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2020 VT 75

No. 2019-353

In re Michael Anderson (Office of Attorney Licensing) — Original Jurisdiction

Character and Fitness Committee

February Term, 2020

Thomas S. Durkin, Chair

Andrew R. Strauss, Office of Attorney Licensing, Burlington, for Petitioner-Appellant.

Michael B. Anderson, Pro Se, Valparaiso, Indiana, Respondent-Appellee.

PRESENT: Reiber, C.J., Robinson, Eaton, Carroll and Cohen, JJ.

¶ 1. **CARROLL, J.** Following a hearing by a three-member panel, the Character and Fitness Committee certified applicant Michael Anderson's good moral character to practice law. Pursuant to Vermont Rule of Admission 18(c), the Court ordered review on its own motion. On appeal, applicant, representing himself, argues that the Committee's decision should be affirmed because the Committee adequately performed its duty to investigate his good moral character "thoroughly, fairly, and impartially." We conclude that the Committee failed to provide sufficient factual findings to support its decision to certify applicant's good moral character. After conducting our own review of the record, we conclude that applicant has failed to demonstrate his good moral character.

I. Facts

¶ 2. In November 2018, while a student at Valparaiso University Law School in Indiana, applicant applied for admission to the Vermont Bar. As required for admission, applicant submitted a character and fitness application to the National Conference of Bar Examiners (NCBE). Question 33 of the character and fitness application asked if an applicant had "ever been a named party to any civil action." Applicant listed four civil actions where he was a named party.

¶ 3. In one of these civil actions, applicant wrote that he sued his law school because it would not reimburse him for pizza he bought for a school-sponsored Easter party. Applicant explained that the law school did not dispute that he spent the money but would not reimburse him because he did not have the original receipt. According to applicant, the school initially tried to "bully" him into dropping the suit but eventually wrote a check to the court clerk in the amount of costs and the case was dismissed.

¶ 4. Question 35 asked whether an applicant had ever been "cited for, arrested for, charged with, or convicted of any violation of any law." Applicant listed five criminal matters. In two instances he was charged, but the charges were later dropped. Applicant described the three remaining criminal matters as follows. In August 2007, he pleaded guilty to interfering with a 911 call. In March 2011, applicant was charged with public intoxication because, as he described it, he was "drunk and argumentative" at a music festival and "deserved it." Finally, in August 2018, while applicant was in law school, he was charged with misdemeanor theft for taking a flag from a display at a county courthouse. He provided the following explanation for the incident:

> Some friends and I took a flag from a display at the county courthouse. We did not intend to steal it, but only to parade around with it. I decided the gag had gone too far, and was in the process of carrying it back. A cop pulled up, and told me to drop it. I told him I would not drop a flag. He was going to let me put it back, but his supervisor pulled up. The supervisor told me to drop it. I told him I wasn't going to drop a flag. So they took the flag and said they were going to book me for a Public Intox. I demanded a breathalyzer and scored .05 (still legal to drive). Since there was no

> evidence to support the public intox, they booked me for theft even though they knew very well that I had no intent to steal anything.
>
> I have filed my motion for a jury trial, and expect to win it.

¶ 5. Question 37 asked whether an applicant had "been cited for, arrested for, charged with, or convicted of any moving traffic violation during the past ten years." Applicant listed six traffic violations. Finally, under question 47, which allowed an applicant "to provide additional information or further explain any . . . previous responses," applicant provided the following:

> I would only like to say that as a 40[-]year[-]old man, I have a lot more history under my belt than my colleagues in law school, most of whom are about 25 years old.
>
> Also, a good lawyer must respect the legal system, but must not be afraid of it. I feel my record shows that I have refused to be intimidated when I knew I was in the right, and that I have accepted punishment when in the wrong. I hope you won't judge me too harshly because I have presented you with such a long file.

¶ 6. Applicant graduated from law school in December 2018 and subsequently passed the Vermont Bar Exam. The following June, a member of the Committee reviewed applicant's application for admission to the Vermont Bar, which included the character and fitness report prepared by the NCBE. The reviewing Committee member declined to certify applicant's good moral character for three reasons. First, citing applicant's previous traffic violations and criminal charges, the committee member found it "unlikely" that applicant would be able to conform to the Vermont Rules of Professional Conduct, which govern the ethical conduct of licensed attorneys. Second, the committee member concluded that the record strongly suggested the possibility of a substance-abuse issue that could potentially injure applicant's future clients and also lead to violations of the Rules of Professional Conduct. Finally, the Committee member expressed concern about applicant's ability to conduct himself in a professional manner:

> [Applicant]'s record demonstrates an inability to conduct himself professionally and in a manner that engenders respect for the law when in situations involving conflict. As exemplified by his dealings with his law school [and the police], when [applicant] is

> involved in a dispute in which he feels he is in the right, he becomes confrontational, combative, rude, swearing, and insulting. Moreover, counsel for the law school, after resolving a dispute with [applicant] involving reimbursement for expenses, went so far as to suggest that [applicant] had filed a frivolous lawsuit against the school for the sole purpose of harassing the school. While [applicant] may have had justifiable issues with his law school, his inability to conduct himself professionally during the resolution of those issues strongly suggests that, when faced with legal conflict inside and outside of the courtroom as an attorney, [applicant] will not be able to conduct himself without obstructing the administration of justice and will not be able to abide by the Rules of Professional Conduct.

¶ 7. Pursuant to Vermont Rule of Admission 16(e)(2), a hearing was scheduled before a three-member panel and applicant, representing himself, submitted a brief arguing that his "past reveal[ed] that he [would] almost certainly be an excellent, ethical lawyer." Applicant identified the following positive factors that he claimed "completely mitigate[d] any credible claims that [his] relatively few misdeeds in the past might make him 'unlikely' to be an ethical attorney"—his employment history, driving record, good credit, charity work, and the honesty and consistency of his answers. With regard to the last factor, applicant gave the following explanation:

> [Applicant]'s application, the NCBE report, supporting documents, and the character and fitness disclosures made to Valparaiso University all match. . . . Moreover, [applicant]'s explanations of his interactions with the legal system lack embellishment. When he was innocent, he has explained what happened, and the records back him up thoroughly. When he was guilty, he has admitted it and taken what steps he could to make things right.

Applicant also cited the following factors that he argued were "either irrelevant, or amount to neutral" when understood in context: substance abuse, failure to follow police instructions, interfering with a 911 phone call and other criminal charges from Minnesota, and the lawsuit against his law school.

¶ 8. With regard to applicant's failure to follow police instructions, he acknowledged that he refused to comply with a police instruction to place an American flag on the ground. He asserted, however, that he did not regret refusing to put the flag on the ground because "[s]uch an

order is in derogation of the United States Flag Code, and Indiana statute." Regarding the lawsuit against his law school, applicant argued that he filed the appropriate paperwork along with a credit-card statement showing the expense and the vendor. The school declined to reimburse him for the pizza, explaining that it needed a receipt. Applicant explained that he did not have the original receipt and thought that asking for a duplicate receipt was inappropriate because in his experience obtaining duplicate receipts was associated with dishonest conduct. Applicant argued that he thought the "high road" was to file a cause of action in small-claims court and explained the proceeding events:

> On May 11th, [the school's general counsel] wrote a patronizing email . . . admitting liability for the initial expense, but asserting that it was for some reason unethical to file a lawsuit to recover it. He also cut and pasted some irrelevant section of the Indiana Rules of Professional Conduct into the email to make it seem as though [applicant] was violating them without actually stating as much. And he deliberately misconstrued some parts of a phone conversation where [applicant] had said going to court with the merits of a case so clearly in his favor would be "fun" and that he "looked forward" to his day in court, in an attempt to make it appear as though the suit was frivolous. He then attempted to trick [applicant] into accepting a check for an amount less than he was entitled to by pretending that the matter was already settled.

¶ 9. The hearing before the three-member panel of the Committee occurred in September 2019. Following the hearing, the panel issued a decision certifying applicant's good moral character. The panel found that during the hearing, applicant was "well-spoken, polite, and professional with the panel and came across as generally credible." Furthermore, the panel found that many of applicant's witnesses "spoke highly of him" and provided strongly positive reviews "without reservation." Based on these findings, the panel concluded that it was not "concerned with [applicant]'s ability to follow the law or a possible substance abuse problem."

¶ 10. The panel expressed several concerns, however, about applicant's ability to "conduct himself professionally and in a manner that engenders respect for the law when in situations involving conflict." The panel explained that "when confronted with his prior conduct

during the hearing, [applicant] showed little if any remorse or understanding of the problematic nature of his conduct." Instead, he generally insisted that his actions were "justified and appropriate, regardless of the flimsy nature of most of these justifications." Nevertheless, considering "the totality of the evidence, including [applicant]'s pre-law school career," the panel concluded that applicant's past conduct was not a basis for declining to certify his good moral character. The panel hoped and expected "that the experience of going through th[e] admission process, including appearing before th[e] panel, [would] encourage [applicant] to exercise more foresight when confronting conflict in the future."

¶ 11. Pursuant to Rule 18(c), the Court ordered review of the Committee's decision on its own motion. On appeal, applicant argues that the Committee's decision should stand. First, citing Rule 18(c), he argues that the Court lacks jurisdiction to review the Committee's decision on its own motion. Second, citing the Vermont Constitution, applicant argues that the Court must give deference to the Committee's factual findings. If the Court declines to give deference to the Committee's findings, applicant argues that the Vermont Rules of Admission "may as well end with a final section that reads 'none of the above rules apply if the Supreme Court doesn't like you.' "

¶ 12. Moving to the merits, applicant argues the Committee's decision should be affirmed because the Committee considered and then appropriately weighed all the evidence applicant presented, which included multiple witnesses who testified to applicant's good moral character. Applicant also argues that the NCBE report presents an inaccurate and out-of-context picture of his character. Returning to the pizza incident, he argues that his actions were justified because in Indiana it is acceptable to file a suit and refuse to settle when the merits are in a plaintiff's favor. Licensing Counsel, who represents the Committee in this matter, declined to a file a brief, explaining that although the Committee "wrestled with the decision as to whether to certify [applicant]'s good moral character," the Committee believes the "circumstances presented

to the Committee and the rationale behind [its] decision are fully laid out in the . . . written decision."

¶ 13. We conclude that given the Committee's concerns about applicant's prior conduct, it did not make sufficient factual findings to support its decision to certify applicant's good moral character. After conducting our own review of the record, we conclude that applicant has failed to demonstrate his good moral character.

II. Jurisdiction

¶ 14. Before turning to the merits, applicant argues that the Court lacks jurisdiction to review the Committee's decision because Rule 18(c) implies that the Court can order review of the Committee's decision, not conduct the review itself. This argument is completely inconsistent with the Vermont Rules of Admission and the Court's constitutional authority.

¶ 15. The Vermont Constitution gives the Supreme Court "disciplinary authority concerning all judicial officers and attorneys at law in the State." Vt. Const. ch. II, § 30. The Court accordingly has a "unique constitutional responsibility with respect to the regulation of the practice of the law." In re Brittain, 2017 VT 31, ¶ 17, 204 Vt. 572, 169 A.3d 1295. The Legislature has further recognized this inherent constitutional authority by statute, providing the Court with authority to "publish . . . rules regulating the admission of attorneys to the practice of law before the courts of th[e] State." 4 V.S.A. § 901. Pursuant to this authority, the Court promulgated the Rules of Admission to the Vermont Bar, "which are intended to ensure that attorneys granted admission to practice law in Vermont meet our standards for professional competence." In re Oden, 2018 VT 118, ¶ 3, 208 Vt. 642, 202 A.3d 252; accord In re Birt, 2020 VT 55, ¶ 5, ___ Vt. ___, ___ A.3d ___. In pursuit of this goal, the Rules provide the Committee with the authority to determine "whether an Applicant possesses good moral character." V.R.A.B. 4(b). Rule 18(c) in turn provides that the Court may order review of the Committee's "decision on its own motion."

¶ 16. Notwithstanding the Court's "unique constitutional responsibility with respect to the regulation of the practice of law," Brittain, 2017 VT 31, ¶ 17, applicant argues that Rule 18(c) does not give the Court authority to itself review the Committee's decision. Applicant submits that Rule 18(c) gives the Court authority to order review of the Committee's decision, not conduct the review itself.

¶ 17. "In interpreting a court rule, we generally employ tools similar to those we use in statutory construction." Oden, 2018 VT 118, ¶ 8 (quotation omitted). Consistent with the principles of statutory construction, we look at the rule's plain meaning. State v. Villar, 2017 VT 109, ¶ 7, 206 Vt. 236, 180 A.3d 588 ("The plain, ordinary meaning of the words control . . . ." (quotation omitted)).

¶ 18. There is no reasonable dispute that Rule 18 gives the Court authority to review the Committee's decision itself. Rule 18(c) explicitly says the Court may order review "on its own motion." Whatever ambiguity could possibly exist regarding who conducts the review is clarified by the rest of the Rule 18(c). The title of Rule 18(c) is "Right to Appeal; Supreme Court's Review." Rule 18(c) provides that either the applicant may appeal the Committee's decision to the Court, or the Court can order review. Rule 18(c) is accordingly clear that it is the Court which reviews the Committee's decision, whether the applicant appeals or the Court orders review itself.

¶ 19. Furthermore, Rule 18(d), entitled "Supreme Court Review," specifically empowers the Court to "take any action consistent with its constitutional authority." Because the Vermont Constitution gives the Court "disciplinary authority concerning all . . . attorneys at law in the State," Vt. Const. ch. II, § 30, the Court has both the "constitutional authority and responsibility for regulating the practice of law," which includes the responsibility for determining who is admitted to practice law in the state, Brittain, 2017 VT 31, ¶ 17.

III. Standard of Review

¶ 20. Applicant next argues that the Court is bound by the Committee's factual findings. Our case law is clear that members of the Committee are agents "of the Court appointed to investigate the subject matter," that is, an applicant's good moral character, In re Bitter, 2008 VT 132, ¶ 18, 185 Vt. 151, 969 A.2d 71 (quotation omitted), and serve "as an initial fact finder on behalf of the Court," Brittain, 2017 VT 31, ¶ 17. It is, however, "this Court that must be convinced of [an] applicant's good moral character." Bitter, 2008 VT 132, ¶ 18 (quotation omitted). For that reason, reviewing the Committee's decision is not analogous to reviewing the decision of a trial court or administrative agency. Brittain, 2017 VT 31, ¶ 17. "Our constitutional authority and responsibility for regulating the practice of law require that we consider the Committee's findings in the context of our own searching review of the record." Id. "Although we typically defer to the Committee's credibility assessments and findings, we are not bound to do so." In re Grundstein, 2018 VT 10, ¶ 23, 206 Vt. 575, 183 A.3d 574 (quotation omitted); cf. Birt, 2020 VT 55, ¶ 6 (explaining that the Board of Bar Examiners "is an arm of this Court and we are not bound by its findings or decisions").

IV. Merits

¶ 21. The question presented in this appeal is whether applicant possesses good moral character to be admitted to the Vermont Bar. "Good moral character is a functional assessment of character fitness" designed to exclude those from practicing law "whose prior conduct reasonably demonstrates a likelihood to pose a risk to clients, the legal system, or the administration of justice." V.R.A.B. 16(b)(1). While this "prior conduct usually involves either dishonesty or lack of trustworthiness," other conduct is also relevant to the extent it has a "rational connection with the applicant's present . . . capacity to practice law." Id. The applicant "bears the burden of proof of establishing good moral character." V.R.A.B. 16(c).

¶ 22. Here, the reviewing Committee member declined to certify applicant's good moral character, reasoning that applicant's prior conduct demonstrated (1) an inability to follow the law, (2) the possibility of a substance-abuse issue, and (3) "an inability to conduct himself professionally and in a manner that engenders respect for the law when in situations involving conflict." The three-member panel, however, certified applicant's good moral character. The panel concluded that applicant's prior behavior did not raise concerns about substance-abuse issues or whether applicant could follow the law. Although the panel expressed concern—like the reviewing member—about applicant's ability to conduct himself professionally in situations involving conflict, the panel concluded that applicant's "history of confrontational, combative, and insulting behavior" was not an adequate basis for declining to certify his good moral character.

¶ 23. We do not dispute that the Rules of Admission give the Committee broad discretion "to determine, through fair, impartial, and thorough investigation, whether an Applicant possesses good moral character." V.R.A.B. 4(b); Oden, 2018 VT 118, ¶¶ 4, 7. In conducting this investigation, the Committee serves an integral role as a factfinder acting on behalf of this Court. Brittain, 2017 VT 31, ¶ 17. As the factfinder, the Committee is in the best position to make credibility determinations and assess evidence. Id. The Committee's discretion, however, is not without limit. The Rules specifically direct the Committee to "prepare a written decision setting forth its findings, conclusions, and recommendations." V.R.A.B. Rule 18(a).

¶ 24. In this case, the three-member panel did not exercise its discretion in accordance with the Rules because it did not provide sufficient factual findings to support its decision to certify applicant's good moral character. Although the panel expressed concerns about applicant's prior conduct in situations involving conflict—including his failure to show remorse and his insistence that his actions were justified—it certified his good moral character. The panel concluded that this prior conduct was not an adequate basis for declining to certify applicant's good moral character. In support of this conclusion, the panel cited the "universally positive references" applicant

received from friends, colleagues, and law professors and noted that his pre-law-school career "appears to have been free of the poor judgment evidenced more recently." The panel also hoped and expected that the character and fitness process would "encourage [applicant] to exercise more foresight when confronting conflict in the future."

¶ 25. Considering that the panel specifically expressed concerns about applicant's prior conduct, his failure to demonstrate remorse for this conduct, and his resort to "flimsy" justifications for his behavior, the panel did not provide sufficient findings to support its conclusion that applicant's prior conduct did not provide a sufficient basis for declining to certify his good moral character. Applicant's pre-law-school conduct is less relevant than "his more recent expressions of character." Bitter, 2008 VT 132, ¶ 20. His pre-law-school conduct accordingly cannot override his more recent behavior, which, as the panel itself noted, could make it difficult for applicant to "navigate the small and collegial community of Vermont lawyers and judges." In addition, although numerous witnesses gave applicant positive references, these witnesses are of minimal relevance in determining whether applicant's "confrontational, combative, and insulting behavior" in situations involving conflict would pose a risk to future clients or the legal system.

¶ 26. Notwithstanding that the panel did not provide sufficient findings to support its decision to certify applicant's good moral character, it is ultimately "this Court that must be convinced of the applicant's good moral character." Bitter, 2008 VT 132, ¶ 18 (quotation omitted). After conducting "our own searching review of the record," Brittain, 2017 VT 31, ¶ 17, we conclude that applicant has failed to demonstrate his good moral character. Applicant's prior conduct indicates a patten of dishonesty and an inability to behave professionally in situations involving conflict that "reasonably demonstrates a likelihood to pose a risk to clients, the legal system, [and] the administration of justice." V.R.A.B. 16(b)(1). While we agree with applicant that his conduct before the panel is relevant, his conduct supports our conclusion that he has failed to demonstrate his good moral character.

A. Pattern of Dishonesty

¶ 27. The prior conduct that usually affects an applicant's good moral character "involves either dishonesty or lack of trustworthiness." V.R.A.B. 16(b)(1). "Because truthfulness is one of the most important character traits for a member of the bar to have," "[f]alse, misleading or evasive answers to bar application questionnaires may be grounds for a finding of lack of requisite character." Bitter, 2008 VT 132, ¶ 27 (quotation omitted). Applicants accordingly have a duty of candor and forthrightness in the answers they provide on their bar applications. Id. ¶ 20 (expressing concern over applicant's "evident lack of candor"). We are generally more concerned with an applicant's ability "to honestly and completely answer questions about [their] past" than we are with past conduct itself. Id. ("Although willing to accept applicant's rehabilitation since his past criminal infractions, we cannot ignore applicant's seemingly chronic inability to honestly and completely answer questions about his past."). An applicant's lack of candor before the Committee and this Court "is not irrelevant to our analysis," especially if the applicant provides inconsistent explanations for past conduct. Grundstein, 2018 VT 10, ¶ 37.

¶ 28. Here, the answers applicant provided on his bar application and his conduct throughout these proceedings indicate a pattern of dishonesty. Beginning with the bar application, several of applicant's answers fell short of his responsibility to be truthful and honest. These answers are particularly troubling given that, in his application, applicant attested that his answers were true and he had "not omitted any information that [wa]s reasonably responsive or related to the information requested." See Bitter, 2008 VT 132, ¶ 26 ("[W]hile some of applicant's answers may have, in some quibbling sense, been correct, they were certainly not complete, nor were they in keeping with his affirmation at the end of the application that he had answered all questions 'fully and frankly.' ").

¶ 29. We focus on applicant's answer to question 33, which asked whether an applicant had "ever been a named party to any civil action." In answering this question, applicant explained

that he sued his law school because it would not reimburse him for pizza he bought for an Easter party. Although the school did not dispute that he spent the money, applicant alleged that the school would not reimburse him because he did not have the original receipt. This answer did not fulfill "applicant's responsibility to be truthful and honest." Bitter, 2008 VT 132, ¶ 26.

¶ 30. The record indicates the following about the pizza incident. On March 29, 2018, applicant requested that he be reimbursed $296.26 and attached a bank statement showing a charge in the same amount. Applicant was subsequently informed that the law school could not reimburse from a bank statement and was directed to call the vendor for an itemized receipt. Instead of obtaining a receipt, applicant filed a lawsuit. A few days later, applicant sent an email to the law school's general counsel explaining that he filed a lawsuit, and could not understand the school's strategy because there was no dispute that the school owed him the money and he would prevail on the merits. Applicant spoke with the general counsel on the phone that same day. During that phone call, general counsel told applicant that he would be reimbursed if he provided an itemized receipt. Applicant responded that he could get a receipt but chose not to because that would be "no fun." Instead, applicant said he would bring an itemized receipt or affidavit to court so he could prevail on his case.

¶ 31. General counsel sent applicant an email on May 11 explaining that he obtained an itemized receipt from the vendor, and that applicant could pick up the check in the amount of $296.26, which would satisfy the claims outlined in his lawsuit. General counsel also informed applicant that he found his conduct "disturbing." Citing several sections of the Indiana Rules of Professional Conduct, general counsel warned that if applicant were an attorney, he "would have filed an ethics complaint against [applicant] and asked for court costs, attorney fees, and sanctions in the case before the court. Consider this a lucky lesson learned." Applicant responded: "I reject your offer in settlement." On June 20, the law school paid the amount sought and court costs to the court clerk's office and the lawsuit was dismissed.

¶ 32. Considering this record evidence, applicant's description of this event on his bar application was inaccurate. The school was not refusing to reimburse him. The school was instead asking him to provide a receipt. Nor was the school asking for the original receipt as applicant described, but any itemized receipt.

¶ 33. Applicant's inability to honestly answer questions about the pizza incident is particularly troubling because it involves the legal system. Any dishonest conduct is relevant to determining good moral character "[b]ecause truthfulness is one of the most important character traits for a member of the bar to have." Bitter, 2008 VT 132, ¶ 27. The ultimate inquiry, however, is whether the applicant's "prior conduct reasonably demonstrates a likelihood to pose a risk to clients, the legal system, or the administration of justice." V.R.A.B. 16(b)(1).

¶ 34. The underlying conduct that applicant did not honestly describe directly involved harm to the legal system. Judicial resources were spent litigating a frivolous claim that could have been resolved if applicant simply had provided an itemized receipt. His lack of candor regarding this incident is therefore especially relevant in assessing whether he possesses the good moral character to practice law. Applicant's failure to honestly describe an incident in which he filed a frivolous lawsuit against his law school does "not give us confidence that applicant understands the importance of honesty or the gravity of his behavior." Grundstein, 2018 VT 10, ¶ 40 (quotation omitted).

¶ 35. Throughout the character and fitness process, applicant has continued to mischaracterize the school's actions and provide new and shifting explanations to justify his inappropriate conduct. In his bar application, applicant explained that he filed the suit to get reimbursed. In his brief before the panel, however, applicant argued that he also brought the lawsuit suit to convince his law school that its "policy of denying legitimate expenses was wrong." He also admitted in his brief that the school would have accepted a duplicate receipt, but argued that he thought it would have been inappropriate to get a duplicate because, in his experience,

obtaining multiple receipts is associated with dishonest conduct, such as seeking reimbursement from multiple entities or committing tax fraud. Finally, applicant described the general counsel's May 11 email as "patronizing" and accused counsel of pasting "irrelevant sections of the Indiana Rules of Professional Conduct into the email to make it seem as though [applicant] was violating them."

¶ 36. During the hearing before the panel, applicant initially stood by his new explanation that he did not ask for a duplicate receipt because of his concerns with fraud. When pressed by the panel, however, applicant conceded that his actions were inappropriate:

> [I]t was done when I shouldn't have done it. I'm not going to try to justify it further other than just to explain my thoughts at the time and it wasn't something that I would consider typical. We were in this really emotionally charged time.

Applicant assured the panel that he "would never do that again."

¶ 37. Notwithstanding applicant's assurance that he would not engage in this conduct again, applicant argues in his appellate brief that suing the law school was justified. He submits that filing a lawsuit in Indiana when the merits are in the plaintiff's favor and refusing to settle is fine because "[t]he laws and legal culture are different there." He asserts this despite the fact that the law school's general counsel specifically warned him that his conduct would have violated the Indiana Rules of Professional Conduct if he were a licensed attorney. In fact, applicant argues in his appellate brief that general counsel falsely accused him of behaving unethically to try to force him to settle.

¶ 38. While providing these shifting explanations and mischaracterizing the school's actions, applicant has continued to emphasize the honesty and consistency of his answers. In his brief before the panel, applicant cited the consistency and honesty of his answers on his bar application as a positive factor indicating his good moral character. He inaccurately argued that his application, the NCBE report, and supporting documents were all consistent with the

explanation he provided. After telling the panel that suing the law school was inappropriate, applicant argued in his appellate brief that his conduct was totally justified and swore, under the penalty of perjury, that everything in his brief was true to the best of his knowledge.

¶ 39. In short, applicant's answers on his bar application and his conduct throughout the character and fitness process demonstrate a pattern of dishonesty that indicates he lacks the good moral character to practice law. He has not honestly described the pizza incident—which directly involved harm to the legal system—and has offered conflicting justifications for his conduct. Especially troubling is that applicant acknowledged before the panel that his conduct was wrong and specifically assured the panel that he "would never do that again." Before this Court, however, applicant continues to insist that filing his frivolous lawsuit was justified.

B. Situations Involving Conflict

¶ 40. In In re Brittain, we declined to certify an applicant's good moral character because his prior conduct "demonstrated a pattern of disrespect and insubordination towards the courts" that would likely result in injury to clients, the obstruction of the administration of justice, or a violation of the Rules of Professional Conduct. 2017 VT 31, ¶ 37. We explained that in four prior instances, the

> applicant demonstrated disrespect towards the court by willfully disregarding court orders or interrupting or inappropriately arguing with the judge about those orders; he showed very little understanding of the bounds of proper courtroom demeanor, particularly in the presence of a jury; and he frequently responded to the court's admonitions by asserting that the judge was biased against him.

Id. ¶ 38. Similarly, in In re Hirsch, we concluded that the applicant had not demonstrated his fitness to practice law because his conduct indicated "an inability to make proper presentations of fact and law on behalf of a client or to focus on the client's needs in or out of court." 2014 VT 28, ¶ 10, 196 Vt. 170, 95 A.3d 412 (quotation omitted). We explained that applicant had, among other

things, accused a Vermont magistrate judge of "lying and conspiring to prevent his admission to the bar of New Hampshire." Id.

¶ 41. While this case is distinguishable in some respects from Hirsch—which considered the applicant's fitness rather than his good moral character—and Brittain, applicant's prior conduct demonstrates that when asked to do something he disagrees with, he becomes argumentative, confrontational, and often refuses to comply. In addition, applicant insists that his refusal to comply is justified, accuses others of misconduct, and/or alleges some kind of personal animus. Accordingly, like Hirsch and Brittain, applicant's prior conduct demonstrates that he would likely be unable to put his client's interests first or respect the legal process. Applicant's "prior conduct reasonably demonstrates a likelihood to pose a risk to clients, the legal system, [and] the administration of justice." V.R.A.B. 16(b)(1). Applicant's conduct during law school and his interactions with law enforcement illustrate our concerns.

1. Conduct During Law School

¶ 42. In December 2015, applicant received an email from his law school's financial aid office telling him that he needed to complete an Educational Benefit Agreement Form before registering for classes. Although a standard form, applicant responded that he could not sign the form because it would make him personally liable for significant sums. The terms, applicant explained, were "too perilous to [his] children" who were already living in "abject poverty so that [he] could come to law school." Applicant then sent an email to the school's general counsel reiterating the reasons why he did not want to sign the form and questioning the legality of making him do so. He cautioned that there was "a pretty serious chance that refusing to allow [him] to register could create a significant liability to the school; but, allowing [him] to register without signing the form in question create[d] none whatsoever." Eventually, applicant conceded and signed what he referred to as an "obsolete form."

¶ 43. In August 2017, the law school's registrar reminded applicant that he needed to complete a legal writing course to graduate the following spring. Applicant subsequently petitioned to waive out of the class. When an associate dean informed applicant that his petition had been denied, applicant sent an email to the dean criticizing the school's decision, including the school's interpretation of various American Bar Association (ABA) regulations. The email in part read:

> I have to admit I feel a little screwed here. [Professor] Siegel was a mean, incompetent teacher, and I wouldn't trust her to write out a parking ticket. As I understand the story, she made [another student] cry the first term, and he had so many credible complaints against her that he managed to get out of the class. Somehow, I ended up stuck with his seat, and had to transfer from the warm bosom of [another professor's class] . . . . Then, [Professor] Siegel lied, said I had missed too many classes (I left the one in question for a moment, but came back), and got me [administratively withdrawn]. I didn't seriously contend the [administrative withdrawal] on [another person's] advice . . . . And now, looking back at the whole thing, I am going to have to give up an opportunity to study something that is actually enriching, and that furthers my legal education, so that I can re-take a course that I substantially completed anyhow.
>
> If I had any sense, I would have turned on the waterworks like [the other student] did and gotten out of the thing myself.

After the associate dean responded explaining that applicant would have to take the class, and offered to place applicant in a section taught by a professor he may prefer, applicant sent an additional email. In the email, applicant said it was "horseshit" that he had to take the class, questioned Professor Siegel's qualifications to teach the writing class, alleged that she lied about the classes he missed, and claimed she violated both ABA regulations and the honor code.

¶ 44. The pizza incident occurred that spring. When applicant learned from various administrators that he needed an itemized receipt, he sent an email to the school's general counsel, questioning the school's receipt policy:

> I don't think there is any real dispute that VU owes me the money, and I can't imagine I won't prevail on the merits of the case. Plus,

> the optics of the thing are just beautiful from my perspective. The event in question was an Easter party for the children of students, and we invited the kids from [H]illtop [H]ouse. So I am getting stiffed for buying poor kids pizza for crying out loud.
>
> Further, this seems like a really dumb situation to put the school in. I understand that VU is trying to divest itself of the law school. And I imagine some snarky article on Above the Law about how VU Law is such a terrible law school that one of its students sued it and won would really hurt VU's bargaining position. It's really none of my business, but it seems absurd.

On his bar application, applicant alleges the school improperly tried to "bully" him into dropping the suit.

¶ 45. While each of these instances alone could seem harmless, when taken together this law school conduct establishes a troubling pattern of behavior. See Brittain, 2017 VT 31, ¶ 38 (considering cumulative impact of applicant's behavior). When asked to do something he disagreed with, applicant questioned the validity of what he was asked to do, engaged in rude and demeaning behavior, and accused others of wrongdoing. When asked to sign a standard form, applicant alleged that the form was unfair to his children and suggested that making him sign the form could create legal liability for the school. When informed he had to take a basic legal writing course, applicant alleged, among other things, that his writing professor was incompetent, lied about his absences, and had violated ABA regulations. And when asked to do something as simple as provide an itemized receipt, applicant filed a frivolous lawsuit.

¶ 46. It could be easy to diminish the significance of applicant's law school conduct. However, his inability to comply with simple requests in law school without engaging in personal insults, accusing others of misconduct, or filing frivolous lawsuits, casts serious doubt on his ability to put his clients' interests first by ethically performing the myriad of more complex tasks expected of lawyers in situations that are often emotionally intense and have more significant things at stake than class schedules and reimbursement for the cost of pizza. Nor can we dismiss

this behavior as atypical because applicant had a similar interaction with law enforcement during law school.

2. Refusing Police Officer's Instruction

¶ 47. Following applicant's third year of law school, he was walking to a restaurant with some of his friends. As a "gag," one of applicant's friends took an American flag from a display in front of a courthouse that was mounted on a six- to eight-foot flagpole. When they reached the restaurant, an employee told them he was going to call the police because they had the flag. While applicant was carrying the flag back to the courthouse, a police officer told him to drop the flag. Applicant responded that he could not put a flag on the ground because his grandfather was a veteran. Although applicant alleges that the first officer was going to let him put the flag back, "a sergeant showed up and started yelling and all these police cars . . . pull[ed] up and finally somebody took the thing." Applicant was subsequently charged with misdemeanor theft.

¶ 48. This interaction with law enforcement demonstrates the same problematic behavior that applicant engaged in during law school. When asked to perform a basic task by a police officer, applicant questioned the validity of the order and refused to comply. Not only did he refuse to comply at the time of the incident, applicant has insisted throughout the character and fitness process that his action was justified. For example, in his brief before the panel, applicant suggested that the officer's order was inappropriate because the officer asked him to "desecrate an American flag."

¶ 49. Applicant's inability to comply with a basic request from a police officer—and his insistence that the officer was wrong for asking him to drop the flag—further indicates that applicant would likely harm future clients and the legal system. His refusal to comply with a request from a police officer he perceived as illegitimate indicates he would likely disregard a client's request he disagreed with or refuse to respect a court decision he thought was wrong or unfair.

¶ 50. In sum, we reverse the Committee's decision certifying applicant's good moral character. After conducting our own review of the record, we conclude that applicant has failed to demonstrate his good moral character to practice law for two reasons. First, applicant's answers on the bar application and his conduct during the character and fitness process indicate a pattern of dishonesty. Second, the record indicates that in situations involving conflict, applicant would likely be unable to put his client's interests first or respect the legal process.

The application of Michael Anderson for admission to the Vermont Bar is denied.

FOR THE COURT:

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Associate Justice