

ORIGINAL

THE SUPREME COURT OF OHIO

In re Application of:

Joseph V. Libretti , Jr.

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Case No. 2014-1555

**CMBA'S BRIEF IN RESPONSE TO APPLICANT'S OBJECTIONS AND BRIEF  
AND TO BRIEF OF AMICI CURIAE**

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## INTRODUCTION

On September 5, 2014, the Board of Commissioners on Character and Fitness (“Board”) adopted its Panel’s unanimous findings of fact and recommended that Libretti’s application to register as a candidate for admission to the practice of law “be disapproved, and that he not be permitted to reapply for admission to the practice of law in Ohio.”

The matter is now before this Court under Gov. Bar R. I, § 11 (D)(5)(b), because of Libretti’s 1992 Continuing Criminal Enterprise (“CCE”) (21 U.S.C. § 848) felony conviction resulting from his decade-long, “kingpin” involvement in the sale of cocaine and marijuana in Colorado and Wyoming. Where, as here, “an applicant’s background includes [a felony] conviction, the applicant bears the burden of proving that he or she is **morally fit** to practice law **and** that he or she is **fully and completely rehabilitated.**” *In re Application of Poignon*, 132 Ohio St.3d 395, 2012-Ohio-2915 (emphasis added; citation deleted).

The Report found that Libretti failed to demonstrate by clear and convincing evidence that he “possesses the requisite character, fitness, and moral qualifications” (Report at 5), and that “[h]is noted lack of candor leads the panel to doubt whether he is, or in the future will be, rehabilitated” (*id.* at 17). Libretti conceded both points in his February 3, 2014 Motion to Withdraw Application. He admitted (at 2), (1) that “he may not have carried his burden of proof at his hearing,” and (2) that his “post-conviction accomplishments alone do not adequately demonstrate full rehabilitation, acceptance of responsibility and candor.”

The Report, citing abundant evidence, found that Libretti was deceitful, amoral, and manifested disrespect for the law (including repeated violations of his 2008-2013 parole and his litigiousness). The Panel further found that this pattern continued to persist even after the hearing.

### STATEMENT OF FACTS

Throughout virtually his entire adult life, Libretti, who is 51 years old, has been involved either in the sale of controlled substances (or controlled substance analogs), or in prison. The following brief chronology is intended to assist the Court in understanding the complex and extensive case file.

<u>Date</u>	<u>Event</u>
c. 1982 – c. 1991	+Libretti trafficked in narcotics, including cocaine, marijuana, and other drugs in Colorado and Wyoming.
Oct. 1985	+Libretti was granted immunity to testify before a Colorado federal grand jury investigating the distribution of controlled substances. CMBA Ex. 37.
1991	+Libretti was convicted of misdemeanor assault on a police officer. CMBA Ex. 40.
1991	+Libretti was arrested and charged in Wyoming federal court with numerous counts of drug, firearms, and money laundering operations, including running a Continuing Criminal Enterprise. Report at 1.
Dec. 1992	+In Wyoming federal court, Libretti pled guilty and was convicted of kingpin involvement in a Continuing Criminal Enterprise, involving narcotics trafficking in Wyoming and Colorado. He was sentenced, <i>inter alia</i> , to the statutory minimum prison sentence of 20 years. Report at 2-3; CMBA Ex. 38.
Dec. 1992-May 2008	+Libretti was in prison. In late 2007, Libretti was released to a halfway house in Casper. Report at 3. +During his imprisonment, Libretti filed innumerable habeas petitions, civil actions, appeals, and petitions in forfeiture proceedings. See pp. 19-21 below.
May 2008-May 2013	+Libretti began five years of supervised release, first in Casper and then in August 2010 in Cleveland. Report at 1, 3. +Libretti repeatedly violated the court-ordered terms of his supervised release. See pp. 8-9 & 23-24 below.
June 2, 2010	+Libretti's residence in Casper was searched pursuant to D WY warrant. The search yielded actual marijuana, synthetic marijuana, and some \$7,200 found in a heating duct. CMBA Ex. 65 at 2-5 & #9-29. See Report at 3. +The Wyoming Supreme Court later concluded that "[T]he funds seized from Mr. Libretti and Mr. Hohlios were proceeds from violations of the Wyoming Controlled Substances Act." <i>In re: US Currency Totaling \$7,209.06</i> , No. S-11-0243, 2012 WY 75, 278 P.2d 234 (WY May 30, 2012) (CMBA Ex. 27, quoting CMBA Ex. 70)
Aug. 2010	+Libretti moved to Cleveland to begin law school. Report at 3.
c. Sep. 2010-Mar. 30, 2011	+Libretti began Spice operations in Cleveland while attending law school. +Libretti provided Spice-related materials to JPL Marketing, an Arizona entity, in exchange for a 42% interest in JPL's profits.

	+Libretti continued to operate his Casper Spice business. Report at 4. +The Cleveland and Casper Spice business ended at the time of Libretti's Mar. 30, 2011 arrest.
Mar. 18, 2011	+Libretti was indicted in D WY for conspiracy to distribute methamphetamine. See CMBA Ex. 60. (Libretti was acquitted in Jan. 2012. Report at 5.).
Mar. 30, 2011	+Libretti's Cleveland apartment was searched pursuant to ND Ohio warrant. +Libretti sought immunity (Tr. 125:14-19) for additional Spice, which was approved by the US Attorney's Office (CMBA Ex. 65 at p. #30), after which law enforcement agents seized an additional five containers of Spice – including Spice treated with JWH-018, a controlled substance. +Libretti was in pretrial confinement until his January 2012 acquittal on the single methamphetamine charge.

Following his 1992 CCE conviction, Libretti served 16 of his 20 year prison sentence at various federal penitentiaries. In late 2007, Libretti was assigned to a half-way house in Casper, Wyoming, where he met Brian Frank Hohlios and William Breeden, both convicted methamphetamine dealers. In May 2008, Libretti began a five-year period of court-ordered supervised release, which he repeatedly violated (discussed at pp. 8-9 & 23-24 below).

During his May 2008-May 2013 supervised release, and even during law school in Cleveland, Libretti trafficked in at least Spice in Wyoming, Ohio and Arizona. "Spice" is a slang term for fake or synthetic marijuana.

In June 2010, Libretti's Casper residence was searched by federal and state law enforcement officers. In a subsequent forfeiture proceeding, the Wyoming Supreme Court found that funds seized during the June 2010 search of Libretti's Casper residence "were proceeds from violations of the Wyoming Controlled Substances Act." In re U.S. Currency Totaling \$7,209.00, Joseph Libretti & Frank A. Hohlios v. State of Wyoming, No. S-11-0243, 2012 WY 75, 278 P.2d 234 (WY May 30, 2012)(CMBA Ex. 27 (quoting CMBA Ex. 70)).

In early March 2011, Libretti was indicted in Wyoming federal court on a single count of conspiracy to distribute methamphetamine. CMBA Ex. 60 (D WY Docket). In late March 2011,



Libretti's Cleveland apartment was searched by federal and state law enforcement officers. On March 30, 2011, Libretti sought immunity, resulting in the following (CMBA Ex. 65 at p. # 30):

"OHN AUSA Matthew Sheperd received approval from OHN US Attorney's Office supervision to provide LIBRETTI immunity from prosecution in the OHN for the below listed drug evidence recovered in the OHN."

CMBA Ex. 65 also lists (at 6, Top Table) the suspected Spice seized "with immunity" during the search of Libretti's Cleveland apartment's storage locker. The items seized "with immunity" included Spice treated with JWH-018, a controlled substance. Libretti has not been prosecuted for possession of JWH-018. On March 30, 2011, Libretti was taken into pretrial confinement, and ultimately acquitted of the methamphetamine charge in January 2012.<sup>1</sup>

Libretti initiated the bar application process in November 2012, and was interviewed by CMBA interviewers on June 6, 2013. His two-day hearing before a Panel of the Board was held on November 15, 2013 and January 7, 2014.

### ARGUMENT

- I. **As Libretti Previously Admitted, He Failed To Meet His Burden Of Proof, And His "Post-Conviction Accomplishments Alone Do Not Adequately Demonstrate Full Rehabilitation, Acceptance Of Responsibility And Candor."**

The Report recognized (Report at 2, 17) what Libretti calls his "post-conviction accomplishments," but found them vastly outweighed by evidence of his unfitness. As noted

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<sup>1</sup> Libretti's acquittal on the methamphetamine count is not dispositive here. The US Attorney's failure to prove Libretti's guilt beyond a reasonable doubt in federal court in Wyoming does not equate to Libretti having proved the converse in this proceeding in Ohio by clear and convincing evidence. Before this Panel, Libretti claimed innocence (*e.g.*, Tr. 103:18-104:6), but did not address, *inter alia*, key facts, including: (1) the Wyoming grand jury's indictment, (2) the multiple findings of probable cause for search and arrest warrants, and (3) the skepticism evident in the ND Ohio's Dec. 17, 2013 dismissal of Libretti's civil action. *Libretti v. Woodson*, 1:13-cv-00932-DAP (ND OH Dec. 17, 2013)(CMBA Ex. 92), *appeal pending*, No. 14-3266 (6<sup>th</sup> Cir.)(docketed Mar. 24, 2014).

above, Libretti previously agreed, conceding that these “alone do not adequately demonstrate full rehabilitation, acceptance of responsibility and candor.” Libretti Motion to Withdraw Application at 2. Now, however, he argues they provide “overwhelming evidence” to the contrary. *E.g.*, Libretti Objections and Brief at 8.

Libretti’s discussion here of his “accomplishments” consists largely of selective recitations of the evidence (mostly his own testimony, which the Panel found untrustworthy), use of extra-record “evidence,” spin, and criticisms of the Panel.

Libretti extols his success in securing a position, a promotion, and even respect at Energy Transportation (“ET”) in Casper. Libretti Objections and Brief at 4, 11-12. But, he did not mention to this Court that he concealed his Casper Spice business from his employer. As Dan McGlade, the President of ET, testified, (1) ET has a strict no drugs policy, (2) Libretti never told him (McGlade) that he (Libretti) also ran a synthetic marijuana business in Casper during Libretti’s ET employment (Tr. 543:19-23). Nor (3) did Libretti secure McGlade’s permission to use the company as a place of delivery for Spice-related leaf (*see* CMBA Ex. 86 @ Invoice 1, *and* Tr. 543:24-544:7). Similarly, Libretti cites the testimony of Linda Hricko, Libretti’s supervisor at the Cuyahoga County Public Defender’s Office, but does not mention her testimony that he (Libretti) told her that “he [Libretti] felt that [as of March 20, 2011] that spice was legal, that there was nothing illegal about it at that time” (Tr. 250:8-24). In fact, at that time, Libretti possessed JWH-018, a controlled substance.<sup>2</sup>

Before this Court, Libretti again (and repeatedly) claims that his Spice business was entirely “legal.” But nowhere in his brief does Libretti mention the only judicial determination

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<sup>2</sup> Similarly, Libretti told Professor Lazarus, another of his character witnesses, that his Cleveland Spice business was entirely legal (Tr. 189:14-191:1). And, Libretti told classmate Robert Schmidt, another character witness, that the possession and sale of Spice “wasn’t something that was illegal” (Tr. 271:21-272:20).

on the legality of his Casper business. In In re U.S. Currency Totaling \$7,209.00, Joseph Libretti & Frank A. Hohlios v. State of Wyoming, No. S-11-0243, 2012 WY 75, 278 P.2d 234 (WY May 30, 2012), the Wyoming Supreme Court quoted with approval the trial court's entire order (CMBA Ex. 27, quoting CMBA Ex. 70), which concluded (emphasis added):

"This Court finds that the testimony of Agents Winter and Courtney was credible and persuasive. The Court further finds that Plaintiff has proven by a preponderance of the evidence that **the funds seized from Mr. Libretti and Mr. Hohlios were proceeds from violations of the Wyoming Controlled Substances Act. ...**"

This finding is *res judicata* (or collateral estoppel) as to Libretti. (*See* Tr. 316:9-15).

Libretti also asserts here, as he did at the hearing, that the DEA's Thanksgiving 2010 announcement of its intent to schedule five chemicals used to make Spice was an epiphany, after which he began "liquidating what he had aggressively, at or below cost." Libretti Objections and Brief at 6. In contradiction to his claimed desperation to rid himself of his Spice inventory, Libretti continued to purchase chemicals to make synthetic marijuana. Report at 4. He ordered WINFX5 in December 2010 (CMBA Ex. 86 @ p. 13), and JWH-018 on February 28, 2011 (CMBA Ex. 86 @ p. 14) -- the day before the DEA's ban of JWH-018. At the hearing, Libretti claimed that he cancelled the February 28 order of JWH-018 after his customer learned of the DEA's ban (Tr. 347:3-12), and he later told the Panel that he substituted an order to buy a more expensive chemical in March 2011 (Tr. 513:20-514:12).

Libretti now claims that he "discontinued that conduct [in March 2011] because his conscience bothered him." Libretti Objections and Brief at 8. Yet, Libretti told the Panel that his conscience bothered him from the outset. And, his involvement continued until he was arrested on March 30, 2011 and placed in pretrial confinement. Even now, he argues that some forms of Spice remain legal. *E.g., id.* at 11 ("many forms of [Spice] remain legal today"); *id.* at

40 (*semble*). Is this a suggestion that, unless his application is approved, he will resume his Spice business?

II. **The Panel Found, And The Record Demonstrates, “A Significant Deficiency In [Libretti’s] Honesty.”**

Citing this Court’s decision in *In re Application of Davis*, 38 Ohio St.2d 273, 274, 313 N.E.2d 363 (1980)(internal citation omitted), Libretti acknowledges (Libretti Objections and Brief at 7) that “The goal of the [bar admissions] process is to determine whether an applicant possesses the ‘honesty and integrity which will enable him to fully and faithfully discharge the duties of our demanding profession.’”

Here, the Panel found that Libretti fell far short of the *Davis* standard, which has direct parallels in Gov. Bar R. I, § (11)(D)(3) (“A record manifesting a **significant deficiency in the honesty**, trustworthiness, diligence, or reliability of an applicant may constitute a basis for disapproval of the applicant.”) (emphasis added), and in the Board’s “essential eligibility requirements for the practice of law.” Board of Commissioners on Character and Fitness, Definitions of Essential Eligibility Requirements for the Practice of Law<sup>3</sup> (“6. The ability to conduct oneself with a **high degree of honesty, integrity, and trustworthiness** in all professional relationships and with respect to all legal obligations.” (Emphasis added).)

The Panel provided compelling and recent examples of Libretti’s dishonesty, including in his 2008-2013 dealings with his probation officer, and in his 2012-present bar application process.

First, the Panel found that Libretti repeatedly violated the terms of his federal court-ordered Supervised Release from May 2008 to May 2013, including: (1) Libretti’s intentional

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<sup>3</sup> The Board’s Definitions of Essential Eligibility Requirements are cited without attribution to source in Libretti Objections and Brief at 9 n.3.

failure to disclose to his probation officer his involvement in manufacturing and selling Spice, and the “large sums of money” he made from Spice, and (2) Libretti’s association with and recruitment into his Spice business of a convicted felon and current methamphetamine dealer (William Breeden). Report at 8.

Second, the Panel also found that Libretti was deceitful, evasive, and “not very forthcoming during the bar application process.” *E.g.*, Report at 8.<sup>4</sup> As summarized immediately below, this includes Libretti’s application, his interview, the hearing, and his post-hearing Supplement.

In his Application and pre-hearing Supplements, Libretti failed to disclose or made misrepresentations in at least the following respects (organized by Question #):

Question 7 & Question 23C	+Libretti did not disclose his involvement in his Spice business in Casper and Cleveland. Report at 10. Rather, he claimed to have been unemployed in Cleveland from Aug. 2010 to Mar. 2011, while attending law school. CMBA Ex. 1 at p. 13. +Libretti did not disclose his 42% interest in JPL Marketing, an Arizona distributor of Spice. Libretti sought to explain this away in his post-hearing May 6, 2014 Supplement.
Question 19	+Libretti did not disclose his two Federal Tort Claims Act claims against the DEA and the US Attorney’s Office. CMBA Exs. 66, 80. He sought to explain away this omission in his post-hearing May 6, 2014 Supplement. +To date, Libretti has not disclosed a new (but essentially repetitive) case he filed: <i>Libretti v. Courtney &amp; Woodson</i> , No. 2:14-cv-001-S (D WY) (docketed May 29, 2014).
Question 19 @ Form 3 (p. 44)	+Libretti claimed that this 2003 appeal was “to recover legally earned money which had been turned over to the government by the bailee of funds.” +In fact, (1) the unnamed “bailee” was Libretti’s brother William, whom Libretti did not sue (Tr. 136:23-137:9); and (2) the money was not “legally earned,” but rather, as Libretti testified under oath in 1992, was “proceeds from previous illegal sales of controlled substances”. (CMBA Ex. 93 at 14-15, 33-34). +Libretti’s appeal was dismissed as frivolous by the 10 <sup>th</sup> Circuit. <i>Libretti</i>

<sup>4</sup> This alone disproves Libretti’s argument that the Panel ignored “anything that occurred after early 2011” (Libretti Objections and Brief at 5), since Libretti’s bar application process began with the filing of his bar application with this Court in November 2012.

	<i>v. Wyoming Attorney General &amp; Tony Young</i> , No. 02-8018, 60 Fed. Appx. 194, 2003 U.S. App LEXIS 3000 (10 <sup>th</sup> Cir. Feb. 19, 2003) (CMBA Ex. 18).
Question 20B	+Libretti did not disclose his Mar. 30, 2011 request for immunity, nor its approval by the US Attorney's Office. <i>See</i> Report at 11-12. + The Panel found that Libretti's belated disclosure of this in his post-hearing May 6, 2014 Supplement was "less informative" than his hearing testimony. Report at 11 n.8.
Question 21 @ Form 5 (p. 67)	+Libretti claimed that the firearms charges in a Colorado criminal case "were groundless and later dismissed." +In fact, the Colorado firearms criminal case was dismissed as an informal part of Libretti's Wyoming plea bargain (Tr. 52:22-53:9; 148:16-19. <i>But see</i> Libretti's retraction at Tr. 475:22-477:13).
Question 26A-E	+Libretti answered "No" to all questions relating to mental health. +But, in ND Ohio pleadings filed just before and just after his June 6, 2013 interview, he alleged as facts that he suffered from "severe distress, depression, and anxiety, including suicidal thoughts" due to PTSD and that such interfered with his law school work. CMBA Ex. 74 at ¶¶ 69, 73; and CMBA Ex. 77 at ¶¶ 71, 75. <i>See</i> Tr. 600:2-18 (Kline). <i>See also</i> Report at 5.

In his November 2012 Application, Libretti "purposely" failed to disclose his involvement in his Casper and Cleveland Spice business (Report at 13 n. 9; Tr. 359:7-10; *see* CMBA Ex. 1), nor did he do so in any pre-hearing supplement.

With respect to his June 6, 2013 interview, Libretti told this Court that (1) he discussed this Spice-related activity "openly" with the CMBA interviewers (Libretti Objections and Brief at 16-17, 17, 44); (2) the CMBA interviewers had "full knowledge" of his Spice-related activities (*id.* at 13); and (3) he "openly" discussed his request for immunity with the interviewers (*id.* at 44). None of those things is true.

In fact, Libretti discussed only very limited aspects of the Casper Spice business with the CMBA interviewers, telling them that (a) he only financed (b) his roommate's (c) "herbal incense"<sup>5</sup> business.<sup>6</sup> *See* Report at 10. Rather than "openly" discussing his Spice-related

<sup>5</sup> During the CMBA interview, Libretti used only the guarded term "herbal incense." Report at 10; Tr. 294:4-6. He did not use terms such as synthetic marijuana, or similar more accurate

activity, Libretti in fact concealed far more than he disclosed. He did **not** disclose (1) the nature and extent of his involvement in the Casper Spice business (*i.e.*, that he (Libretti) alone ran the Casper Spice business during Hohlios's March-June 2010 imprisonment for a parole violation, after Hohlios's death in July 2010, and even after he (Libretti) moved to Cleveland in August 2010)<sup>7</sup>; (2) that he associated with Breeden, a convicted felon and then-current methamphetamine dealer, and recruited Breeden to his Casper Spice business, in violation of the court-ordered terms of his Supervised Release; (3) his Cleveland Spice business; (4) his March 30, 2011 request for and approval of immunity; and (4) his possession of JWH-018, a controlled substance, seized from his Cleveland apartment's storage locker.<sup>8</sup> Report at 10 & n.7. Moreover, (5) Libretti falsely told the interviewers that he had complied with the terms of his parole. Report at 8 n.6; Tr. 586:1-5 (Kline). And, Libretti did not disclose (6) that actual marijuana was seized during the June 2, 2010 search of his Casper residence.

Then the day after the interview, Libretti wrote the interviewers (7) falsely stating "Since my release from prison **I have not broken any laws**," except for two traffic tickets. CMBA Ex. 42 @ last 6 pages (emphasis added); *see* Tr. 352:22-353:11.

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terms, or even the slang term Spice (Tr. 653:18-23). The term "herbal incense" is used "to mask ... the[] intended purpose" of Spice. CMBA Ex. 84.

<sup>6</sup> Before this Court, Libretti again seeks to distance himself from the Casper Spice business. For example, he claims that it was "Hohlios' house [which] was searched" on June 2, 2010. Libretti Objections and Brief at 5. However, in direct contradiction, in 2013 Libretti told the Wyoming federal court that he (Libretti) "was the only tenant," that the government's suggestion that Hohlios was also a tenant was "a misstatement," since Hohlios and Hohlios' girlfriend were but guests at the time of the search. CMBA Ex. 67 at 9.

<sup>7</sup> Tr. 590:8-18 (Kline); 655:3-7 (Rosman); CMBA Ex. 71 at 3.

<sup>8</sup> Tr. 591:13-592:1 (Kline); Tr. 655:3-656:4 (Rosman).

With respect to the hearing, the Report found that Libretti was “evasive and not credible” (Report at 11), and the Panel noted “multiple examples” where Libretti “walk[ed] a fine line with regard to his disclosures” (Report at 12). So troubled by Libretti’s hearing testimony, the Panel wrote:

“Stated bluntly, after observing Libretti for a number of hours on the witness stand, the panel did not trust Applicant to be truthful or forthcoming.”

Even after the hearing concluded, the Panel found that Libretti’s pattern of deception continued. Specifically, the Panel found that Libretti made “knowingly false” statements in a FOIA request attached to his May 6, 2014 Supplement. Report at 11 n.8. This is discussed more fully below at pp. 36-37.

In sum, the conclusion of the Panel’s unanimous Report here mirrors the conclusion of this Court in *In re Application of Wiseman*, 135 Ohio St.3d 267, 2013-Ohio-763, at ¶23 (2013). where, this Court wrote:

“Moreover, he has engaged in a pervasive pattern of lies and omissions throughout his admissions process in an effort to conceal his past conduct and convince this court that he possesses the requisite character, fitness, and moral qualifications to practice law in the state of Ohio.”

III. **Libretti’s Amoralty: The Panel Found That Libretti Lacks Remorse for Harm He Caused.**

“The Panel was struck by Libretti’s amoral viewpoint as it pertained to his criminal activities and spice operation.” Report at 13. The Report quoted with approval the testimony of CMBA interviewer James Kline that “at no point did he [Libretti] ever express the view as to the harm that his conduct had on others.” Such, the Panel wrote, was “precisely the reaction the panel had after listening to Libretti testify for several hours ....” Report at 13, citing Tr. 613:9-614:11 (Kline). See CMBA Ex. 46 at 2 (Kline’s “Green Sheet”).



**A. Libretti's Amorality Concerning His 1992 Continuing Criminal Enterprise Felony Conviction**

With respect to his 1992 felony conviction, Libretti told the CMBA interviewers on June 6, 2013 that, he “didn’t consider himself a criminal” (CMBA Ex. 49 at 1), because he was “[s]elling a product to consenting adults” (*id.*; Tr. 579:1-12).<sup>9</sup> Moreover, “at no time” during his June 6, 2013 CMBA interview, did Libretti “ever express a view that he believed that the use of drugs was immoral or improper” (Tr. 611:19-21 (Kline) (part of longer answer)).

Further, the record is devoid of evidence of genuine remorse for the harm Libretti caused to third parties by his pre-1992 drug trafficking in cocaine, marijuana, Ecstasy, Euphoria, and psilocybin mushrooms. Nor did he express remorse for third party victims (such as the innocent spouses and children), or those who may have been injured or worse by an intoxicated customer. The only so-called exception is Emily’s story:<sup>10</sup> Emily’s life imploded when her boyfriend (who was Libretti’s best friend) became addicted to cocaine, lost his job and had to quit school (Tr. 455:21-456:17). Libretti’s concern for Emily led him to supply her with cocaine. Tr. 114:13-18; Tr. 456:5-11 (both parts of longer answers). After Libretti’s CCE conviction, Emily continued to use cocaine, and developed a really bad addiction which destroyed some 10 years of her life. Years later, he said, he apologized to her. Tr. 114:10-115:12.

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<sup>9</sup> Libretti now disingenuously attempts to time-shift his amorality from the June 6, 2013 CMBA interview to 1980’s. Libretti Objections and Brief at 26.

<sup>10</sup> Libretti criticized what he calls a “sarcastic[]” discussion of “Emily’s story.” Libretti Objections and Brief at 48. But, he is the one who testified: Emily’s boyfriend “ended up becoming addicted to cocaine and had to drop out of school, and **I eventually became her supplier, and I did sell to her.**” Tr. 455:21-456:17 (emphasis added) (part of longer answer).

**B. Libretti's 2008-2011 Amoralty: Libretti's Trafficking in Spice Was Immoral And Ultimately Illegal, And Libretti Cannot Hide Behind His "Legal" Product Mantra.**

During the hearing Libretti made repeated "protestations that his spice business was legal" (Report at 8), contending for example that Spice "was a legal, mainstream product, just like 5-hour Energy drinks or tobacco or vitamins. You would see it on the counters at convenience stores," gas stations and grocery stores. Tr. 96:13-97:2.

Even Libretti, however, conceded that his trafficking in Spice was "stupid" or "foolish" (Report at 13), and immoral (*id.* at 6-7. *Accord, e.g.,* Tr. 450:4-11; Tr. 454:3-14).<sup>11</sup> In the context of a hearing to determine an applicant's "moral qualifications," this admission was (and is) fatal. Morality, not just illegality or criminality, is the standard for admission to the Ohio bar. Under Gov. Bar Rule 1, §1(D) (emphasis added), an applicant must demonstrate his "character, fitness and **moral** qualifications."

Both at the hearing and since, Libretti has sought to justify or excuse his immoral behavior first by characterizing his initial involvement as virtuous, and secondly by endlessly repeating the mantra that his Spice business was entirely "legal," analogizing it to Energy drinks, tobacco, and vitamins. These are addressed in turn below. To this, Libretti now adds a frivolous criticism of the Panel claiming it failed to distinguish between "legal activities it deems morally questionable and conduct that has an actual nexus with an applicant's fitness." Libretti Objections and Brief at 23.

First, at the hearing and again now, Libretti seeks to characterize his initial involvement in the Spice business as a virtuous effort to help his financially distressed roommate (Hohlilos)

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<sup>11</sup> Libretti's character witnesses agreed that Libretti's involvement with Spice was immoral. For example, as, Libretti's supervisor put it: "Because even if it was technically legal, I would say that it wasn't morally a right choice." Tr. 251:1-13 (Hricko).

sell a “legal” product. *See, e.g.*, Report at 6-7 (quoting Libretti); Libretti Objections and Brief at 5. If so, why did Libretti continue the Casper Spice business after his roommate was incarcerated for a parole violation from March to early June 2010? Or after March 24, 2010, when a court-authorized intercept revealed that he (Libretti) told Breeden that he (Libretti) “was becoming paranoid because people were pleading guilty to the possession of ‘spice’.”? CMBA Ex. 63 at ¶48 (pp. #40-41). Or, after his Casper residence was searched in June 2010? Or, after his roommate died in July 2010? Why did Libretti both continue the Casper operation and begin to make and distribute Spice after moving to Cleveland in August 2010? And, why after moving to Cleveland in August 2010 until March 2011 did he provide Spice to JPL Marketing in Arizona? As the Panel found, Libretti did so for one reason – a greed-motivated desire to make money. Report at 7.

Second, in his Objections and Brief to this Court, Libretti invokes that “legal” mantra some 25 times. In his opening brief to the Sixth Circuit,<sup>12</sup> Libretti referred more than 60 times to his “legal” Spice business, and even extended his analogies to Tootsie Rolls, chocolate chip cookies, and fudge.<sup>13</sup>

But, Libretti cites no federal or state statute, regulation, judicial decision or other authority for the proposition that Spice is or was legal. He produced no evidence that he held a federal or state license to sell Spice, or to do any business at all,<sup>14</sup> and he cites no evidence that

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<sup>12</sup> Brief of Appellant, Libretti v. Woodson, No. 14-3266 (6<sup>th</sup> Cir.) (Doc. No. 10-1 (filed May 15, 2014)(Appendix 1).

<sup>13</sup> Appellant’s Reply to Appellee’s Response to Appellant’s Second Motion Requesting the Court To Take Judicial Notice, Libretti v. Woodson, No. 14-3266 (6<sup>th</sup> Cir.) (Doc. No. 17 (filed July 23, 2014)).

<sup>14</sup> Here, Libretti in essence concedes that he did not secure a license to do business in Ohio. Libretti Objections and Brief at 17.

he ever collected or remitted sales taxes on the raw materials he purchased or the Spice he sold.<sup>15</sup> His sole basis for claiming that Spice was “legal” product apparently rests on whether or not the DEA had criminalized Spice by scheduling it as a controlled substance.

In fact, (1) five chemicals used to make Spice were banned by the DEA on March 1, 2011 (CMBA Ex. 84), including the JWH-018 Libretti possessed on March 30, 2011. Today, all “controlled substance analogs” are banned. 21 U.S.C. §813. (2) As a substance intended for human consumption which affects the structure of function of the body (Tr. 504:21-505:1), Spice almost certainly was subject to FDA regulation, but Libretti presented no evidence of FDA approval (Tr. 505:12-17), because there is none (CMBA Ex. 84). (3) In Ohio, all “controlled substance analogs” – including AM-2011, JWH-018 and WINFX5 (all of which Libretti sold) – became illegal on October 11, 2011. Ohio Rev. Code §3719.013. *Accord* Tr. 249:15-17 (Hricko). All synthetic cannabinoids – including JWH-018, AM-2011 and WINFX5 – became illegal in Wyoming and Arizona in February 2011.

Moreover, Spice is not like Energy drinks or Tootsie Rolls. For example, Spice has no use other than to mimic the “high” produced by marijuana, an illegal substance. Further, Spice was made in private residences, held in private storage lockers, and marketed as “herbal incense” to mask its intended purpose. *See State ex rel. DeWine v. Fred's Party Ctr., Inc.*, 2014-Ohio-2358 at ¶7 (7<sup>th</sup> Dist. Ct. App. 2014)(in nuisance action, court noted that Spice mislabeled as to be “sold as incense only, it was not for human consumption, and ‘It's Legal in 50 States, 100% Legal.’”).

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<sup>15</sup> CMBA Ex. 86 shows that Libretti did not pay sales tax on the WINFX5 and JWH-018 which he ordered for shipment to Cleveland.

And, as the evidence demonstrates, Spice is toxic to humans. Libretti, however, was oblivious to the toxicity of the Spice. While manufacturing and selling Spice for human consumption, Libretti did not bother to study “the effects of spice or what it does.” Tr. 274:4-7. Except for once expressing a belief that Spice was too toxic to put into a garbage dump, he nevertheless sold Spice for human consumption (Tr. 344:10-14).<sup>16</sup>

Both here (Libretti Objections and Brief at 39); and in his recent Motion to Strike (Libretti Motion to Strike at Arguments 8 & 9), Libretti asserts that the record is devoid of evidence of the toxicity of Spice to humans. He is wrong. Contradicting himself, Libretti also admits here that Spice is toxic (Libretti Objections and Brief at 45-46), but then backtracks again (*id.* at 47 (Spice is “legal yet possibly harmful”); *id.* at 50 (Spice was “legal though arguably unhealthful”).) In fact, CMBA Ex. 84 details adverse health effects of Spice, stating, for example, that the scheduling of JWH-018 (and certain other cannabinoid analogs) “was necessary to prevent an imminent threat to public health and safety.” It then elaborates:

“Since 2008, DEA has received an increasing number of reports from poison control centers, hospitals and law enforcement regarding these products. ... Emergency room physicians report that individuals that used these types of products experience serious side effects which include: convulsions, anxiety attacks, dangerously elevated heart rates, increased blood pressure, vomiting and disorientation.”

Not even Libretti would deny that, because Spice produces marijuana-like highs, it results in DUIs, thus creating the risk of harm to third parties. See State v. Shalash, 2014-Ohio-2584 at ¶10 (10th Dist. Ct. App. June 16, 2014), quoting with approval testimony of the State’s expert that some cannabinoid analogs, including AM-2011 and JWH-018 (both of which Libretti made

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<sup>16</sup> Libretti chastised Bar Counsel for “quoting himself” rather than Libretti on this point. Libretti Opposition and Brief at 49. Leading questions are, of course, permitted on cross-examination. The transcript reads:

Q. Rather, you sold for human consumption something which was too toxic to be put in a garbage dump?

A. I did sell the chemical when it was legal, yes.

and sold), “are more potent than regular marijuana and ... these substances affect a person’s brain causing hallucinations, paranoia and aggression, and can cause seizure and death.”

Libretti’s analogies to tobacco and alcohol are smokescreens. For example, unlike Spice, tobacco and alcohol have long been recognized as being legal products, but both have been subject to numerous federal and state statutes and regulations, including excise taxes.<sup>17</sup> In contrast, marijuana is illegal and criminalized under federal and (now virtually all) state laws, and, as new mimics of marijuana (*i.e.*, Spice) have been developed, they too have been criminalized. Further, the health effects of both tobacco and alcohol are well known, so much so that tobacco is used as a definitional example in comment i to §402A of the Restatement (Second) of Torts, which was adopted by the ALI in 1964, of a product that is not more dangerous than an ordinary consumer would expect given the ordinary knowledge common to the community. In contrast, Libretti both claims to have been unaware of the health effects of Spice, and challenged before this Court the basis of the Panel’s findings that Spice is harmful and that its effects are “not positive.” Libretti Motion to Strike at Arguments 8 & 9. Moreover, both tobacco and alcohol have long borne mandated warnings, while Spice has never had such warnings. Moreover, Spice was marketed as “herbal incense ... to mask ... [its] intended purpose.” CMBA Ex. 84.

Finally, Libretti’s obliviousness to the toxicity of the Spice fails another of the Board’s “essential eligibility requirements for the practice of law,” to wit: “The ability to avoid acts that exhibit disregard for the health, safety and welfare of others.” Board’s Essential Eligibility Requirements #6.

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<sup>17</sup> In 2009, Congress enacted the Family Smoking Prevention and Tobacco Control Act, codified at 21 U.S.C. §387a. Tobacco was not subject to FDA regulation before then. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000). There is no similar determination for Spice.

**C. Libretti's Criminal History and Spice-Related Activities Reveal Poor Judgment.**

Especially in light of Libretti's criminal history leading to his 1992 conviction, his 2008 or 2009-2011 involvement with Spice also reflects incredibly poor judgment. Indeed, the record is replete with expressions of bafflement over why any applicant, let alone one with a prior felony drug conviction, would walk a fine line by getting involved in selling synthetic marijuana. *E.g.*, Tr. 250:8-251:13 (Hricko); 219:14-220:16 (Lazarus); 588:19-589:19 (Kline). Similarly, Libretti's effort to recruit Breeden to the Casper Spice business showed poor judgment (Tr. 254:10-16 (Hricko)), and was "a very dangerous thing to do." Tr. 227:24-228:16 (Lazarus).

Libretti's poor judgment fails another of the Board's Essential Eligibility Requirements, to wit: "The ability to exercise good judgment in conducting one's professional business." Board's Essential Eligibility Requirements #3.

**IV. Libretti's Disrespect for the Law: Litigiousness and Violation of Court-Ordered Supervised Release, and Aiding Violation of Garnishment Orders.**

Libretti complains that the "the Report concluded that Libretti lacks respect for the law, and 'views the law as a weapon to harass,' based on his litigation history." Libretti Objections and Brief at 21; *see* Report at 14-15. The evidence overwhelmingly supports the Panel's conclusion that "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." Report at 15. Following his December 1992 felony conviction, Libretti filed innumerable habeas petitions, civil actions, appeals, and petitions in forfeiture proceedings. A similar pattern followed his January 2012 acquittal in Wyoming. Even today, the pattern repeats itself.

#### **A. Libretti's Post-1992 Litigiousness**

Following his 1992 conviction, Libretti repeatedly sought to withdraw his guilty plea, most recently in 2011. *E.g.*, Libretti v. United States, 38 F. 3d 523 (10<sup>th</sup> Cir. 1994) (part of CMBA Ex. 38); *see* CMBA Ex. 60 at D WY Docket #53. He did so even though he expressly agreed not to do so in his 1992 Plea Agreement (part of CMBA Ex. 38 at ¶13).<sup>18</sup> In the words of the 10<sup>th</sup> Circuit, Libretti was “persistent in challenging his guilty plea and, in particular, the forfeiture aspect of his sentence.” United States v. Libretti, 2001 US App. Lexis 21412 at \*\*4 (10<sup>th</sup> Cir. 2001) (listing cases)(CMBA Ex. 31).

Further, except for the statutory minimum term of imprisonment, Libretti challenged every term of his sentence, including a \$50 assessment. Report at 14. Finally, numerous cases filed by Libretti were dismissed on *res judicata* or collateral estoppel grounds (*e.g.*, CMBA Exs. 15, 16, 24, 25, 28), or for lack of jurisdiction as impermissible, subsequent habeas corpus petitions (*e.g.*, CMBA Ex. 1 @ at 58, 59). One appeal was dismissed as frivolous. CMBA Ex. 18 at \*12. In another, the magistrate judge recommended that Libretti not be permitted to file similar claims in the future. CMBA Ex. 13.<sup>19</sup>

In this post-1992 conviction litigation, Libretti repeatedly sued several BATF, DEA, Wyoming Division of Criminal Investigation, and local law enforcement agents. *E.g.*, CMBA Exs. 4, 5, 13, 24 (BATF Agent Kenneth Bray). He also sued lawyers on several occasions (*e.g.*,

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<sup>18</sup> For example, in 2006 Libretti sought to withdraw his 1992 guilty plea claiming that the DEA's pre-conviction administrative forfeiture of \$33,160 resulted in Libretti's inability to retain counsel of choice at his 1992 trial and on appeal (US v. Libretti, 2006 US App. Lexis 22622 @ \*\*7 (10<sup>th</sup> Cir. 2006)(CMBA Ex. 29)). But, 12 years earlier the same court – the 10<sup>th</sup> Circuit – wrote: “Defendant's family hired his counsel; therefore, contrary to his objection to the presentence report, the family would be responsible for his attorney's fees.” US v. Libretti, 37 F.3d 1510 (10<sup>th</sup> Cir. 1994)(CMBA Ex. 55 at p. 3)(emphasis added)).

<sup>19</sup> The district court order is not currently available, but Libretti claimed that the magistrate judge's recommendation was not approved (Tr. 484:9-22).



CMBA Ex. 1 at 32, 35; CMBA Ex. 6). In 1994, Libretti also sued his ex-girlfriend for fraud, breach of contract, and breach of fiduciary duty. Libretti v. Claudia S. Porter, No. 2:94CV147 (D WY dismissed Oct. 30, 1997). Tr. 134:14-135:10; *see* CMBA Ex. 12. Ironically, the Porter case reveals the disingenuousness of Libretti's current effort to play the sympathy card – implying that his conviction in 1992 resulted in the demise of his engagement to be married. Libretti Objections and Brief at 3.

During his June 6, 2013 CMBA interview, Libretti said that he had “no regrets” about his post-1992 litigiousness. Tr. 592:10-593:4 (Kline). At the hearing, however, Libretti told the Panel that he would not have filed so many cases and appeals if he had known about joinder. Tr. 385:8-386:2; Tr. 485:5-17. He repeats that contention in his brief here. Libretti Objections and Brief at 22. If so, why since 2012 did Libretti file and maintain four – and now five – separate actions or administrative proceedings alleging similar claims seeking similar relief (discussed immediately below)?

#### **B. Libretti's Post-January 2012 Litigiousness**

Libretti repeated his pattern of litigiousness after his 2012 trial in Wyoming. He participated in several forfeiture proceedings.<sup>20</sup> In addition, Libretti filed four – and now five – actions or administrative proceedings alleging similar claims, and seeking similar if not identical relief,<sup>21</sup> to wit: (1) a Rule 41(g) motion for compensation in the Wyoming federal criminal case

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<sup>20</sup> *See, e.g.*, CMBA Ex. 61 at 2 n. 1; CMBA Ex. 62 at 2; CMBA Ex. 64 at 2-3 (in Libretti's handwriting); Tr. 101:21-102:16.

<sup>21</sup> *See* CMBA Ex. 78 (“The [ND Ohio] Court will not allow Plaintiff to assert a claim the subject matter of which is being actively litigated before a federal judge in Wyoming.”).

(Tr. 306:13-22),<sup>22</sup> (2) a Federal Tort Claims Act (“FTCA”) claim against the US Attorney’s Office (CMBA Ex. 66; Tr. 312:4-10), (3) a FTCA claim against the DEA (CMBA Ex. 80; Tr. 311:7-15), and (4) a civil complaint in Cleveland which was removed to ND OH (Tr. 309:9-14). Notably, in the ND OH case, Libretti sought to file several amended complaints – some after his own motion to stay had been granted – seeking to add additional claims and defendants, including Stephanie Sprecher, the federal prosecutor from his Wyoming trial. CMBA Ex.73 (at Docket #25).<sup>23</sup>

In none of his pleadings in these cases did Libretti disclose (1) the June 2, 2010 seizure of both actual and synthetic marijuana from his Casper residence; (2) the *res judicata* effect of the Wyoming Supreme Court’s finding that “the funds seized from Mr. Libretti and Mr. Hohlios [in Casper in June 2010] were proceeds from violations of the Wyoming Controlled Substances Act” (CMBA Ex. 27); and (3) that Libretti was found in possession of a controlled substance (JWH-018) in Cleveland on March 30, 2011. *See* Tr. 357:6-358:7 (according to Libretti, it “was not relevant”).

In its October 16, 2013 Order, the Wyoming federal court rejected Libretti’s motion for reconsideration of the dismissal of his Rule 41(g) motion, finding that it “suffers from the same failing as his previous motions, it is not supported by facts, but rather speculation and unsupported, self-serving statements and accusations.” CMBA Ex. 91 at 3. Libretti’s ND OH case was dismissed under Rule 12(b)(6) on Dec. 17, 2013. CMBA Ex. 92. Libretti has appealed

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<sup>22</sup> Bizarrely, Libretti, though represented by counsel, filed motions in Wyoming federal court *pro se* until ordered not to do so by the court. Report at 15; CMBA Ex. 60, Docket # 149; Tr. 387:3-13; *see* Tr. 217:16-218:7 (Lazarus).

<sup>23</sup> Libretti now seeks to add Assistant US Attorney Stephanie Sprecher as a defendant in his new D WY case.

the ND OH dismissal to the Sixth Circuit. The appeal was docketed as Libretti v. Woodson, No. 14-3266 (6<sup>th</sup> Cir.). Oral argument was held on October 2, 2014.<sup>24</sup>

Finally, although Libretti disclosed his Sixth Circuit appeal in a post-hearing supplement on May 6, 2014, in no Supplement has Libretti disclosed his new D WY case. On May 29, 2014, Libretti filed Libretti v. Courtney & Woodson, No. 2:14-cv-001-S (D WY)(Appendix 3). In it, Libretti, proceeding *pro se*, complains yet again about the June 2010 search of his Casper residence and the March 2011 search of his Cleveland apartment. The subject matter of this case is similar if not identical to the now-dismissed civil action in ND OH. Indeed, Libretti even failed to change the caption on complaint from ND OH to D WY. It is also similar if not identical to the subject matter of the now-dismissed Rule 41(g) motion in D WY. Importantly, however, Libretti answered “NONE” when asked about Related Cases on the Civil Cover Sheet for his new D WY case. Libretti v. Courtney & Woodson, No. 2:14-cv-001-S (D WY)(Doc. # 1-1 (filed May 29, 2014)(Appendix 2)).

Libretti’s failure to disclose this new case in a Supplement to his Application is indefensible given the Panel’s concern at the hearing and in the Report with vexatious litigation.

**C. Libretti Violated The Court-Ordered Terms Of His Supervised Release.**

When convicted in 1992, the D WY court imposed the statutory minimum prison sentence of 20 years to be followed by a five year term of supervised release. (Part of CMBA Ex. 38). Among the provisions of the terms of the Supervised Release were the following (*id.*):

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<sup>24</sup> In his opening brief on appeal, Libretti conceded the dubious merit of his claims, writing: “The current state of the law appears to incorrectly suggest that a civil remedy for a Fourth Amendment violation does not exist when the police seize property outside the scope of what the warrant authorized the police to seize.” Libretti v. Woodson, No. 14-3266 (6<sup>th</sup> Cir.)(Doc. #10-1 (filed May 15, 2014).)

“Defendant shall not use or possess any illegal drugs or controlled substances. Supervised release shall be revoked for possession of illegal drugs or controlled substances.”

Further, Libretti’s Standard Conditions of Supervision included the following (*id.*):

“2) the defendant shall report to the probation officer as directed by the Court or probation officer and shall submit a truthful and complete written report within the first five days of each month;”

“7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;”

“9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;”

As noted elsewhere, while on parole from May 2008 to May 2013, Libretti repeatedly violated the terms of his court-ordered Supervised Release. The Panel noted that (1) Libretti intentionally failed to disclose to his probation officer his involvement in manufacturing and selling Spice, and the “large sums of money” he made from Spice, and (2) Libretti failed to disclose his association with and recruitment into his Casper Spice business with William Breeden, a convicted felon and current methamphetamine dealer. Report at 8. In addition, Libretti’s possession of controlled substances – the actual marijuana seized from Libretti’s Casper residence on June 2, 2010, and the JWH-018 seized from Libretti’s Cleveland apartment’s storage locker on March 30, 2011 – violated those terms.

**D. Libretti Assisted Hohlios In Evading Garnishment Order(s).**

The Report (at 3) found that “The profits from the sale of spice were run through Libretti’s bank account so as to help Hohlios avoid child support garnishments.” Despite this adverse factual finding and his own earlier motion before this Court (Motion to Strike at 1), Libretti now accuses Bar Counsel of raising this as a “new and unsupported” allegation in

CMBA's opposition to his Motion to Strike. Libretti Objections and Brief at 40-41, citing CMBA Opp. Mot. Strike 1. He is obviously wrong that this is new.

He is also wrong in claiming that the Report's conclusion is unsupported. In fact, Libretti told the Panel (Tr. 94:23-95:23):

"When we started this business -- well, it was Brian's business and I was investing in it, and he wanted to put the money in my bank account because he had a -- some child support garnishments, and if the money was in his bank account, they could take my money for his obligations. So we ran everything through my bank account.

"But he wanted to make sure that he had access to my money, so he set up a trust and he put my bank account in the trust and he made himself a trustee and a beneficiary on that. And he made me a trustee and beneficiary."

Given Hohlios's concern over garnishment orders and given Hohlios's legal advice that trust income "legally ... wasn't [a beneficiary's] income,"<sup>25</sup> the Report's conclusion that Libretti aided Hohlios's evasion of garnishment orders was a fair and reasonable conclusion. What is neither reasonable nor fair is to now argue, as does Libretti, that Spice-related income that was not Hohlios's income was Hohlios's income: Libretti Motion to Strike at 1 ("The other individual [i.e., Hohlios] was free to take his share of the sales profits and apply it to any child support arrearages that were his responsibility.").

#### **E. Libretti's Tax Evasion**

During the entire period of his Supervised Release (May 2008-May 2013), Libretti did not declare or pay federal taxes on income from his Casper and Cleveland Spice businesses (Tr. 363:9-364:4). Nor did he disclose his Spice-related income to his Probation Officer (Tr. 460:13-20; 462:22-463:23).

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<sup>25</sup> The transcript reads: "Because originally Brian set this up as a trust so he said legally it wasn't my income." Tr. 460:13-23.

The only Spice-related income Libretti declared was from JPL Marketing LLC, the Arizona entity to which Libretti supplied Spice in exchange for a 42% interest in JPL's profits.. Having received a 1099 from JPL Marketing, Libretti could not hide his JPL-sourced income. But, rather than simply disclose the 1099 income as such, Libretti reported it on a Schedule C (CMBA Ex. 85 at 2011 Schedule C; Tr. 368:14-17). He did so in order to deduct as "Cost of Goods Sold" the value of the Spice and chemicals seized by law enforcement authorities in March 2011 in Cleveland (Tr. 507:18-508:1).

Libretti does not dispute his failure to declare and pay income tax on his Spice-related income. Instead, he seeks to excuse it, he seeks to obfuscate it, and he seeks to minimize it. First, at the hearing and again now Libretti claims that he did not declare his Spice-related income because law enforcement agents had not returned seized records. Tr. 371:24-372:7; *see* Libretti Objections and Brief at 18, 33. Even if true, Libretti would have already filed both his 2008 and 2009 federal income tax returns before the June 2010 search of his Casper residence, and perhaps his 2010 return before the March 30-31, 2011 searches of his Cleveland apartment and storage locker. Moreover, on his 2011 Schedule C Libretti calculated and deducted as "Cost of Goods Sold" the value of the Spice and chemicals seized by law enforcement authorities in Cleveland in March 2011, belying his contention that he had no records.

Second, Libretti now argues, and asks this Court to judicially notice that under federal law "income taxes cannot in fact be avoided by being 'funneled' through a trust." Libretti Objections and Brief at 33, citing Internal Revenue Code, 26 U.S.C. §§ 671-678. He is right, but the existence of federal law does not, as Libretti implies, equate to his compliance.

Third, at the hearing, Libretti gave a number of inconsistent answers about the magnitude of his Spice-related income. Libretti first claimed to have no Spice-related income in 2008-2009

(Tr. 363:9-20). Later, he told the Panel that “in the beginning” the Spice business was lucrative (Tr. 439:12-19). Still later, Libretti said that he had no income from the Casper Spice business, “Because originally Brian set this up as a trust so he said legally it wasn’t my income.” Tr. 460:13-23. Still later, Libretti told the Panel that he was unable to estimate or even ball-park his Spice-related income (Tr. 508:2-9), but when challenged by the Panel, he estimated his Spice-related income as “possibly not” more than \$20,000 (Tr. 528:7-8). In short, neither Libretti’s inconsistent testimony nor his tax returns are reliable sources to determine the magnitude of his Spice-related income. But, the Panel was correct in finding that “Libretti did not report [to his probation officer] **the large sums of money** he was making from the sale of spice chemicals.” Report at 8 (emphasis added).<sup>26</sup> Nor did he declare “**the large sums of money**” on his tax returns.

That a large amount of money was not declared on Libretti’s tax returns is evident from the following: First, Libretti told this Court that he was released from prison to a half-way house in late 2007 with only \$600, a toothbrush, and a change of clothes. Libretti Objections and Brief at 4. *Seem* CMBA Ex. 61 @ pp. 7-8; *see* Tr. 83:8-20. Yet, Libretti told the Panel that he had about \$132,000 at the time of his March 30, 2011 arrest (Tr. 101:21-102:16).<sup>27</sup> This amount exceeds the combined total of Libretti’s declared gross income for the entire period 2007-2012, including that from Energy Transportation and all other sources disclosed on his federal income tax returns (and Bar Application). CMBA Ex. 85.

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<sup>26</sup> Libretti also told the Panel that he relied on Hohlios’s advice – that because the money was in a trust and therefore was not his income – he (Libretti) need not to tell his probation officer about the income. Tr. 460:13 \-461:7.

<sup>27</sup> This amount is supported by other evidence (CMBA Ex. 63 at 67, ¶12 (by Mar. 29, 2011, Libretti had more than \$90,000 in two Key Bank accounts in Cleveland); CMBA Ex. 61 at 2 ¶4 (on May 20, 2011, between \$100,000 and \$126,000 was seized by law enforcement from Libretti’s bank accounts).

Second, in one month alone, from November 5, 2010 to December 3, 2010, at a time when Libretti was “attending law school” and claimed to have no employment (CMBA Ex. 1 = Application @ p. 13 (Q. 7)), Libretti deposited \$44,400 to one of his Key Bank accounts, withdrawing \$30,000 to buy Spice-related chemicals from Source1Herbs (CMBA Ex. 90). Third, Libretti’s 42% interest in JPL Marketing resulting from his \$30,000 contribution of Spice to JPL (Tr. 419:2-4), yielded him \$19,474 in income in 2011 alone (CMBA Ex. 85 at 2011 Schedule C, Line 1d). JPL’s margin far exceeds Libretti’s own claimed margin – Libretti’s claimed a smaller-than-a-breadbox income of some \$20,000 on more than \$400,000 in costs for 2010-2011 (CMBA Revised Ex. 89, and underlying exhibits).<sup>28</sup>

**V. Libretti’s Procedural Due Process Arguments Are Specious Attempts to Shift Blame From His Own Failure To Meet His Burden of Proof.**

Libretti’s complaints about the “hearing process and Report of the Board” (Libretti Objections and Brief at 28) consist of a series of attacks against Bar Counsel, the Panel, and the Board. None has merit.

**A. The Panel Considered Libretti’s Entire Conduct.**

Libretti first contends that the Panel in its “Report did not examine Applicant’s entire conduct” but rather confined itself to events that occurred “between late 2009-early 2011.” Libretti Objections and Brief at 29.

Libretti is simply wrong. The Panel found that Libretti, while on Supervised Release from May 2008-May 2013, repeatedly lied to his Probation Officer. The Panel further found that Libretti was “not very forthcoming during bar application process” (Report at 8) – a process which began in November 2012, and continued at the June 2013 interview, the November 2013 and January 2014 hearing, and even in Libretti’s May 2014 Post-Hearing Supplement.

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<sup>28</sup> See Tr. 272:21-273:8 (Schmidt)(Libretti’s Spice business generated perhaps “several hundred thousand dollars”).



**B. Libretti's Attacks On the Conduct Of The Hearing Are Without Merit.**

Libretti attributes the adverse findings and recommendation in the Report to failings of both Bar Counsel and the Panel, not to his own conduct. His effort to shift responsibility should be rejected.

**1. The Panel Considered The (D)(3) And (D)(4) Criteria.**

Libretti first "objects to the Report's omission of the (D)(3) and (D)(5)(a) character and fitness factors it was required to consider under Gov. Bar Rule I." Libretti Objections and Brief at 30-31; *see id.* at 27. According to Libretti, "none of [the (D)(3)] factors were considered in the Report." *Id.* at 12-13. Based on these incorrect premises, Libretti reaches the incorrect conclusion that the Panel failed "to adhere to established, articulated standards in evaluating Applicant's candidacy constituted a denial of due process. *Id.* at 30.

Libretti is wrong.

First, under Gov. Bar Rule 1, the (D)(3) and (D)(4) factors are to be considered first by the Admissions Committee. Such was done here, as Libretti admits and as is clear from the "Green Sheets." CMBA Exs. 45 & 46. Second, both Exhibits were before the Panel. Third, both interviewers testified at the hearing. Fourth, Libretti was free to develop any of these factors on direct examination of Libretti himself and of his character witnesses, and through cross-examination of the interviewers. Fifth, there is absolutely no evidence that the Panel did not consider the (D)(3) and (D)(4) factors. There is no requirement that the Panel fill out its own Green Sheets or otherwise mechanically inventory or comment on each factor. Indeed, the Panel did inventory the Board's Essential Eligibility Requirements, which largely track the (D)(3) and (D)(4) factors. The Panel is to be complimented for having done so. Finally, read in its entirety, the Report comments to one extent or another on every one of the applicable (D)(3) and (D)(4) factors.

Further, according to Libretti, only the Admissions Committee considered the (D)(3) factors, and accordingly its “findings” should be upheld (Libretti Objections and Brief at 12-13). In fact, the CMBA interviewers based their recommendations on the incomplete and misleading information provided by Libretti. Even then, the interviewers viewed their recommendation as a “close call” (Tr. 574:7-17 (Kline)), and one which was tempered by ambivalence, concerns or reluctance. Tr. 574:7-22 and ff (Kline).

Perhaps most significantly, the CMBA interviewers noted that “the candidate appears to have disclosed complete information **but we have not had an opportunity to verify it ourselves.**” Tr. 576:17-22 (Kline) (emphasis added).

In contrast, the Panel had the opportunity to verify information disclosed by Libretti. The Panel found Libretti’s disclosures to be incomplete, evasive and deceitful.

**2. Libretti’s Complaint That Bar Counsel Used “Improper Innuendo” Was Waived and Is Wrong.**

Libretti next accuses Bar Counsel of an “improper use of innuendo to influence” or “manipulate” witnesses’ testimony. Again, he is wrong.

A sufficient response to Libretti’s argument is that he waived any objections to Bar Counsel’s questions by not making them at the hearing and by not raising them before the Panel in his post-hearing brief. But, there is more.

Curiously, to support his “innuendo” complaints, Libretti cites almost exclusively questions which relate to Libretti’s pre-1992 firearms, a concern which is not even mentioned in the Panel’s Report. Moreover, contrary to Libretti’s untrue contention of “innuendo” or “improper questions implying facts not in evidence” (Libretti Objections and Brief at 31), each of those questions was based on evidence in the record. Most significantly, CMBA Exhibit 38 includes a copy of the United States Supreme Court’s decision in *Libretti v. United States*, 516

U.S. 29 (1995). There the United States Supreme Court, quoting from the presentence report, which Libretti's counsel at the time conceded to be accurate, wrote "'Libretti's gun business was used to launder drug proceeds' and served as a means by which Libretti could 'justify his income since [he] was not working at times during the conspiracy and, when he was working, was not bringing in the money that would pay for the Lakewood house and other investments.'" *Id.*, 516 U.S. at 47. The Supreme Court also noted (1) Libretti's presentence report "related Libretti's investment of at least \$243,000 in numerous firearms (*id.*); (2) trial testimony that Libretti possessed "dozens of automatic and semiautomatic weapons" (*id.*, 516 U.S. at 33), and (3) the plea-bargain included dismissal of a count charging Libretti with possession of a firearm equipped with a silencer (*id.*, 516 U.S. at 34).

Other hearing exhibits including judicial opinions discussing Libretti's arsenal of weapons included CMBA Ex. 36 (firearms seized from Libretti's Colorado residence alone included more than 100 semi-automatic and fully automatic weapons); United States v. Richard Sabell aka Chinsq, No. 92-8061, 13 F.3d 407 (10<sup>th</sup> Cir. Dec. 21, 1993) (CMBA Ex. 54) (rejecting assertion by one of Libretti's co-conspirators that Libretti's BATF licensure was a defense, and noting that some of the firearms were licensed and some were unlicensed); and Libretti v. Dwyer, No. 93-1373, 37 F.3d 1509 table, 1994 US App. Lexis 29228, 1994 WL 573929 (10<sup>th</sup> Cir. Oct. 19, 1994)(CMBA Ex. 28).

Libretti offers what he calls a "blatant example" of "innuendo" relating to firearms. He asserts that CMBA Interviewer James Kline was asked "in contradiction to the actual evidence" whether a Colorado firearms case was dismissed as an informal part of Libretti's 1992 conviction. Libretti Objections and Brief at 34, citing Tr. 385. There are at least three independently sufficient responses. First, Libretti himself twice testified that the Colorado

firearms criminal case was dismissed as an informal part of his Wyoming plea bargain. Tr. 52:22-53:9; 148:16-19. Later, Libretti sought to retract that twice-given testimony. Tr. 475:22-477:13. Second, Libretti's purported retraction is based on a passage in CMBA Ex. 93, which reflects only that dismissal of the Colorado criminal case was not a formal part of his Wyoming plea bargain. That passage (at 4-5) in CMBA Ex. 93 is, moreover, most reasonably read to confirm that dismissal was an informal part of his Wyoming plea bargain. Third, the issue wasn't whether the dismissal was a formal or informal part of the plea bargain. The issue was the truthfulness of Libretti's assertion in his Application that "Charges were groundless and later dismissed." CMBA Ex. 1 at 67.

### **3. Libretti's Remaining But Multiple Attacks On The Panel Have No Merit**

Libretti bore the burden of proof by clear and convincing evidence. He failed to meet that burden. His failure, he now claims, is really the fault of the Panel. He accuses the Panel of not asking the right questions, failing to call other witnesses, requiring responsive answers, supposedly getting "angry" at what Libretti calls "measured and careful responses," allowing an "unwarranted adversarial nature of the hearing," and making "inaccurate renderings of the record" in its Report. These, he concludes, "irreparably tainted the resulting Report." Libretti Objections and Brief at 31. None of his contentions has merit.

Libretti first claims: "In the present case it is beyond cavil that the Panel did not ask the right questions in evaluating Joe's character and fitness, though not in the way it asserts Joe is demanding of it." Libretti Objections and Brief at 7. What is beyond cavil is this: Libretti was represented by counsel, who was free to ask Libretti and other witnesses any and all of "the right questions."

Libretti also complains that the Panel failed to call other witnesses. For example, he criticizes the Panel for failing to call additional witnesses to substantiate its finding (Report at 8),

which Libretti calls an hypothesis, that Libretti had a “blind spot” in his moral fiber when he (Libretti) recruited William Breedon, a convicted felon and then-current methamphetamine dealer, to Libretti’s Casper Spice business. Libretti Objections and Brief at 16. Libretti’s argument fails on at least three bases. First, the Panel’s finding is amply supported by undisputed evidence that: (1) Libretti’s association with and recruitment of Breedon violated the terms of his (Libretti’s) supervised release, (2) Libretti failed to disclose his recruitment of Breedon to his Probation Officer, (3) Breedon in fact sold Spice for Libretti on an Air Force Base in Cheyenne (CMBA Ex. 63 at 40 ¶48); and (4) Libretti’s own witnesses characterized Libretti’s association with Breedon both as demonstrating poor judgment, and as “a very dangerous thing for him [Libretti] to do” (discussed at p. 19 above). Second, Libretti could have called whatever witnesses he chose. Third, there is no credible evidence to support Libretti’s characterization of his recruitment of Breedon as a humanitarian effort to convince Breedon to stop selling methamphetamine (*see* Libretti Objections and Brief at 15, 16, 24). Libretti was certainly not commissioned by his probation officer to do so.

Libretti also criticizes the Panel for failing to contact “the U.S. Attorney’s office to clarify whether [he] had been granted immunity” in 2011 in order to confirm “the panel’s alternative version of events.” Libretti Objections and Brief at 19. Nonsense. First, CMBA Ex. 65 speaks for itself. Second, Libretti, who bore the burden of proof, could have done so. Third, Libretti was fully aware both (1) of his request for immunity in 2011 at the time he submitted his application in November 2012, and (2) of CMBA Ex. 65 at least at the time it was filed in ND OH and served on him on April 30, 2013. Fourth, if, as Libretti claims, no one ever told him whether or not his request for immunity had been granted (Tr. 518:20-519:2), Libretti could not have known whether or not he had been granted immunity. Thus, he had no factual basis to

support his decision not to disclose it in his November 2012 Application. Libretti's decision became completely indefensible after learning of CMBA Ex. 65. In sum, Libretti knew that he had sought immunity, knew by April 2013 that government records (CMBA Ex. 65) reflected approval of his request for immunity, and knew that he was under a duty of inquiry (*see* Tr. 520:7-19).

Libretti also complained that he was not allowed "to provide more information than was being requested." *Id.* at 37. This complaint has no merit either. First, it was entirely proper for the Panel chair to require direct answers to direct questions. Libretti's repeated refusal to do so accounts in part for the Panel's finding that Libretti was evasive. Second, Libretti and his counsel were entitled to follow-up on redirect examination with any explanations deemed appropriate. Libretti's first example – where Bar Counsel said "I'll let your lawyer ask you that" (*id.* at 37, citing Tr. 142) provides a perfect example. Libretti's counsel did follow-up on redirect (Tr. 482:4-483:9). In Libretti's second example, he was asked by a Panelist whether he was ever told by anyone that he had been given immunity in March 2011 (Tr. 422). The question arose during Libretti's redirect, and Libretti's counsel followed-up to the extent she deemed appropriate. His final example is frivolous. In his answer to the immediately preceding question by Bar Counsel, Libretti non-responsively testified that he did not disclose his possession of a controlled substance (JWH-018) in his ND Ohio complaint because "I don't think it was relevant to any of those claims." He was then gently re-asked the question by the Panel chair. Two questions later, Libretti again started to answer non-responsively. Only then did the Chair intervene more directly to ask for a direct answer.

Libretti further complains about what he calls the “unwarranted adversarial nature of the hearing, citing In re Application of Davis, 38 Ohio St.2d 273, 67 O.O.2d 344, 313 N.E.2d 363 (1974). He is wrong factually.

And, he is wrong legally. Davis was clarified in In re Application of Corrigan 47 Ohio St.3d 32, 546 N.E.2d 1315 (1989), where this Court explained:

“Davis invoked the attorney-client privilege, and the board respected it. That is the context in which we suggested, generally, that admissions cases should be nonadversarial. The case does not suggest that the board should refrain from asking penetrating questions about known past misconduct; in fact it suggests the opposite.

“In this case, counsel for the Board of Bar Examiners and members of the panel questioned Corrigan closely on the events of and her feelings during and about the cheating incident. They questioned her even more closely when her initial answers seemed equivocal or evasive. This was totally within the spirit of Davis and is therefore appropriate. Corrigan's first objection is meritless.”

Given a differing contest from Davis, and given the Panel’s finding of Libretti’s evasiveness, the conduct of the hearing was entirely appropriate under Corrigan.

Libretti also speculates that the Panel became angry with him. He argues that he (Libretti) “who had learned from painful experience to be very careful of what he does and says, angered the Panel with his careful and considered answers.” Libretti Objections and Brief at 48. There is no basis in fact to contend that the Panel became angered. Rather, the Panel displayed remarkable patience while “observing Libretti for a number of hours on the witness stand” (Report at 13), receiving testimony which it characterized as “evasive and not credible” (*id.* at 11), and leading the Panel to conclude that it did “not trust Applicant to be truthful or forthcoming” (*id.* at 13).

Moreover, far from giving “careful and considered” answers, Libretti got himself tangled in webs of inconsistent testimony. Many examples could be cited, and some are both in the

Panel's Report and elsewhere herein, to which the following can be added: (1) Libretti testified that both he and Hohlios were trustees (Tr. 95:2-23), and that Hohlios was the sole trustee (Tr. 461:8-24), of proceeds from the Casper Spice business. (2) Libretti initially claimed that the US Probation Office "has always known about my involvement in the spice business" (Tr. 95:24-96:6), but later admitted that he (Libretti) knew that it was wrong not to disclose his involvement in the Casper Spice business to his Probation Officer (Tr. 463:14-23), who did not learn of it until after the search of Libretti's Wyoming residence on June 2, 2010 (Tr. 462:15-21). Libretti now dismisses his initial testimony as "off-the-cuff" (Libretti Objections and Brief at 5) – hardly the hallmark of a "careful and considered" answer he now claims.

Finally, Libretti's criticizes the Panel for making "inaccurate renderings of the record" in its Report. He first cites the Report's finding that Libretti made "knowingly false" statements in a FOIA request attached to his May 6, 2014 Supplement. In his January 9, 2014 FOIA request, Libretti sought records relating to his March 2011 request for immunity. The FOIA request states that "The records are requested for the purpose of scholarly research and for educational purposes" and "these records are being requested for an educational purpose and not for a commercial purpose". Libretti then contends that because the FOIA request was made after the hearing, the Panel had no evidence to support its finding of falsity. He is wrong. First, the FOIA request was made two days after the hearing ended. Nowhere in the FOIA request does Libretti disclose the existence of his pending bar application, or that the issue of immunity related directly to an issue covered at some length at the hearing. Second, Libretti's true purposes are apparent from his actual use of them – the submission of the FOIA request and response in a post-hearing Supplement to his bar application, and then his submission of it to this Court to support his argument that immunity was not granted (Libretti Objections and Brief at



19). Fourth, Libretti's FOIA request failed (1) to cite documents already in Libretti's possession showing his request for and the grant of immunity by the US Attorney's Office (CMBA Ex. 65 at p. #30), and (2) did not even identify the federal prosecutor (Renee Bacchus) who handled the case in the district court and who now handles the Sixth Circuit appeal.<sup>29</sup>

Libretti also complains about the Report's citation of CMBA Revised Ex. 89, a summary exhibit of Libretti's 2010-2011 purchases of Spice-related raw materials. A sufficient response is that Libretti's objection(s) to this exhibit were waived. The record is absolutely clear that Libretti withdrew his nonspecific hearing objection to CMBA Revised Ex. 89, while reserving the right to object in Libretti's closing brief to the Panel as a Motion to Strike "if [Libretti's counsel] find any inaccuracies." Tr. 668:23-669:11. No such motion was ever filed. Moreover, CMBA has addressed the lack of substance of Libretti's objection(s) to CMBA Revised Ex. 89 in its opposition to Libretti's Motion to Strike (at pp. 4-5). To minimize repetition and to conserve space, CMBA incorporates its response.

Finally, Libretti criticizes the Panel for relying on what he calls an "unsourced explanation of a legal product's nature, effect, and potential for harm when none was presented at the hearing." As shown above (at p. 15), Libretti's contention that there is no evidence in the record of the toxicity of Spice is just plain wrong. Moreover, the record is also replete with evidence of Spice's nature and effect. *E.g.*, Tr. 293:8-23 (Libretti); Tr. 504:9-505:1 (Libretti). Whether or not the Panel chose to quote or paraphrase as a succinct summary of the evidence something derived from the National Institute on Drug Addiction – an agency of the Federal Government, and thus a Rule 803(8) entity, and one whose official publications are entitled to

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<sup>29</sup> At the hearing, Libretti hedged his answers to all questions about whether he in fact was granted immunity. Libretti's brief here is the first time he has taken the position that although immunity was requested and approved, it was not granted. If so, Libretti remains subject to federal prosecution for possessing a controlled substance.

judicial notice – does not change the evidence. Ironically, Libretti immediately violates his own objection by quoting from another website linked to the NIDA site (Libretti Objections and Brief at 40).

In sum, Libretti's criticisms of the Panel are sadly misplaced. In fact, the Panel exemplified diligence in preparing for the hearing, patience in enduring conflicting and evasive testimony from Libretti, and care in preparing its Report. Attacking judicial or quasi-judicial decision makers, as well as counsel, is a tool Libretti has a history of employing.<sup>30</sup> It shows poor judgment and desperation.

**C. Libretti's Argument That A Permanent Ban on His Reapplication Would Violate Substantive Due Process Lacks Legal and Factual Support.**

Libretti contends that, were this Court to adopt the recommendation of the unanimous Panel and the Board, such would be "unwarranted, arbitrary and capricious." Libretti Opposition and Brief at 41. He also claims that it would be unconscionable (*id.* at 26) and "a demonstration of hypocrisy" (*id.* at 47) for this Court to do so.

He then speculates that a permanent ban on reapplication would be a "kind of death sentence," because he asserts the Court's adoption of the Report would be a "complete exclusion from the practice of law in Ohio," "is likely to be the end of any professional employment" in another state as well as "any non-licensed job he applies for." *Id.* at 45. Libretti's speculation about future legal employment elsewhere is contradicted by an example provided by his amici (Amici Brief at 3-4), and his speculation about future non-legal employment is contradicted by

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<sup>30</sup> In 2012-2013 litigation, Libretti pilloried two federal judges. He ranted against Wyoming federal Judge Freudenthal, calling her denial of Libretti's request for a hearing as "tantamount to imprisoning someone for a crime, telling him that he must prove his innocence, and then refusing to give him a trial." CMBA Ex. 67 @ pp. 3-4. He also ranted against Ohio federal Judge Polster: "This Court, by refusing to exercise its jurisdiction, is allowing the government to violate Mr. Libretti's constitutional rights, and to steal his property." CMBA Ex. 76 @ p. 7.

the evidence. Tr. 548:23-549:9 (McGlade, though “disappointed” in new revelations about Libretti, would rehire him, though he (McGlade) would make “a couple more things very clear ... before we proceeded.”)

Libretti’s argument relies, *inter alia*, on Parate v. Isibor, 868 F.2d 821 (6<sup>th</sup> Cir. 1989), a case arising from academia. But Parate demonstrates that Libretti’s argument must fail. There, Parate “failed to prove that the defendants’ conduct ... was so severe, so disproportionate to the need presented, and such an abuse of authority ‘as to transcend the bounds of ordinary tort law and establish a deprivation of constitutional rights.’” *Id.* at 833.

Libretti does not even attempt to make such a showing. Rather, he argues, first, that his “redeeming qualities” distinguish him from others whose applications this Court found should be denied without permission to reapply. Libretti Objections and Brief at 43-44. And, second, he argues that this Court cannot adopt the Panel’s and Board’s recommendation because alcohol and tobacco are toxic, because manufacturers are represented by lawyers, because over the course of 50 years unidentified lawyers for tobacco companies did bad things, and because this Court has never denied admission to or disciplined lawyers for representing tobacco companies. *Id.* at 45-47, citing U.S. v. Philip Morris USA, Inc., 907 F. Supp. 2d 1 (D.D.C. 2012). These arguments are discussed in turn.

First, this Court has made it abundantly clear that a number of factors bear on whether an applicant should be denied permission to reapply. Those factors cannot be neatly distilled into the single, unifying principle as Libretti suggests: such a result, he argues, is reserved for “particularly egregious conduct involving dishonesty in multiple contexts (often falsification on a bar application of perjury before the Panel), exacerbated by a refusal to accept responsibility for wrongful conduct.” Libretti Objections and Brief at 43. Even if Libretti’s standard were to

be applied, he would not meet it. Moreover, given the range of applicant misconduct addressed in the Court's decisions, Libretti's efforts to distinguish other cases on their facts is unpersuasive.

This Court's cases do, however, provide critical guidance, and they demonstrate that adoption of the Panel and Board's recommendation would be both just and far from unwarranted, arbitrary, capricious, unconscionable, or hypocritical.

In In re Application of Cvammen, 102 Ohio St. 3<sup>rd</sup> 13, 2004-Ohio-1584, which Libretti cites, the Court articulated the "paramount concern." In Cvammen, which did not involve a prior felony conviction, this Court permanently denied Cvammen's permission to reapply, writing:

"The paramount concern in proceedings before the Board of Commissioners on Character and Fitness is whether the applicant possesses those moral traits of honesty and integrity which will enable him to fully and faithfully discharge the duties of our demanding profession. ..." *Id.* at ¶16, quoting In re Application of Davis, 38 Ohio St.2d 273, 274, 67 O.O.2d 344, 313 N.E.2d 363 (1974).

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"Where, as here, these ethical infractions so permeate the admissions process that the applicant's honesty and integrity are shown to be intrinsically suspect, our disposition must be to permanently deny his application to register as a candidate for admission to the Ohio bar." *Id.* at ¶22.

In In re Application of Aboyade, 103 Ohio St.3d 318, 2004-Ohio-4773, this Court left no doubt on the point, writing (at ¶16): "An applicant whose honesty and integrity are intrinsically suspect cannot be admitted to the Ohio bar." Similarly, in In re Application of Poignon, 132 Ohio St.3d 395, 2012-Ohio-2915, this Court concluded, "In light of this pattern, we agree with the board's conclusion that 'the ideals of trustworthiness and honesty that are so crucial to the legal profession simply would not be served by allowing [Poignon's] admission.'" The same is true here given Libretti's pattern of misconduct, though Libretti's pattern of misconduct differs from Poignon's. And, in its most recent decision denying reapplication, this Court in In re

Application of Wiseman, 135 Ohio St.3d 267, 2013-Ohio-763, found, as did the Panel here, that Wiseman “engaged in a pervasive pattern of lies and omissions throughout this admissions process in an effort to conceal his past conduct and convince this court that he possesses the requisite character, fitness, and moral qualifications to practice law in the state of Ohio.”

Second, Libretti asserts that it would be hypocritical for this Court to adopt the Panel and Board’s recommendation because it has never denied admission to or disciplined lawyers who represent tobacco companies. It is fundamental to our system of justice that clients are entitled to be represented by counsel – even drug dealers and even manufacturers of tobacco and alcohol. Setting aside Libretti’s effort at group character assignation,<sup>31</sup> Libretti’s position is but a thinly veiled effort at misdirection. Despite whatever “redeeming qualities” he possesses, Libretti is a convicted felon; he possessed controlled substances in June 2010 and March 2011; he repeatedly violated the court-ordered terms of his 2008-2013 Supervised Release, including lying to his probation officer; he was deceitful and evasive throughout the bar application process; and, there is no evidence of genuine remorse or acceptance of responsibility either as to his drug trafficking or as to his dissembling in the bar application process.

VI. **The Amici Brief Consists Of An Interesting Academic Discussion, But Is Divorced From The Facts Of This Case.**

Apart from its caption, the brief of Libretti’s amici makes no mention of Libretti at all. This cannot be due to ignorance, since two of the amici are represented by Libretti’s own defense counsel.

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<sup>31</sup> The undersigned counsel for CMBA represented R.J. Reynolds Tobacco Co. as outside counsel in litigation. So too did many of his professional colleagues – including distinguished members of this and other State bars; fellows of the American College of Trial Lawyers; and some of whom were or now are state and federal district or appellate court judges..

This Court, the Panel, and the Board embrace amici's hope that an applicant with a felony conviction has been rehabilitated, redeemed and restored to a productive life. Such is clear from this Court's decisions and from the Panel's Report. *E.g.*, Report at 5 (Libretti's "status [as a convicted felon], per se, does not demonstrate that he lacks the moral character to be a member of the Bar.") But, that hope does not always pan out.

Whatever the merits of amici's generalized academic discussion, even they urge unconditional approval of applicants only "in the absence of any present conduct rationally related to the practice of law ...." Amici Brief at 14. They do not urge approval of Libretti's application in particular. Nor would they given Libretti's recent (May 2008-May 2013) and repeated violations of the terms of his Supervised Release, and his recent (November 2012 to date) and repeated evasiveness during the bar admissions process.

### **CONCLUSION**

Whatever Libretti's "redeeming qualities," they are overwhelmed by his criminal convictions, his grants of immunity, his repeated violations of the court-ordered terms his 2008-2013 Supervised Release, his possession of controlled substances in 2010 and 2011, his disrespect for the law, his lack of genuine remorse, his failure to accept responsibility for his actions, and his duplicity throughout the bar application process.

Libretti admitted as much in his Motion to Withdraw Application, conceding that he failed to meet both his burden to establish by clear and convincing evidence his character, fitness and moral qualifications to practice law in Ohio, and that he has been rehabilitated.

Libretti exemplifies: "An applicant whose honesty and integrity are intrinsically suspect cannot be admitted to the Ohio bar." *In re Application of Aboyade*, 103 Ohio St.3d 318, 2004-Ohio-4773 at ¶16.

The recommendation of the unanimous Panel and by the entire Board should be adopted  
by this Court.

A handwritten signature in cursive script, appearing to read "Paul G. Crist", written over a horizontal line.

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[pgcrist@yahoo.com](mailto:pgcrist@yahoo.com)

*Attorney for Cleveland Metropolitan Bar  
Association.*

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original and 18 copies of the foregoing were sent by Federal Express this 20<sup>th</sup> day of November, 2014 to:

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 this 20<sup>th</sup> day of November, 2014 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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E-mail: [dzh@dzh-law.com](mailto:dzh@dzh-law.com)  
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

Rob Wall, Esq. (0082356)  
Ohio Justice and Policy Center  
215 East Ninth Street, Suite 601  
Cincinnati, Ohio 45202  
*Counsel for Amicus Curiae*  
*Ohio Justice and Policy Center*



CASE NO. 14-3266

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**IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH  
CIRCUIT**

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JOSEPH V. LIBRETTI, JR.,

Appellant,

-vs-

STEVEN WOODSON, IN HIS INDIVIDUAL CAPACITY,

Appellee.

---

On Appeal From the United States District Court  
For the Northern District of Ohio  
Case No. 1:13-cv-00932-DAP

---

**BRIEF OF APPELLANT**

---

C. Timothy Murphy III, Esq. (0091128)  
Murphy's Law, LLC  
5247 Wilson Mills Road # 211  
Cleveland, Ohio 44143  
Phone: (440) 941-3846  
Fax: (440) 290-4243  
[murphy@murphyslawllc.com](mailto:murphy@murphyslawllc.com)  
Counsel for Appellant

**STATEMENT IN SUPPORT OF ORAL ARGUMENT**

Appellant requests oral argument. First, the civil remedy available to a person when the police seized property that the warrant did not authorize them to seize requires clarification. Specifically, when the police seize property that the warrant did not authorize them to seize, while searching in an area that the warrant did authorize the police to search, does the seizure violate the Fourth Amendment? The current state of the law appears to incorrectly suggest that a civil remedy for a Fourth Amendment violation does not exist when the police seize property outside the scope of what the warrant authorized the police to seize.

Second, the law regarding the Fourth Amendment and the government's retention of seized electronic data requires clarification and development. Specifically, how long may the government retain seized electronic evidence before conducting a review of that evidence to determine whether any of it falls outside the scope of a search warrant? Further, at what point does the government's continued retention of seized electronic data that is not evidence of a crime violate the Fourth Amendment?

This case is ideal for resolving these issues. Although it was conceded at the suppression hearing in Mr. Libretti's criminal case that none of the seized computers or hard drives contained any evidence of a crime, they were not

returned until after Mr. Libretti's acquittal many months later. Oral argument will provide an opportunity to clarify the law in this area.

### **JURISDICTIONAL STATEMENT**

The District Court had jurisdiction pursuant to Title 28 U.S.C. §§ 1441, 1442, and 1446. This Court has jurisdiction to hear this appeal pursuant to Title 28 U.S.C. § 1291 (2006). The District Court entered the final judgment disposing of all parties' claims in this case on December 17, 2013. (R. 39, PageID# 577) Mr. Libretti filed a timely motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e) on January 10, 2014. (R. 40) The District Court denied the Rule 59(e) motion on January 27, 2014. (R. 42)

The notice of appeal was filed on March 24, 2014 (R. 43 PageID#607). Because the defendant is a former United States employee sued in an individual capacity for an act or omission occurring in connection with his duties performed on the United States' behalf the notice of appeal was timely pursuant to Fed. R. App. P. 4(a)(1)(B)(iv).

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Joseph V. Libretti, Jr.

(b) County of Residence of First Listed Plaintiff Cuyahoga  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

PRO SE

## DEFENDANTS

Steven Woodson Taylor Costney,  
in their individual capacitiesCounty of Residence of First Listed Defendant Narcon  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Bivens, 42 U.S.C. § 1983

Brief description of cause:

Fourth Amendment violations based on search and seizure

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$ 195,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S)

IF ANY NONE

(See instructions):

JUDGE

DOCKET NUMBER

DATE

5-27-14

SIGNATURE OF ATTORNEY OF RECORD

Joseph V. Libretti Jr.

FOR OFFICE USE ONLY

RECEIPT: CHY019566\$ 400.00

APPLYING IFP

JUDGE SWSMAG. JUDGE KMR

Print

Save As...

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Consent mailed  
2 Summons issued

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
U.S. DISTRICT COURT  
DISTRICT OF WYOMING

JOSEPH V. LIBRETTI, JR.,

Plaintiff, *pro se*,

v.

TAYLOR COURTNEY, AND  
STEVEN WOODSON,  
IN THEIR INDIVIDUAL CAPACITIES,

Defendants.

2014 MAY 29 PM 12 50  
Case No. 14-cv-107-SWS SRIS, CLERK  
CHEYENNE

CIVIL COMPLAINT AND  
RULE 38 JURY TRIAL DEMAND

PARTIES

1. Plaintiff Joseph V. Libretti, Jr. is a citizen of the State of Ohio.
2. Defendant Steven Woodson is a retired federal agent. On May 28, 2010 he drafted and applied for a search warrant that resulted in a search of Plaintiff's home at 3225 Quivera River Road in Casper, Wyoming on June 2, 2010. Defendant Woodson also applied for a warrant to seize Plaintiff's bank accounts and individual retirement accounts (IRAs) in April of 2011. Defendant Woodson is a citizen of Wyoming. Defendant Woodson is the defendant in counts I-IX of this Complaint.
3. Defendant Taylor Courtney is a law enforcement officer who executed a search warrant at Plaintiff's home located at 3225 Quivera River Road in Casper, Wyoming on June 2, 2010, and seized Plaintiff's property. Defendant Courtney is a citizen of Wyoming. Defendant Woodson is the defendant in counts X-XIII of this Complaint.

JURISDICTION

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1332 (diversity of citizenship).

- 231. Jury trial on all issues so triable.
- 232. Any other relief that this honorable court would find reasonable and just.

Dated: May 27, 2014

Respectfully submitted,

Joseph V. Libretti, Jr.

Joseph V. Libretti, Jr.  
Plaintiff, *pro se*  
1900 E. 30th St. Apt. 305  
Cleveland, OH 44114  
Ph 224-355-6358

**RULE 38 JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38 Plaintiff hereby demands a jury trial on all issues so triable.

Joseph V. Libretti, Jr.

Joseph V. Libretti, Jr.  
Plaintiff, *pro se*