation and to obtain legal counsel. Meanwhile, Mr. Blackwell applied to take the July 2006 bar examination; his application was approved by the Bar Admission Office pending approval of his character, fitness, and moral qualifications. Finally, in January 2007, a hearing was conducted regarding his 2005 disqualification, in which there were allegations that another applicant had reported Mr. Blackwell's test-taking improprieties in the morning session of the examination and that during the afternoon session, Mr. Blackwell had been observed by a proctor placing his pen down when time was called but picking it up again and continuing to write an essay for 4.45 seconds. In response, Mr. Blackwell testified that he had initially stopped writing when time was called, but then had decided to change an incorrectly written word.

However, in addition to the alleged violations of test protocol, several other concerns were discovered by the Character and Fitness Board, such as Mr. Blackwell's failure to disclose legal involvement in March 2005 and the lawsuit by the University of Denver for unpaid tuition. Also of concern were findings from Mr. Blackwell's psychological examination by Thomas L. Hustak, PhD, a clinical and forensic psychologist. Dr. Hustak testified that he had diagnosed Mr. Blackwell with depressive disorder not otherwise specified, and noted that he had compulsive, passive-aggressive, and schizoid personality traits. Dr. Hustak also believed that Mr. Blackwell had been experiencing these symptoms for some time and that such symptoms would interfere with his ability to function as a lawyer. In investigating an individual's character and fitness, the Ohio Character and Fitness Board lists 10 standards for admission to practice law in *The Essential Eligibility Requirements for the Practice of Law*. According to Dr. Hustak, Mr. Blackwell's ability to fulfill 6 of the 10 standards was impaired.

The panel recommended to the Ohio Character and Fitness Board that Mr. Blackwell's July 2006 bar examination be disapproved and that he be permitted to reapply to take the bar examination in Febru-

ary 2009 if he complies with a stipulation to undergo psychological treatment and re-evaluation by a psychologist.

Mr. Blackwell appealed to the Ohio Supreme Court, and a trial was held in August 2007. The Ohio Character and Fitness Board recommended that the Ohio Supreme Court disapprove Mr. Blackwell's character and fitness for the bar examination, because, aside from his inability to comply with test protocol, he was considered mentally unfit to enter the practice of law. Mr. Blackwell objected to the recommendation, arguing that his test-taking conduct should not have resulted in his disqualification for the July 2005 examination or an adverse assessment of his character and fitness.

Ruling and Reasoning

The Ohio Supreme Court affirmed the recommendation of the Character and Fitness Board and, citing the Rules for the Government of the Bar of Ohio, disapproved Mr. Blackwell's character and fitness for admission to the bar examination, ruling that Mr. Blackwell failed to sustain his burden "by clear and convincing evidence that [he] possesses the requisite character, fitness, and moral qualifications for admission to the practice of law" (Ohio Sup. Ct. R. Gov't Bar 1(11)(D)(1)). In addition, Mr. Blackwell's overall conduct coupled with the findings of Dr. Hustak's psychological evaluation indicated that Mr. Blackwell was unable to comply with time constraints and demonstrated eccentric and occasionally irrational thinking, which Dr. Hustak attributed to psychological symptoms that would interfere with his ability to practice law. Ohio Sup. Ct. R. Gov't Bar 1(11)(D)(3)(e) states that, "evidence of a mental or psychological disorder that in any way affects or, if untreated, could affect the applicant's ability to practice law in a competent and professional manner" is grounds for disapproval of an applicant's character and fitness for admission to the Ohio bar.

Discussion

The decision of the Ohio Supreme Court to uphold the recommendation of the Ohio Character and Fitness Board was in accordance with the standard used involving similar cases of examination violation, failure to disclose, and mental health inquiry within Ohio. Considering all of Mr. Blackwell's infractions, the Ohio Supreme Court emphasized his need for further psychiatric treatment, which suggests that the

court recognized that Mr. Blackwell's mental health needs may have influenced his conduct. Thus, the mental health aspects of this case highlight interesting barriers to mental health treatment for law students.

The March 2008 American Bar Association (ABA) mental health initiative indicated that lawyers are at higher risk for depression than the general population and that up to 40 percent of law students experience depression. Evidence of this is well established and supported by a landmark study in 1991 by John Hopkins University that ranked lawyers first in the rate of clinical depression among the 105 professions surveyed. Further complicating the matter is an individual's fear of seeking treatment due to stigmatization. Therefore, one could speculate that Mr. Blackwell declined to enter treatment for the same reason that many other law students avoid treatment—to prevent the need to disclose a psychiatric condition or treatment for admission to the bar examination. Although it does not diminish the importance of Mr. Blackwell's poor decision-making capacity and his test-taking improprieties, this case underscores the negative impact of mental health stigma and the importance of mental health education to combat the stigma.

Often, the impact of mental health stigma on daily functioning is grossly underestimated and the experience of stigma, whether actual or perceived, is associated with poorer quality of life, decreased psychological well-being, and decreased self-esteem. Thus, law students, or at least those in Ohio and other states with similar eligibility requirements, suffering from serious untreated psychiatric difficulties may ultimately have impaired abilities to fulfill the Essential Eligibility Requirements for the Practice of Law. But, because of the current standards of an invasive character and fitness review, students, many with treatable disorders, may be discouraged from seeking appropriate psychiatric services to lessen symptoms and improve functioning.

Character and fitness are considered among the most important components of the admission process, but they are a catch-22 for anyone with a prior or current history of mental health treatment. There is a need for all professions, including the legal profession, to continue to seek and utilize a fair system of balancing its gate-keeping function while maintaining the dignity of human experience.

Confidentiality of Commitment Records

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State and Federal Confidentiality Laws Do Not Prevent Disclosure of Some Commitment Records When Police Investigate False Information Provided on a Firearms Application.

In *U.S. v. Smith*, 511 F.3d 77 (1st Cir. 2007), the United States Court of Appeals for the First Circuit reviewed the decision of the U.S. District Court for the District of Maine to deny a motion to suppress police records and an emergency involuntary admission application. Law enforcement had obtained the records when investigating the information Christopher Smith had provided on a federal firearm purchase application. Mr. Smith had falsely reported that he had never been committed to a mental institution. He argued that the records should have been protected by state and federal confidentiality statutes.

Facts of the Case

On April 2, 2005, following a drug overdose and medical hospitalization, Mr. Smith was involuntarily admitted to a psychiatric hospital in Bangor, Maine, based on an Application for Emergency Involuntary Admission to a Mental Hospital, called a blue paper. This form had been initiated by Donna Huff, a nurse practitioner, certified by Dr. Victor Kelmenson, and endorsed by the Penobscot County probate judge.

On the form, Ms. Huff stated, "I believe Christopher Smith has a mental illness and due to mental illness, poses a likelihood of serious harm . . ." (*Smith*, p 79). Dr. Kelmenson reported that Mr. Smith "pose[d] a likelihood of serious harm due to a mental illness because [of] amphetamine overdosed psychosis, hx [history] of suicidal ideation and paranoia, [and] violent outbursts" (*Smith*, p 79). After the probate judge endorsed the application, Bangor police officers transported Mr. Smith to the psychi-