IN THE SUPREME COURT OF OHIO

In re: Application
Cynthia Marie Rodgers

Supreme Court Case No. 2019-1094

Applicant's Objections to the Board of Commissioners on Character and Fitness Findings of Fact and Recommendation

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Applicant's Objections

BRIEF IN SUPPORT

I. PROCEDURAL AND BRIEF FACTUAL SUMMARY

In August 2014, Cynthia Rodgers graduated from the graduate level paralegal program at Capital University Law School. In August 2015, she began a juris doctorate studies at Capital University Law School. In September 2018, Applicant obtained a legal intern license (Bd.File # 18, p. 17) and worked as a legal intern at Capital University Law School Legal Clinic in September 2018 during her final year of law school. (Bd.File number 22, p. 3.*)* This license enabled her to work at the law school litigation clinic and also gave her the opportunity to work at the Gahanna Prosecutor's office on Thursday during Mayor's Court. In addition, Rodgers was able to join the defense team at the clinic to defend a stalking victim in the civil case of *Brett Suttle v. Nicole Suttle* in Franklin County Common Pleas Court. In May 2019, Applicant began as a licensed legal intern at Southeastern Ohio Legal Services on 4-12-2019 (Bd.File #19, p.1) and graduated from Capital Law School with public service honors.

Applicant filed her Registration Application on November 15, 2016. (Bd.File #1) disclosed many civil cases that were filed in various courts and many administrative matters heard out of court. These court cases included 2 civil cases in which she was initially pro se and then obtained assistance of an attorney to settle the case. This was the counterclaim in *Watts v. Rodgers, which was* settled by David Little, Esq. (Bd.File #2, p. 113) and a civil

claim regarding a used vehicle which was settled with the assistance of David Stokes, Esq[1] known as *Rodgers v. JLH Auto/GM, et al*.

Rodgers did estate work from 2004 to 2015. In one case, Rodgers was the administrator of three estates. In the first estate, she had a probate attorney and various attorneys in a declaratory action. The last attorney hired in that case had responded to a Motions for Summary judgment and deposed George D. Pahoundis. After the court permitted her to withdraw, she advised Rodgers that she could continue to represent herself in the capacity as an administrator and continue with the trial pro se. This advice regarding how to continue as a pro se administrator came just before the jury trial was to set to begin in November 2006. Rodgers was advised by counsel that she also had the option to dismiss the case. Rodgers as administrator of the estate of her father was unsure about how to do a jury trial and asked the court to change it to a bench trial the afternoon before the trial was to begin. After the 2 ½ day bench trial, the trial court asked for post-trial briefs. At no time did Rodgers claim to be an attorney. After the trial the complaint was ultimately dismissed in 2007, a nunc pro tunc

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[1] Handwritten notes show that on 3-28-12 at 1pm a voice mail was left for Elizabeth M. Norton (0082610) of Frost Brown Todd LLC phone 614-464-1211. Rodgers met with attorney Karen H. Wentworth at 51 North Third Street, Suite 401 Newark, Ohio to see if she was interested in the case. Attorney Wentworth gave Rodgers her email of khwlaw@yahoo.com

- In an email dated 5-7-2013, attorney Wentworth stated "I was very impressed by the work you did on your own and your attention to detail. I think you should go to law school!"
- Rodgers also had a conference with attorney Max C. Sutton of the Sutton Law Firm at 3 N. 3rd St. Newark, Ohio. Sutton later called Rodgers and told her to contact defendant's attorney at Morrow, Gordon, Byrd at 33 W. Main Street, Newark, Ohio.
- In addition, Rodgers emailed GM attorney on 5/12/2013 in an attempt to work out a settlement On 5/14/2013, GM settled and Rodgers dismissed the complaint against GM.
- In the Complaint under a section entitled "Attempts to Reach an Agreement", Rodgers stated, "On or about August 20, 2010, Plaintiff faxed a two-page letter to John Hinderer Honda (fax 740-522-4219) to request that John call Plaintiff about the oil cooler replacement that was expected to cost $397.62 plus labor. …The replacement hoses as detailed on a 2010 General Motors diagram are estimated to cost $608.00 … Both Defendant Hinderer Honda and "John" failed to contact Plaintiff. Plaintiff left a voice mail message with Kyle of Hinderer Dealership on 10-7-2010 offering to work with the Hinderer Dealership to save on labor costs but Defendant failed to return telephone call." Complaint, page 10.

order was then issued in favor of the defendant and then recorded at the Coshocton County Recorder's office. Since there was no standing for the administrator to defend against the counterclaim, this order can be stricken from the record.

Rodgers was advised by counsel that she had a right to appeal the late Judge Evan's decision. Rodgers continued pro se in the appeal. The appeal went to the Fifth District Court of Appeals and then on to the Ohio Supreme Court. Rodgers then filed a "Motion for a New Trial" in 2007. After that motion was denied, Rodgers filed a "Motion for Reconsideration" which was also denied. Rodgers appealed the denial to Fifth District Court of Appeals and then to the Ohio Supreme Court.

Rodgers has admitted she did not know much about the law back then. Rodgers was following the advice of counsel and believed that she was doing what she needed to do as her duty as administrator of her father's estate.

While Rodgers was in paralegal school and law school, the filings associated with her father's estate, were boxed up and stored in the basement. Now ten years later, after completion of her legal studies, and reading the panel's report, Rodgers has found that other courts have never permitted administrators to proceed pro se in the trial court or in the appellate court. One recent example is the *Lusk* case. In that case, the appellate court ruled, "Therefore, because Lusk is not authorized to appeal pro se from the trial court's dismissal of the wrongful death and survival claims he filed against appellees on behalf of the decedent's statutory next of kin and her estate, we must dismiss this appeal." *Lusk v. Crown Pointe Care Ctr.*, 2019-Ohio-1326, ¶ 12, appeal not allowed, 2019-Ohio-3731, ¶ 12, 157 Ohio St. 3d 1406.

Rodgers did probate work from November 2006 to November 16, 2014 (Judicial notice of Coshocton County Probate docket. Exhibit 3) on the "farm" case and two other cases related to the farm. One was a title search case and the other involved a negligently drilled water well on the farm that Rodgers believed at the time may have contributed to her elderly father's death and

to her great-nephew's death (Ray Pahoundis, aged 2 mo.). Since Rodgers had been permitted to appear in court in the farm case, Rodgers thought she was allowed to handle other cases related to the farm. Rodgers believed she had a right and a duty to do so. Rodgers believed she had a duty to do her best at presenting the cases of the administrator of her father's estate.

Now in hindsight, every appeal should have been marked as in *Lusk*, "*appeal not allowed*". Rodgers had never had an estate case before this and did not know her proper role as administrator. Rodgers had access to the internet through America Online which was a very slow browser at the time. Rodgers was denied access to the law library in Coshocton and did not have access to WestLaw or Nexis. Rodgers' research was limited to finding a copy of a similar filing at the courthouse and following it as a guide. At no time did Rodgers claim to be an attorney.

When one appears in court without standing, the appearance has no effect on the rights of others. If it were so, parties rights would be affected by those without standing. Here, no damage has been done to the rights of the estate of John D. Pahoundis. The estate had no access to funds that might have been available at the time to hire an attorney. Rodgers received no benefit from handling the estate as she did not receive payment for her work as administrator.

The estate action filed by Craig Eoff and Steven Elliot of Eoff and Elliott was a request for a declaratory judgment. Because the court did not "set forth its construction of the disputed document <deed> or law, and expressly declare the parties' respective rights and obligations, "merely entering judgment in favor of one party <The Pahoundis Family Trust>, without further elaboration, does not constitute a final judgment sufficient to give this <Fifth District Court of Appeals> Court jurisdiction over an appeal." {¶9} "[I]n the context of a declaratory judgment action, merely entering judgment in favor of one party, without further elaboration, does not constitute a final judgment sufficient to give this Court jurisdiction over an appeal." *Peavy v. Thompson*, 9th Dist. Summit No. 25440, 2011–Ohio–1902, ¶ 10. "In order to properly enter judgment in a declaratory judgment action, the trial court must set forth its

construction of the disputed document or law, and must expressly declare the parties' respective rights and obligations." *Miller Lakes Community Assn. v. Schmitt*, 9th Dist. Wayne No. 11CA0053, 2012-Ohio-5116, ¶ 8. *Estate of Gravis v. Coffee*, 2019-Ohio-2806, ¶¶ 8-9

When a case is filed without standing, the case is a nullity. This is because a case is a "legal nullity", when a "complaint clearly violates R.C. 4705.01 because he filed it on behalf of others. Therefore, his complaint is a legal nullity, and he does not have a meritorious claim because he failed to properly commence or attempt to commence an action for wrongful death." *Baon v. Fairview Hosp.*, 2019-Ohio-3371, ¶ 33. When one files a case without standing, the filing has no effect on the rights of others. Here, Rodgers believed she had standing to file complaints as she had been allowed to appear in court, appeal decisions and argue before the Fifth District Court of Appeals from 2006 to 2008.

In 2008, Rodgers filed a pro se complaint as an administrator against *Varsity Title et al* in Muskingum County. That court did not sanction Rodgers for the filing. Rodgers quickly realized she was untrained for the task of responding to discovery. Rodgers dismissed this case in less than 15 days. This filing did not affect the rights of the estate, because the judicial certificate of title prepared by Varsity Title was only used in the bench trial and because the bench trial decision had no effect on the rights of the estate. Only an attorney representing the estate would have had standing to bring action on the judicial certificate of title.

In 2008, Rodgers filed a pro se complaint as administrator against *Buckeye Union Drilling (aka Multi-Crown Systems, Inc.)* in Coshocton County. Since Rodgers was permitted to continue with the bench trial in 2006, Rodgers believed she could file this case on behalf of the estate. When a case is filed without standing, the case is a nullity. This is because a case is a "legal nullity", when a "complaint clearly violates R.C. 4705.01 because he filed it on behalf of others. Therefore, his complaint is a legal nullity…." *Baon v. Fairview Hosp.*, 2019-Ohio-3371, ¶ 33.

Rodgers argued in the May 14, 2019 panel hearing that now that she is more educated in the

law, she would do things differently procedurally and would limit the number of defendants in a claim. Rodgers not aware of the extent of her prior errors until after reading the panel report, researching the issues on West Law and reviewing the answer filed by an attorney in the *Buckeye Union Drilling/Multi-Crown Systems* case.

Rodgers recalls a conversation with Frederick Sealover regarding a problem with her doing things "for others," but it was not clear what he meant. Rodgers was the administrator of the estate of John Pahoundis at the time and believed that she could represent the administrator in lawsuits. Now reading the law, Rodgers sees what attorney Sealover was probably trying to say. Although Coshocton city prosecutor James Skelton and County Prosecutor Robert Batchelor and Judge Evans and Rodgers' counsel did not know administrators could not appear in court, the UPL law states that it was not permitted.

After reading the panel report, Rodgers looked at some of the old complaints she had filed years ago. Rodgers admits her writing was unclear in several instances. When asked about the "farm" case, Rodgers stated that she would have dismissed the "farm" case instead of proceeding with the bench trial. This was because the trial was hard to do and the appeal process was so time consuming. She admitted she did not know what "sustained" and "overruled" meant at the time. Rodgers admits that under the pressure to meet the deadlines and to try to figure out what was required of her in each step by the various courts, that Rodgers often wrote too much. She rambled and was not clear or lawyer-like. These documents were filed when Rodgers did not know better. Not only did she not know better, the rural court and opposing counsel did not know better either. No sanctions were brought against Rodgers and the trial court did not tell Rodgers that she could not proceed pro se. After the bench trial, Rodgers argued before the Fifth District Court of Appeals and then appealed to the Ohio Supreme Court.

Rodgers had a duty to do her best for the estate, and believed that she had a duty as administrator to keep possession of the family farm and determine what other assets belonged to

the estate. Rodgers's search for assets led to microfilm in Summit County Probate Court that were owned by her father and his siblings. Since many of her aunts and uncles were out of state, Rodgers filed a complaint in federal court and received a decision from the Honorable Sara Lioi, of the U.S. District Court, Northern Division. In the decision, Judge Lioi dismissed Rodgers complaint due to lack of jurisdiction and explained that since the complaint had to do with probate assets, the case belonged in Probate Court instead of federal court.

After contacting Summit County Probate Court, Rodgers was informed she would need an attorney to proceed. While seeking an attorney, Rodgers talked to a Cleveland attorney George Pilat, who encouraged her to go to paralegal school. Rodgers completed paralegal school and received her paralegal tuition back as a scholarship to attend Capital University Law School. (Rodgers did not recall at the time of the hearing that she had also received the Addison & Dewey Scholarship in 2017/2018 academic year.)

From Rodgers's sense that injustice, sometimes demands a legal remedy, Rodgers believes that she can be of benefit to others. In 2013, Rodgers accompanied her youngest brother Joe to see an attorney after Joe claimed he had been removed from a Utica police cruiser while handcuffed, then maced and put back into the cruiser.

Rodgers found the *Copen v. Noble County* case in federal court and took her brother to Shaw & Miller in Columbus to see attorney Mark Jon Miller. Miller wanted the OVI case too, so Joe finally agreed to let him handle it too. Eventually, Miller realized he did not have enough time to handle the Licking County case and had Rodgers do various errands to help in the OVI matter. Rodgers did research for Miller from her home from January 2014 to April 2014 believing that his firm was Shaw & Miller at the time. (Bd.File #1, p. 17) Miller also sent Rodgers to a Utica gasoline station to interview an employee for Miller; travel to the Utica impound lot where Joe's vehicle was parked to take pictures; research the backgrounds of the officers involved and submit public information requests. Since Rodgers was in paralegal school at the time, she added this work to

her resume and separated this work on her bar application as "Volunteer Research Investigation Photography" (Bd. File #1, p. 15). Miller had revealed to Rodgers in November of 2014 that the Shaw & Miller firm had dissolved in April 2014, so Rodgers listed the work done as "Volunteer Research Tele-commuter" during the period of April 2014 to July 2014 as being under Miller Law Offices. (Bd.File #1, p. 14. and Bd.File #1, p. 16, Bd.File #2, p. 12) The OVI case resolved and Rodgers was nearing graduation from paralegal school. It is understandable how Miller might see that period of time as free labor or an internship since Rodgers was in paralegal school at the time. The work had ended in July 2014 and Rodgers graduated from the paralegal program in the summer of 2014.

In September of 2014, after graduation from paralegal school, Rodgers was in the process of completing the final accounting for her father's estate and began seeking work in Muskingum County as a probate paralegal. She also looked at finally completing a master's degree. In November 2014, she received an email of a job offer from Miller. (Email, Exh. 4) Rodgers was very hesitant to accept because of the distance from her home being about 65 miles each way. Miller offered mileage reimbursement and pleaded until Rodgers finally agreed. On the first or second day of work as Miller's paralegal, Miller confessed that there was no Shaw & Miller law firm anymore and that he had been working solo without a paralegal. Miller signed a verification letter with NCBE that her volunteer work with him ended in July 2014 and that he hired her as a paralegal in the fall of 2014 and she worked in that position on into spring of 2016. (#1, p. 15 and Bd.File #2, p. 64-65) Miller stated that he would "rehire" Rodgers. (Bd.File #2, p. 64)

Although a specific wage was not discussed, Rodgers expected her first paycheck to be delayed a week or two. Rodgers believed that by the third Friday, she would receive her first paycheck. When Miller failed to issue a paycheck, Rodgers did not complain, but was very disappointed. Rodgers decided to make the best of things and learn what she could while she was there. Rodgers believed that Miller was struggling financially as he was avoiding a Chase creditor

that came into the office to see him. Eventually his financial situation improved and he began taking trips to Las Vegas, Florida, Sedona and to the beach. By the end of 2015, he claimed over $200,000 in earnings on his malpractice insurance application. Since Miller was doing so well in part by the hard work of Rodgers, Rodgers knew it wasn't fair for her to be taken advantage of in this way.

At times Rodgers would work over 40 hours a week as she would work into the evening to avoid having to drive in rush hour traffic. Rodgers was disappointed each time Miller would interview a law student, but never hire anyone. The interview process began to look like a way to get free research from a law student as Miller would have applicants prepare a brief on one of his cases as part of a "job interview." Rodgers was rarely able to leave her office for lunch and was overworked. If anyone was scammed it was the homemaker who had been out of work for about ten years that was trying to get back into the workforce, not the brilliant attorney who had figured out a way to make $200,000 a year as a solo practitioner.

During discovery in the wage case, the former paralegal that had worked for Shaw & Miller said it dissolved in **2013,** and signed an affidavit stating her duties were the same as Rodgers and said that she was paid at least minimum wage for her work. One of the three law clerks that Miller hired in the spring of 2016 to replace Rodgers, also signed an affidavit stating her duties were the same as Rodgers and said that she was paid at least minimum wage.

Because Rodgers felt that she was being taken advantage of, Rodgers decided to quietly apply for law school, to see if she might get accepted. After she was accepted into law school Rodgers informed Miller and he began to take steps that afternoon to hire another paralegal in the building, but she would not agree to his terms.

During the first month of law school in the fall of 2015, Miller encouraged Rodgers to quit law school, but Rodgers persevered. Rodgers had no money for books for the first two weeks of classes and had to go to OSU Moritz Law Library to use their reference book section to read for

her classes. Rodgers was able to reduce her work hours to part-time with the help of student loans.

In her second semester on Thursday, March 17, 2016, (St. Patrick's Day), Miller missed work to celebrate the holiday. Rodgers left the office for a while in the afternoon for an OSU medical appointment and then returned to the office to make up for her time off and worked into the evening. While driving home, Rodgers informed Miller that she felt like she was coming down with a fever and that she would probably not be in the office on Friday. Miller sent late night drunk text messages demanding that Rodgers be at work in the morning as he had people coming in to make their Friday payments at 10 am. Instead, Rodgers went to her family doctor. As her fever increased, Rodgers became more upset about the way she was being mistreated and quit her job. Miller apologized and claimed he had been at the bar too late, and wanted to place Rodgers on a leave of absence instead. Miller then brought up bar admission.

When Rodgers attended class the following Monday, one of the deans explained an opportunity to participate in the externship program at Capital University Law School and the GPA needed to be eligible to participate. Rodgers subsequently qualified and worked at Operation Legal Help Ohio for veterans as a law clerk (Bd.File #9, p. 1)and then at Licking County Municipal Court as a judicial extern under the Honorable Michael Higgins. (Bd.File, #4, p. 1) Rodgers went on to complete pro bono work with Legal Aid Society and Southeastern Ohio Legal Services which qualified her to graduate with pro bono legal honors. This work experience does not show up in the July 17 Report. The Report leads one to think that the only work that Rodgers did the last two years of law school was related to her guardianship duties on behalf of her brother Julius. Although being a guardian required many trips to Ohio State Medical Center from 2015-2018, Rodgers gladly performed the necessary chores to see that her brother recovered from open heart surgery and adjusted to his new surroundings.

Because his open-heart surgery was related to a birth defect, Rodgers saw a cardiologist to make sure she did not inherit the same condition. Rodgers had seen other specialists after a leg

injury related to a tree-trimming injury in July of 2000. If the landlord Watts had agreed to pay McCullough's tree service or some other licensed tree service, this injury would not have happened. After a December 2000 leg surgery to remove the injured left saphenous vein, Rodgers had surgical complications. This mobility disability limited Rodgers. She was approved for SSI in July of 2003.

Rodgers's teaching contract was a "term appointment." After the term ended, she had accepted a job in sales at a department store that was to begin in July 2000. Rodgers had completed two different thesis under two different committees. The first thesis advisor left for Hong Kong without notice. The second attempt ended when the department head failed to show up for oral argument and the argument was continued, but not rescheduled before the committee fell apart again. In December of 2000, Rodgers signed a re-admission contract which would allow her to start a third thesis in January 2001. By August 31, 2001, she was told she had run out of time to complete the final chapter and was removed from the program.

Rodgers's inability to complete the thesis was in part due to the miscalculation of the nine months which should have run from 1-1-2001 to 09-30-2001. Instead it was shortened to 8 months without any rationale by Professor Bender, instead of being kept at the usual 12 months for all other students. Rodgers saw that this was unfair and contacted Legal Affairs. When the university failed to respond, Rodgers contacted attorney David B. Shillman. Attorney Shillman was going to file a complaint in part to a breach of contract based on the offerings in the Ohio University graduate catalog and the shortcomings of the department which lacked personnel to serve on committees due to frequent leave of absences and change. Rodgers shared her research regarding graduate catalogs serving as contracts with attorney David B. Shillman, Esq. In 2012, Shillman had accepted Rodgers case on a contingency basis and planned to file suit. If the complaint had been filed in the court of claims in 2012, Rodgers would have likely received full credit for all of her graduate level loans from 1993 to 2000 which would have reduced her student loans in half.

Instead, Mr. Shillman died in 2013 before he filing. An attorney returned the file. (Exhibit 5)

Although Rodgers never filed for bankruptcy, times were tough for a while. Although some in her situation would have applied for a total-and-permanent discharge of their student-loan obligation 18 years ago after the complications from surgery, Rodgers always had hope that her disability would eventually improve. The federal loan servicer had offered a 25-year repayment plan based on income, so Rodgers consolidated her loans with her husband and signed up for that repayment plan instead.

When Rodgers decided to go to law school, she applied for assistance through BVR. Rodgers was told that she could not be funded by BVR because she still was under a doctor's care. Rodgers decided to take a chance that her health would continue to improve and to go anyways. Through it all, Rodgers's credit was checked yearly and the she has complied with the yearly check of income tax records by her loan servicer. The law school complied with the student loan regulations when they awarded Rodgers's student loans. Rodgers's law school student loans are not past due. (Bd.File, #1, p. 32)

Rodgers had a prior student loan remaining from 2001 that she consolidated with her husband and then entered into a repayment plan based on income. The Department of Education requires her to give her student loan servicer access to her income tax records every year. Rodgers had done this for the last 18 years. Rodgers's income from 2019 will be used to determine her monthly payment in 2020 and the payment will be adjusted for the next seven years. In seven years, whatever amount remains as a balance will be forgiven as part of the agreement that the Department of Education made with Rodgers in 2001.

Rodgers' law school student loans will be 10-15% of her income that is over $18,000 on the percentage of income plan. Rodgers's income from 2019 will determine her payments in 2020 and the payment will be adjusted throughout the next twenty-five years. If Rodgers works for a non-profit for 30 hours a week (considered full-time) for 10 years, whatever remains as a balance will

be forgiven, as part of the agreement Rodgers made with the Department of Education on July 12, 2019 when she selected her repayment plan. This income-based repayment plan is one of four repayment plans offered to every college student by the Department of Education. Rodgers had not selected her plan as of the May 14, 2019 hearing as the time for her "exit interview counseling" session was not passed yet.

Although Rodgers was never actually evicted at any time in her past, she had reached an agreement with her landlord to move in 2001. After she turned in her keys, she and her family became homeless when they could not move into the Crestmont apartment due to fleas and had nowhere else to go. Having no place to rent and with all their belonging still in a U-Haul, Rodgers began searching the newspaper for a place for her family to live. Rodgers quickly negotiated a deal with a family that owned a duplex in Zanesville which became affordable after the landlord agreed to a Section 8 voucher toward the rent. (Bd.File #2, p. 150, ZMHA letter) After repairs were completed, the unit passed inspection, the family was able to stay there for a year. Although Rodgers did not know about the *McKinney-Vento* law that would allow children to stay in their regular school districts, Mr. Rodgers drove their children 15 miles to and from their old school every weekday.

Rodgers was given the opportunity to enter into a self-sufficiency contract with the local Section 8 office in 2001. This meant part of their rent would be placed in an escrow account for future home ownership. Once Section 8 rental vouchers are assigned to a family they move with a family as the family moves to another county or another state. The vouches can also be converted into a homeownership voucher. The program is not like a subsidized housing project seen in the Cleveland ghettos. The Rodgers family has lived in a three-bedroom single family home owned by a distant relative since leaving the Zanesville duplex in 2002. A few years ago, Rodgers purchased an adjoining vacant lot for under $3,000 as a place to build a small house. The lot is used for a small garden for her family now. Rodgers realizes that it will not be likely that she will

be able to build without a large down payment. Rodgers has been paying her credit card debt on time for over five years and improving her credit score so construction financing might be affordable in the future.

Rodgers admits that she is not your typical applicant. She has been married for 37 years. She has three daughters that graduated from The Ohio State University. Her oldest daughter lives in Manhattan and was the first Ohio State Student to graduate from the Penn State's Wharton school of business in Philadelphia. The middle daughter is a dental hygienist in Columbus and the youngest lives in Columbus and enters nursing training in January. Rodgers worked full-time every summer beginning at age 14 and two hours after school every school day throughout high school as part of the Comprehensive Employment Training Program (CETA). Rodgers's daughters began training to work as lifeguards at age 15 and continued working to help support themselves through high school and college.

Some of Rodgers's hardships in the past were out of her control. Rodgers always left her apartments clean after moving out in order to get a rental deposit returned. When landlords fail to account for these deposits or escrowed funds, hardships result for low-income tenants. Most low-income people are living paycheck to paycheck, so it is a hardship to move and come up with first month's rent and deposit at the next place.

Another problem for low-income families is crime. Rodgers purchased a Pontiac which was then damaged in an accident. The car later came up missing from a parking lot owned by a body shop. Rodgers continued to look for her car when it disappeared from Mike's Auto Body. If Rodgers knew what bailment was at that time, she would never have filed the small claims case in *Mike's Auto Body.* Rodgers was not sanctioned by the court for filing the complaint. Rodgers thought at the time, that since the car was on the property of the body shop that the company was liable for it.

Just before the Pontiac was wrecked, Rodgers found a Catera advertised on Ebay and

purchased it from JLH Auto. When Rodgers discovered the car had a bad engine and had just been returned by another buyer the day before, Rodgers owed over $2,900 to Chase Bank plus interest. (Bd.File #20, p. 18 &19) Rodgers continued to make payments on her loan. Rodgers sent a fax and left a message in an attempt to get the dealership to repair the engine, but the dealership would not return her calls. Rodgers talked with various attorneys and filed a lawsuit in *JLH Auto* pro se. The complaint was long-winded and detailed. Rodgers testified in the May 14, 2019 hearing that if she could do it over, she would only include the salesman in the complaint that had misrepresented the meaning of the dashboard warning-lights during a test drive. Instead, Rodgers included GM and others in the complaint. It was not until Rodgers re-read the complaint this week that she recalled the reasons why she filed the complaint and why she had included the various parties.

At the time, Rodgers did not know how to enter into settlement negotiations and obtained the assistance of the late attorney David Stokes. Rodgers was able to get most of her money back and paid one-third of each settlement as agreed to her attorney. Rodgers did not miss any loan payments. Rodgers was not sanctioned by the court for filing the complaint.

Rodgers has distanced herself from the past litigation during law school. Most of the boxes of papers have been stored away for a decade in the basement with other boxes that Rodgers stored there 18 years ago. Rodgers believed that she knew the cases pretty well, but when questioned about which attorneys had been contacted and which experts or defendants had been called prior to filing suit, Rodgers saw that she could not remember some details without documents to refresh her recollection of dates and names of people. Only about 2% of the Complaints were available online.

Rodgers admits she has made many rookie mistakes. She has forgotten to sign a complaint. She has filed in the wrong court. She did not have access to Westlaw or a law research engine. Now, each time Rodgers reviews a decision made in one of her cases, she

has more *understanding* of why the decision was made by the court. Rodgers has completed many courses that will help her in the future as an attorney which include Civil Procedure, Evidence and Ethics.

While Rodgers worked at the Miller Law Firm, she had the opportunity to talk with attorney Miller about the *Genesis Healthcare* (2013) case that she had dismissed in 2014. The *Genesis Healthcare* case that was refiled in 2015, under the saving statute, was reviewed by Miller in 2015 before it was filed. (-----)))))))))))))))) Rodgers added Purdue Pharma as a defendant to the 2015 complaint as she has had tinnitus ever since being given Dilaudid at the emergency room in August of 2010 for a migraine following the motor vehicle accident. (Rodgers has learned to tolerate this high-pitched sound and is able to block it out with background noise.)

In addition to speaking with Miller, Rodgers spoke with Eleana Drakatos regarding the requirements for the "Affidavit of Merit" and later regarding the appeal. During the appeal before the Fifth District Court of Appeals, Rodgers was able to successfully persuade one justice who said in his dissent that he would allow the non-medical claim to continue without an "Affidavit of Merit." This oral argument was during Rodgers's second semester of law school.

In her final year of law school, Rodgers was involved as a licensed legal intern in several cases. (Bd.File #14, p. 7) Rodgers was one of the licensed legal interns that helped to defend Nicole Suttle in the bench trial concerning *Brett Suttle v. Nicole* Suttle. (Bd.File #20 p. 4, Recommendation of Professor Lorie McCaughan). In addition, Rodgers helped to defend Mr. and Mrs. Bruggeman in the case of *Hoffman Handyman Services v. Kimberley and Richard Bruggeman*, et al filed a counterclaim for violations of the Fair Debt Collections Practices Act after finding that the Hoffman Handyman Services had been out of business for several years. Rodgers assisted with a "Motion to Suppress" which led to a plea deal in

City of Columbus v. Chelsie Branson. In addition to these cases, Rodgers also assisted with wills, eviction clinic and a divorce. While assisting the Gahanna prosecutor's office, Rodgers helped to negotiate plea deals, review cases for bench warrants, and successfully presented a traffic case against a college student.

Rodgers was also successful in her case against her former employer for unpaid wages in which she was represented by employment attorney Jason Dawicke. Miller was given the opportunity to pay less than half of the wages that he owed Rodgers prior to the lawsuit being filed, but he failed to do so. Rodgers insisted that the settlement check be reissued under the terms of the settlement agreement which Miller agreed to, which required a W-2 instead of a 1099 so that employment related taxes, FICA, Medicare were deducted from her part of the settlement. Rodgers's attorney was paid one-third of the $16,500 mentioned in the July 17 report.

Rodgers' paycheck was received on August 5, 2019 and was used to pay off a credit card, pay current bills, pay bills in advance, and to obtain LegalGUARD Insurance that will cover legal expenses to clear up old debt with J.C. Penney, Elder-Beerman, and Lowes from about twenty years ago. Rodgers has scheduled an appointment with an attorney for Friday, October 4, 2019 to get assistance in completing this task. Rodgers learned since the May 14 panel hearing that Synchrony Bank is the owner of the old JC Penney debt.

Although credit account information regarding unpaid credit cards drops off credit reports after 7 years, about every middle-income family that has an unexpected injury or complications from surgery that sets one back financially like Rodgers experience, will likely have some debt that goes unpaid. Rodgers was honest in reporting this credit card debt on her bar application. She never believed the debt just went "away" as Rodgers testified that she recalled using the credit cards and the struggled to keep up with the payments during hard times.

Rodgers would have qualified for the Legal Aid Bankruptcy By-Pass clinic if it were offered 20 years ago. Rodgers recently volunteered at one of the by-pass clinics which helps low-income Ohioans notify creditors that the debtor has no assets and does not have the income to pay on a past due account. When people face unexpected hardships, not being able to pay their debt is not like neglecting their responsibility to pay the debt.

If Rodgers filed bankruptcy for no good reason but to get rid of enormous credit card debt Rodgers would be acting irresponsibly. (See *In re T.Z.-A.O.* who had just a few months after applying to law school, filed for Chapter 7 Bankruptcy. In re T.Z.-A.O., 441 Md. 65, 69, 105 A.3d 492, 494 (2014)) Rodgers has not purchased a brand new car since 1986. An applicant who said he "had a monthly car payment of $674.70 and that he earned only between $500 and $600 per month" was found to be irresponsible and was denied admission to the Maryland bar. *In re T.Z.-A.O.*, 441 Md. 65, 76, 105 A.3d 492, 498 (2014) The Maryland applicant also had "accumulated significant debt, including $220,000 in private and federal student loan debt and additional consumer credit accounts." *In re T.Z.-A.O.*, 441 Md. 65, 76, 105 A.3d 492, 498 (2014). Here, Rodgers debt is mostly what was needed to support herself while in graduate school and law school and interest. Rodgers did public service type of work when she was in her 20s. This type of work was well suited for her. Rodgers intend to supplement her public service work with self-employment earnings.

Rodgers has driven a reliable 1998 Chevrolet for the last 6 years. It is 21 years old with 312,000 miles on it and is kept running by a nephew who is a master mechanic. Evidence that Rodgers does not neglect her debt is the withdrawal of retirement account (approximately $8,000 Ohio Public Employees Retirement) to pay bills during her maternity leave in 1989. Rodgers had not resumed her education at that time and about all of her nursing school student loans from 1977-1979 were paid off in 1986 due to regular monthly payments and a unexpected public service credit which was applied to the account due upon the completion

of five years at Muskingum County Childrens' Services.

In addition, Rodgers produced evidence at the May 14, 2019 hearing, that when she has been faced with bills in the past that she cannot afford, she has taken the initiative to contact creditors to enter into payment plans. (Exhibit 2) At the time of the hearing, Rodgers believed that it was a Bank One credit card that she was paying on when she made payments to CCB every month for over 5 years. (Bd.File #2, p. 155) Now she is sure. The bank stopped charging interest and late fees and Rodgers was able to pay off the debt, without worrying that her checking account would be garnished.

The board was concerned that Rodgers would be too quick to file suit in a dispute. The record shows that Rodgers attempted for over a year to work out the claim against Eitel's Towing. This attempt is evident in the "claim" that was filed 2/28/18, which was a year before the complaint was filed in small claims. (Bd.File #21, p. 20 exhibit N). Eitel's had set up a time for Rodgers to meet with an adjuster named Fred in Columbus. Fred told her to call Eitel's and Eitel's told her to call Jonathan Eitel, but Jonathan would never return phone calls. Rodgers hoped the matter would settle outside of small claims, but decided file it based on the amount of the repair costs and the rental car expenses. While Rodgers was on the stand in the panel hearing, Rodgers could not recall the name of the attorney she contracted with to help her draft the complaint. Rodgers attached exhibits to her complaint showing the damages. (Bd. File # 21, p. 20-29)

Rodgers was not sure if she was overreporting on her bar application, but NCBE stated that she had. Between 2016 and May 14, 2019, Applicant updated her bar application to disclose employment at Operation Legal Help Ohio for veterans (Bd.File #18, p. 11) Capital University Law School as student ambassador (Bd.File #4, p. 2 and #18, p. 11); Licking County Municipal Court as judicial intern (Bd.File #4, p. 1 and #18, p. 11); Legal Aid Society/South Eastern Ohio Legal Services (SEOLS)(Bd.File#18,p.15) and Capital

Law School Legal Clinic.(Bd.File #18, p. 15)

On or about June 18, 2019, Mark Jon Miller delivered a complaint to Bar Admissions alleging, that Rodgers was a vexatious litigator because she filed a case against Miller for unpaid wages for a time period in which Miller mischaracterized the position as an "internship." (Bd.File #23, p. 1-8) This prompted the panel to request a "Post-hearing Memorandum." Rodgers' bar admission attorney filed a "Memorandum" with some Exhibits from the underlying employment case. (Bd.File #26, July 3, 2019) At the time, Rodgers was unrepresented on the Vexatious litigator case. Dawicke had not been retained for the Vexatious Litigator case. Rodgers had submitted a claim to Nationwide, but no decision had been made yet if they were going to defend her.

At the time the Board filed the July 17 report, the 2019 case vexatious litigator case was still pending. If the panel took the Miller complaint to be factually true, then the panel's reaction to the reported $16,500 settlement was reasonable. But a closer look at the NCBE verification signed by Miller in 2017, shows that he indicated that the volunteer period ended in July of 2014. The wage claim was related to the paralegal position which did not begin until the fall of 2014. (Bd.File #2, p. 64-65)

Perhaps a deeper investigation would have helped. Documents related to Rodgers's defense which were not before the board include:

1. Rodgers' July 19, 2019 "Motion to Dismiss" the Vexatious Litigator case. (Exh. 6)
2. Miller's July 25, 2019 "Dismissal" with prejudice Entry dated July 25, 2019. (Exh.7)
3. Paystub dated July, 2019 from showing back wages received on 08/05/2019. (Exh. 8)
4. A 2019 affidavit by Morgan Rae; (Exh. 9)
5. A 2019 affidavit by former paralegal (Exh. 10)
6. Rodgers's August 2014 Paralegal graduation certificate; (Exh 11)
7. An email from Miller offering Rodgers a job in November 2014; (Exh.4)

8. Rodgers's business cards issued by Miller showing "paralegal"; (Exh. 12)

The cases that Miller listed in his 2019 Complaint could have been analyzed along with:

1. Plaintiff George Pahoundis's "Dismissal" filed in 08CI137
2. The *JLH Auto* complaint that shows Rodgers's attempts to settle the matter with JLH before filing suit and the actual claim made. (Exh. 13, partial)
3. The Complaint in the *Birkhimer* motor vehicle accident case and subsequent settlement.

12. The savings statute that allowed the 2013 *Genesis Healthcare* complaint to be filed a second time after it had been dismissed without prejudice.

a. The 2015 *Genesis Healthcare* Complaint showing it was refiled based on the savings statute after a year of physical therapy was completed at OSU following rotator cuff surgery there.
b. The 2015 email between Miller and Rodgers that show attorney Miller had actually reviewed the 2015 *Genesis Healthcare* complaint at the time it was filed. (Bd.File #26, p. 27)
c. The 2015 Email between Miller and Rodgers that show he was aware that an "affidavit of merit" was needed in the *Genesis Healthcare* case and that Rodgers intended to have Dr. Bishop sign the affidavit. (Bd.File #26, p. 26)
d. Complaints that Rodgers filed in cases mentioned in ¶ 23 that Rodgers had won.
e. Complaints that Rodgers filed in cases mentioned in ¶ 23 that Rodgers had been represented by counsel, including the *Estate of Jerry Pahoundis v. Estate of Billy Leedy* case regarding the mobile home fire and the decision to sue the landlord.
f. Complaints filed in cases mentioned in ¶ 23 that Rodgers had successfully defended against.
g. The 2011 Decision from Fifth District Court of appeals showing dismissal due to lack of appealable order. This was a counterclaim was filed to notify the grantee that due to failure of the grantee to pay farm taxes on the property, the 80 acres was reclaimed by Rodgers, as an heir of the grantor, due to the clause in the deed containing a future interest of the grantor of a possibility of a reverter, if real estate taxes were not paid.

Analyzing these cases would take time. No court has ever sanctioned Rodgers, so until she received the *Buckeye Union Drilling/Multi-Crown Systems* answer, she thought that there would only be a problem with representing the estate in a wrongful death case because it would be filed in order to benefit heirs. Since Rodgers failed to sign the complaint, it was as if it were never served. Rodgers did not understand it fully at the time, but hurried to dismiss the case.

This *Buckeye Union Drilling* case was discussed with an attorney before it was filed. Rodgers did not see any problem in filing it pro se when the attorney had decided he could not take it on a contingency basis, but would on an hourly basis. Rodgers thought she could file the case since she was still the administrator of the estate.

Rodgers had two siblings that were not doing well after defending themselves in the eviction actions. Rodgers did not understand what powers came with being the administrator of an estate or having a power of attorney. Rodgers would have never filed a case if she had known that it was not permitted. Rodgers had not received any legal education yet at the time that these cases were filed over ten years ago. All other estate cases were done with the advice of counsel. Since Rodgers had been permitted to proceed pro se, Rodgers believed she was fulfilling her duty of being an administrator from one case to another without knowing she had violated UPL.

The ABA rules prohibit discrimination on the basis of socioeconomic status. The phrase "working the system" means something different to different classes. For the middle class it means getting greedy and getting around paying taxes that are owed by reporting less income. Rodgers has always paid her taxes. Rodgers would have qualified for the Earned Income Tax Credit (EITC) from November 2015 and June 30, 2015, if she had been paid for her work as a paralegal. Rodgers would have qualified for the EITC in the second half of 2015 and for the first quarter of 2016, if Miller had not waited until 2019 to pay Rodgers for her work.

When Miller was asked to produce 3 years of tax records in discovery, he balked. It was reasonable to ask for the production of the Miller's tax returns as Miller claimed a loss of

profits due to Rodgers at a time that began when he started his firm's payroll system.

Miller served bar admissions with a copy of his 2019 *Miller v. Rodgers* complaint before he served Rodgers. Miller emailed Rodgers's attorney, that in addition to delivering a copy of the 2019 complaint to the bar admissions, that he expected to meet with someone at the Supreme Court. Even though the filing of the wage case caused Miller to react in retaliation, Rodgers is glad that she was one of the hundreds of Ohioans each year who finally get the nerve to speak up and ask for their back wages. This retaliation was foreseeable and began in August 2018, when Miller sued Rodgers for alleged defamation.

On July 15, Bar admissions sent Rodgers a letter advising her that since her Character and Fitness Report had not been finished yet, that she could not take the July Ohio Bar Examination. (Bd.File #29) On July 19, 2019, Rodgers filed a "Motion to Dismiss" the *Miller v. Rodgers* complaint that had been filed against her for failure to state a claim. (Exhibit 6) Rodgers had been represented by Gretchen Lipari of Nationwide only in the first case filed by Miller. Miller dismissed his vexatious litigator case against Rodgers on July 26, 2019.

The Board of Commissioners on Character and Fitness had begun a *sua sponte* investigation in 2017, two months after Rodgers received her approval letter. The hearing was delayed in order that Rodgers could obtain counsel. On May 14, 2019, a Hearing was held before a Hearing Panel of the Board of Commissioners on Character and Fitness.

II ARGUMENT

Proposition of Law No. 1

Five-year wait is NOT warranted as a Sanction

The Board recommends that Cynthia Rodgers application "be disapproved; that she be permitted to apply for the July 2024 bar examination" in five years. (*Board's Findings, p. 1,¶ 1)* Rodgers was performing well as a licensed legal intern and then was informed that the Board' s recommendation is that she apply to take the bar exam in five years.

In skimming the July 2019 report, a reader would get the impression that Rodgers has filed bankruptcy. Rodgers has never filed for bankruptcy. Rodgers did file a Motion to Convert her father's bankruptcy to a Chapter 12 Farmer's bankruptcy 5 years after he died, but her father was always represented by attorney Bates. (Bd.File #2, p. 154) Even if she had it would be irrelevant for her to sit for the bar due to actual hardship.

A quick skim of the report would give one the impression that Rodgers has been evicted. Rodgers has never been evicted. Rodgers has rented for over 40 years and does not owe any landlord any unpaid rent. One would also get the impression that Rodgers lives in substandard housing or a subsidized ghetto-like apartment. Rodgers has lived in a three-bedroom single family house for almost 20 years.

Rodgers should have explained how far she had come since her surgery, motor vehicle accident, and physical therapy. Rodgers had tried to work 40 plus hour weeks. Rodgers is able to work 28-30 hours a week on a regular basis, but cannot sit at a desk all day, every day without breaks.

Programs have constant reporting requirements which require reporting of income and asset changes within 10 days. Rodgers's former social economic status is irrelevant since she did not do anything to cause the tree accident which resulted in her vascular surgery besides try to remove a broken branch from a tree. Rodgers followed her doctors' recommendations through the years and was inspired by her family's encouragement.

Rodgers reported all administrative hearings even if the hearing did not involve a court, so there were not actually 60 civil cases. Rodgers testified candidly before the Hearing Panel about the prior civil cases. With respect to the August 2018 Miller defamation lawsuit against her and the June 2019 Miller vexatious litigator lawsuit filed against her, Applicant testified: "It's set for trial in November. I have an attorney Jason Dawicke who's an employment law attorney and then I have Nationwide Insurance, Gretchen

Lipari as a defense. He's [attorney Mark Jon Miller's] claiming that it's [the filing of the unpaid wage case in itself] defamation and Nationwide is defending me on that. *Trans., p. 121, lines 2-7*. Later Rodgers complaint was amended to add retaliation. "I brought the original claim and we amended the original claim…" *Trans., p. 121 lines 24-25*.

Applicants are to truthfully report unpaid debts. Rodgers reported old credit card debt from about 20 years ago and a 2013 dispute with Dell WebBank.

In the panel hearing, Rodgers was asked about an "estimated current debt 400, date of last payment was June 1 of 1988, this is to JC. Penney. You've indicated that the account was closed and that you first got this account in 1982. Does this …this amount for J.C. Penney show on your current credit report? *Trans., p 129, lines 9-14.* Rodgers testified, "No, it does not." *Trans., p 129, line 19.* Rodgers testified further that she had "called them to see if they had any record of it." *Trans., p 129, lines 24-25.* Rodgers testified further that she had "stopped in the store, they don't have anything." *Trans., p 130, lines 1-2.* Rodgers was asked when was the most recent time that she "tried to get ahold of J.C. Penney? *Trans., p 130, lines 22-23.* Rodgers testified "I called them today." *Trans., p 130, line 24.* Rodgers was asked by Chair Manning, "Is that what they told you: We just don't have any record of you? Rodgers testified, "We have no record of it. So that was just my guess of it how much it was. And I stopped into a J.C. Penney store and they don't have a way of tracking it after like five, ten years I guess." *Trans., p 131, line 3-9.* "And they can't find it." *Trans., p 131, lines 14-15.*

Rodgers testified that she had "talked to Joanne Windlin <sic Winland> about…payments and she was like deposit this money <with us> and we'll help you with it." *Trans., p 133, lines 7-10.* Rodgers was not certain at the time but has since verified that this led to a payment arrangement with Bank One which was paid in full to CCB. A Panel member asked about Bank One debt, "And it says original amount of debt is 500

and current balance is 500. And the date of last payment was '05. You still owe them $500, does that appear on your credit report? *Trans., p 131, lines 21-24.* Rodgers answered, "No, it does not and I did find something in my old checks that might help. I was making payments, so I think that the balance is zero. I recalled making payments on something and I wasn't sure what it was. It was a CCB, it was just in my name because I would cross my husband's name off the checks when I made the payments. And I've paid it to the Credit Bureau in Coshocton. I went to a credit counseling lady <Winland of Universal Credit Counseling> and she was telling me how to write the letters so you can get your payments reduced, so I was doing that back then. That was payment <number>54 so that was going on for almost six years. And I think that <debt with Bank One> might be that thing <check reflecting 54th payment of $25>. But I'm not certain, it's been so long ago." *Trans., p 131, line 25 to p. 132, line 13;* Bd.File #2, p. 155). Rodgers has verified the phone number for this creditor as 800-848-1547 had belonged to Bank One by the "Kiplinger Personal Finance Report" issued 1989, p. 122. This Bank One account was paid in full. (Bd.File number 22, Check #3723, dated February 26, 1998, Memo 0402180083880, March Pymt #68 [$25 times 68 payments equals $1,700 paid through 2/26/1998].

A Panel member asked about the initial credit card used by Rodgers, "You opened an initial credit card with Bank One before Chase purchased Bank One?" *Trans., p 135, lines 17-18.* Rodgers testified, "Yeah, I had been with them for a long time." *Trans., p 135, lines 19-20.* Rodgers opened the Bank One f/k/a Central Trust Company joint checking account in August 1982. (Bd.File number 22, page 2 top left 08-82). *(*People who avoid creditors avoid having a checking account or change banks and home phone numbers often. Applicant has had the same bank and house phone for over 18 years.)

A Panel member then asked about Elder-Beerman debt amount of $500 which was

approximately a "14-year-old account. What caused you to go into not being able to pay this and the other credit card which the last payment was right around that time in 2005? Rodgers testified that from 2001 to 2005 she worked "Part-time. I did substitute teaching work some, election poll worker some." *Trans., p 136, lines 16-17.* (Although she was disabled in July 2000, it was July of 2003 until she received her first Social Security check.) The hardship of the unanticipated disability affected Rodgers' ability to catch up on her credit card payments. When asked if she had steady income during that time, Rodgers testified "No." *Trans., p 136, lines 19.*

One panel member asked Rodgers if she "tried to contact Elder-Beerman and figure it out?" *Trans., p 137, lines 3-4.* Rodgers testified, "I went into a store with my driver's license and tried to see if they had any record of it. I found a letter that was from the old collection company dated years ago and I called them and they answered with a different name and I asked them if they had this account and I gave them my Social and everything and they didn't have it. Because the last offer to settle it for like 900, so it's added on some interest since then. And not that I'm in a position to repay anything, my income is still very low, but some day if a settlement comes through then I could …But, and they don't have any record of them and but I knew that I had charged…" *Trans., p 137, 5-22.* Most applicants would just have omitted this from their application since it does not show up anywhere, but Rodgers did not.

Rodgers went on to testify that "Elder-Beerman is through Bon-Ton and they're in bankruptcy. And I contacted them, I'm like, "Is this part of this, <bankruptcy>, do we do this through here <in this bankruptcy case> if I can try to work something out and they said no, it's not part of this. *Trans., p 138, lines 5-9.*

Rodgers testified that on "September 10, 2013" she had paid "$454 to Dell. And at that point is when I considered my part of it paid off." Applicant has since found two

more payments totaling $633. A payment was made October 8, 2013 for $146 and the final payment was $487 on January 15, 2014.

Rodgers was asked by a Panel member, if she was "in default of any of your student loans at this time." *Trans., p 142, lines 6-7.* Rodgers testified "Some are in deferment, some are in repayment." *Trans., p 142, lines 8-9.* Regarding the original balance, Rodgers testified, "I'm not sure of the right amount, but when I was in the PhD program I had borrowed for education and then couldn't use my degree, so with the interest through the years it has accumulated. I don't know what it's up to. We did consolidate them at one time. *Trans., p 142, lines 20-25.*

Rodgers testified, "We're on percentage of income plan so we'll always pay a percentage of our income …." *Trans., p 143, lines 2-3* and said that her "husband was in graduate school too" at the time she became disabled. *Trans., p 143, line 7.* Rodgers added to her testimony that she and her husband were on a "plan for 25 years and we've got all of it in except for maybe six years." *Trans., p 144, lines 1-2.* Rodgers mentioned that when the loan servicer "did the paperwork to consolidate them they left my name off all the papers. So our student loans are in his name. But they show up on both of ours." *Trans., p 145, lines 11-14.*

Rodgers testified that she estimated the future percentage of her paycheck that would be paid as a student loan by estimating doing of her future payments by calculating "an estimate at one time" *Trans., p 145, line 25.* Rodgers testified that she was not sure "if it's 10 percent, 15 percent.." *Trans., p 135, lines 2…….*

Rodgers testified that she knew she would be on a "percentage of income plan like they offer" to all college students. Rodgers added that she "kept up with all of the requirements …the IRS records and everything, so it could be calculated. I did everything that they needed and they offered this repayment plan of all the repayment

plans and I selected that one." She went on to add, that she "wasn't able to do anything with my PhD <classes in comparative arts>" and that the amount owed was high because of "student loans with interest …. And when it came to going to law school, I did check into other ways of getting it covered without having to use student loans…" *Trans., p 150, lines 1-14.* Part of Rodgers's education toward her master's degree was paid for by Bureau of Vocational Rehabilitation (BVR) due to her having an IEP. Rodgers's last application for assistance was denied due to her still being under a doctor's care.

Rodgers testified that sometimes, the amount remaining after the completion of a 25-year payment plan "they forgive what's remaining. *Trans., p 144, lines 5-6.* She added, "if they're <U.S. Department of Education> willing to have me on that payment plan" that she wanted it.

If not, Rodgers is realistic and saw that there would be no way to pay the debt without winning the "lottery" in order for the Department of Education to receive the money owed to them. Once Rodgers became disabled, the interest accrued monthly. Rodgers knew there was no way she could "ever be able to pay all that back." *Trans., p 152, lines 6-10.*

Fairweather asked Rodgers if she has "anyone in your network of personal and professional friends who can be a mentor or resource for you?" *Trans., p 156, lines 18-20.* Rodgers responded that she has "Southeastern Ohio Legal Aid over in Newark, Ohio, I've worked with Natasha Plumly there. *Trans., p 157, lines 1-3*; Bd.File #18, p. 20) Rodgers also testified that she had done "pro bono work at Operation Legal Help Ohio, so there's people that I know that I can reach out to with questions I didn't have before." *Trans., p 157, lines 13-16.* Mr. Fairweather then advised Rodgers that the main thing she should "take away from this hearing is the first thing that you do when you get home is open up your Civil Procedure book and read Rule 11 again. And maybe read it again and

again and again. *Trans., p 158, lines 16-20.*

Rodgers testified that "When I worked as a paralegal, I was able to see an attorney one-on-one work a solo practice and I learned quite a bit working there on how he filed things. And how he did things. And a lot of it is repetitive."

Regarding why she had handled cases that she was not prepared to handle, Rodgers testitied, "I didn't know how to. But I felt like there was an injustice and something needed to be done in those cases. But if I filed one today, I wouldn't have done anything like I did before." This is because Rodgers has learned Civil Procedure and has taken a course in Ethics. Each time Rodgers re-reads a decision from one of the old cases, she sees more of the reasons why the court ruled as they had.

Rodgers also testified that in her work as a Judicial Extern at Licking County Municipal Court that she "met some very good attorneys over there and one was Rob Calesaric so if I ever got any criminal things that I had a question about, I could run it by him. Also people that I worked with at the <Capital Law School Legal> clinic, they would still be there to ask questions of. And other people that I know from law school. *Trans., p 162, lines 7-12.*

Rodgers testified that if she were hired for Legal Aid work that "they bring in new attorneys and they train them." *Trans., p 162, lines 20-21.* In reviewing the transcript Rodgers sees that her speaking level differs from her writing level. Rodgers believes that by being mentored through the Supreme Court mentoring program and by working around attorneys at Legal Aid, she will continue to work on developing her ability to relay her thoughts in a professional speaking manner.

When Rodgers was selected for the *sua sponte* review, Rodgers did not know who to ask for advice. There seemed to be conflicting information regarding the Character and Fitness process. It seemed like the process was to be kept confidential, so Rodgers

did not explain to some people who gave her letters of recommendation for employment purposes, that their letter of recommendation would also be submitted to the panel as part of her Character & Fitness review before the Supreme Court. Rodgers testified that of the four letters of recommendation submitted to the panel that date that two of the recommendations came from people who were not aware that she was going through a character and fitness hearing. Rodgers testified, "I didn't know how, if this was to be confidential or if I was supposed to tell them everything. *Trans., p 172, lines 7-9.*

Rodgers testified that she had "…told Danny Bank about the excessive litigation…I think I filled him in on what happened with the farm cases that I had…got stuck with a three-day bench trial not knowing what 'sustained' and 'overruled' meant." *Trans., p 173, lines 7-15.* Rodgers testified that the letters of recommendation came from people who would still hold the high opinion of her "if they were judging me how and am now, not how I was." *Trans., p 174, lines 17-18.* This is the standard that the court should use in determining Rodgers's character. Because Rodgers has a good credit score, owns real estate in Muskingum County, pays her current bills and is in good standing on her student loans, Rodgers was able to be bonded in her brother's guardianship. Rodgers testified that "right now I am bonded for my brother's estate as far as guardianship, I have a $40,000 bond on me for that." *Trans., p 175, lines 7-8.*

Under redirect examination, Rodgers was asked, "At the time although you didn't have the education and knowledge to properly navigate the court system that you were using, did you honestly feel like you were doing the right thing at the time?" *Trans., p 177, lines 13-16.* Rodgers testified, "Yes." *Trans., p 177, lines 17.*

In closing, Rodgers's attorney Justin Smith testified that he thinks that "she will be a good attorney because she understands the struggles that the rest of society deals with. She understands poverty. *Trans., p 180, lines 11-……1.* Attorney Smith went

on in his closing argument to state "She can help people based off of her experience and struggles, her willingness to help with Legal Aid Society and there's a lot of options through public service where these student loans can be forgiven. *Trans., p 180, line 25 to p. 181, line 4.*

Ms. Von Gunten stated that Rodgers "doesn't strike me as disingenuine. We have plenty of practitioners of the law who are not honest. I think she's honest to a fault, as evidenced from the number of pages that we had. And I think today she attempted to answer all of our questions to the best of her ability and recollection. *Trans.,p182,17-23.*

In addition to the reasons set forth above, there are sufficient other reasons as set forth below to support a sanction less than a five year wait for Applicant.

Proposition of Law No. 2

Sufficient Mitigation Warrants a Lesser Sanction

A. Function of Discipline System is to Protect the Public NOT Punish the Legal Intern

This Honorable Court has held on numerous occasions in disciplinary cases that the function of the discipline system is to protect the public, not to punish the respondent. *Disciplinary* Counsel *v. O 'Neill,* 103 Ohio St.3d 204, 815 N.E.2d 286, 2004-Ohio-4704. Because Applicant was licensed as a legal intern on September 7, 2018 and has practiced law under supervision for ten months, this case is essentially a disciplinary case. The Board by revoking their approval for Rodgers to take the July bar, has in effect revoked Cynthia Rodgers's legal intern license and have recommended that this Honorable Court not permit her to reapply for 5 years.

B. Essential Eligibility Requirements Met

In bar admissions matters, the applicant has to prove that the applicant currently possesses the essential eligibility requirements to be admitted to practice. The evidence in the record is that Applicant's skills and abilities as a licensed legal intern are good and she would be a good

attorney.

Professor Wood stated:

> "I first came to know Cynthia Rodgers in my class on Federal Personal Income Taxation. ….Cynthia was also a student in my Business Associations I and Business Associations II classes. Those students cover agency, partnerships, and corporations. Cynthia was also successful in those classes….I confidently recommend Cynthia to you." "Letter of Recommendation: Richard Wood (Business Law I & II and Fed. Income Tax Professor- Bd.File #20, p. 5)

Litigation Clinic Supervisor, Lorie McCaughan wrote:

> "Cynthia was instrumental in pre-trial discovery…Also, under supervision and with assistance she wrote and successfully argued pre-trial motions, as well as participated in direct examination at trial. Ms. Rodgers also participated in Gahanna Mayor's Court, where she assisted the prosecuting attorney with pre-trial hearings and full evidentiary hearings. She handled cases in domestic relations court and in eviction court, as well as another general civil case that, due to her diligent efforts, resulted in a positive outcome for our client. Always, Ms. Rodgers demonstrated the skills necessary to be a fine attorney: she pays attention to detail; she diligently completes her work; she is a self-starter, yet she is able to work well as part of a team; she presents herself in a professional manner." (Letter of Recommendation: Lorie McCaughan, Litigation Clinic Spvr.-Bd.File#20,p. 4)

Other professionals that know Applicant likewise hold her in high regard. Cassandra B. Jeter-Bailey of Capital University Law School admissions stated:

> "Ms. Rodgers joined the Student Ambassador Program in Fall 2017. As a panelist and tour guide of the Law School, Cynthia has demonstrated superior leadership qualities and has become a trustworthy representative of the institution. She possesses outstanding communication and networking skills, and was engaging, proactive and successful in building relationships with prospective and admitted students. She has always been a trustworthy and hard-working member of our team of ambassadors." Bd.File #20 p. 6 Recommendation of Cassandra B. Jeter-Bailey, Capital University Law School Admissions)

Capital Law School Clinic Director, Danny Bank also wrote a recommendation regarding Rodgers and stated:

> "Cindy was enrolled in our clinical program for the Fall, 2018 and Spring, 2019

> semesters. During that time I had the opportunity to work with and directly supervise Cindy in a variety of cases. My overall experience with her was excellent. She demonstrated the ability to organize, meet deadlines which the Clinic imposed, effectively negotiate and communicate with opposing counsel, deal with difficulty clients and perform exceedingly well under pressure. Cindy also demonstrated strong analytical abilities and confidence when she presented her legal arguments, which were logical and reasoned. Her research was thorough and left no stone unturned. Based on my dealings with Cindy, I am confident that she is able to pick out the crucial points of a case and use them to effectively counsel and represent her clients. In addition, Cindy has a strong work ethic and is a very competent individual who is able to handle herself in a professional manner." Bd.File #20 p. 3 Recommendation of Danny Bank (Capital Law School Legal Clinic director)

C. All RelevantFactors

In *Disciplinary Counsel v. Melissa Smidt, UPL 18-01*, the UPL final report recommended a fine for a paralegal who earned $1,000 representing a "client" in a foreclosure action in Franklin County Common Pleas court. Here, Rodgers was not a paralegal at in 2006 when she appeared pro se as the administrator of the estate of her father. Rodgers did not earn any wages for the work that she did in the 2 ½ day bench trial, or the filings or oral arguments. This Honorable Court has recognized that although the Court had previously created a presumption of a fine and costs when a person has engaged in conduct that violates UPL (*In Re: Application of Shannon O'Connell Egan,* 151 Ohio St. 3d 525, 2017-Ohio-8651, mitigating factors may justify lesser fines or eliminate fines. Here, Rodgers understands that even though she was advised by an attorney as to how to handle the 2006 trial, it was not permitted under UPL laws. In addition, when Rodgers was advised that she could appeal the 2007 trial court decision, she should have talked to an appellate attorney to find out if she was permitted to appeal pro se. Furthermore, when she argued before the Fifth District Court of Appeals, she should have checked with the court regarding arguing pro se as administrator of the estate. When attorney Richard D. Brown was unable to take the water well case on a contingency basis, Rodgers assumed incorrectly that since she was permitted to handle the other case, that she was permitted to handle the water well case. When Rodgers filed the

Varsity Title case, she assumed again that it was within her duties as administrator to file the case. Since Rodgers relied upon the advice and counsel of an attorney prior to the first in court appearance, Rodgers believed her actions were proper. Now that she knows otherwise from reading the character and fitness panel's report, Rodgers has reported herself to UPL. This process may take a while, but Rodgers will fully assist with the investigation.

Under Ohio Probate law, an applicant may complete an "Application to Administer Estate Without Assistance of an Attorney" (Form 4.0B) In the Estate of Billy Leedy, Rodgers administered the estate alone after being appointed by Coshocton County Probate Court. The case closed promptly and there were no UPL violations in that matter.

Rodgers was appointed as the co-administrator in the Estate of Jerry D. Pahoundis, along with the decedent's wife. At all times they were represented by counsel in the matter of the mobile home fire. Attorney Vincent C. Russo handled the *Pahoundis Estate v. Leedy Estate* civil claim against the owner of the mobile home and Attorney Jay Vinsel handled the probate case and accounting.

In re: Greenwald, 808 A.2d 1231 (D.C. 2002), the court found that Greenwald's 14 ½ "years of unauthorized practice do not reflect negatively on his character and fitness to practice law" and his application was granted. (p. 1233) In *Office of Disciplinary Counsel v. Stuber*, 63 Ohio Misc. 2d 23, UPL-92-6 decided June 28,1993, the Court found that Stuber appeared at the counsel table three times in 1991 and 1992 and sat next to parties as if he were their "assistance of counsel" or "assistant of counsel". Here, Rodgers always sat alone as the administrator of the estate of her father and believed that since her name was on caption as a party that she was allowed to be there at the table alone. In *Cleveland Bar Association v. Smith*, 62 Ohio Misc.2d 776, Decided March 2, 1993, a respondent who was not licensed "entered pleas in criminal cases" and the court found that he had "engaged in unauthorized practice of law by…"appearing in a court of law for another in a representative capacity."

(p.672) Therefore, when considering *Greenwald*, *Stuber* and *Smith*, Rodgers would not have thought that UPL applied to her at the time since she had also received legal counsel that told her it was permitted. Therefore, her UPL does not reflect negatively on her character and fitness to practice law.

A more recent case involved an applicant who "stressed that she had no idea she was doing anything wrong" and had opened a law office in Ohio without being licensed in Ohio. *In re: Application of Shannon O'Connell Egan*, Case 2017-0397. The panel recommended that since she had only been in compliance for 6 months that she sit out the July bar exam and was able to sit for the February bar exam. (*Egan* Report and Recommendation of the Hearing Panel, case no. 663; Feb. 3, 2017, p. 7) In his dissent, Gregory Arnold, Esq. emphasized that an "Applicant has the burden of showing that she has the current Character and Fitness to be admitted to the Bar of Ohio. Notwithstanding the above, I believe the Applicant has the current character, fitness, and moral qualifications to be admitted the practice of law in Ohio. I recommend that Applicant be approved by the Board." (*Egan* Report, p. 7)

In *re: Application of Alice Auclair Jones*, Case No. 2018-0496, the panel relied on *Swendiman*, 2016-Ohio-2813, which gave three factors to consider regarding UPL: "age of the applicant at the time of the conduct"; "recency of the conduct" and the "reliability of the information concerning the conduct" to help determine if the applicant possesses the character, fitness and moral qualifications for admission to the practice of law in Ohio. (*Jones*, Report and Recommendation, p. 8) Here, applicant's age and the recency can be determined by the filing dates. The last filing by Rodgers was the appeal in 2010 regarding 08CI0137, which was 9 years ago when she was 51. (Bd.File #2, p. 125, 126, 171)The harm done in these cases was primarily to Rodgers since she paid filing fees in each case and in each appeal in cases that were nullities. Therefore, since like in *Egan* and *Jones*, "there is no evidence tending to demonstrate that she caused any harm …to the citizens of Ohio," the court should approve

Rodgers's application and permit her to sit for the February 2020 bar exam. *In re Application of Egan*, 151 Ohio St.3d 525, 2017-Ohio-8651, p 6.

In re: *Anonymous*, Supreme Court, Appellate Division, New York, 61 A.D.3d. 1214, 876 N.Y.S.2d 925, decided April 16, 2009, the court found that an applicant with $430,000 in student loans that had accumulated over a 20-year period which were delinquent because applicant had "not been flexible with his discussions with the loan servicers …had not presently established the character and general fitness requisite for an attorney and counselor-at-law." Here, Rodgers is not delinquent on her student loans and is in good standing with her loan servicers. Rodgers has fully complied with income verifications for percentage of income repayment plan that is offered to all law students. Therefore, Rodgers has established that she has the character and general fitness requisite for an attorney.

In *Florida Board of Bar Examiners re: S.M.D*. 609 So.2d 1309 (1992), the court found that an applicant that had received the "maximum student loans to cover tuition, books and living expenses" for two years of law school and had accumulated $25,000 in credit card debt, filed a bankruptcy petition after not being able to arrange a payment plan through Consumer Counseling. "The vast majority of her debts were incurred in order to sustain herself and go to school" while "many of her debts were overdue, and her creditors were contacting her on a daily basis. She has been unsuccessful in her job search. We do not believe that her decision to declare bankruptcy was morally reprehensible. For the reasons expressed above, we direct the admission of S.M.D. to the Florida Bar." Here, Rodgers never borrowed the maximum student loans as she received some scholarship assistance. Rodgers's credit cards are paid on time. Rodgers has gone to Consumer Counseling in the past and is not behind on any real estate taxes, mortgage or car loan. Furthermore, Rodgers has never filed bankruptcy and she has only $4,000 in credit card debt.

Rodgers had complied with all of the rules that are in place to be eligible to receive student

loans for law school. She also complied with all of the requirements in Ohio to qualify for minimum wage from her prior employment as a paralegal with Miller Law Offices. At no time did she ever hold herself out to be an attorney during the ten years she did estate work.

There are sufficient mitigating factors present to warrant a lesser sanction than a five year wait to take the bar examination for Cynthia Rodgers.

In disciplinary cases, this Honorable Court has held that when determining the sanction to impose, it should look at all relevant factors, including the ethical duties violated…, the aggravating and mitigating factors and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli,* 96 Ohio St.3d 424, 2002-Ohio-4743.

One of the relevant factors in this case is: what prompted Applicant go on to law school when she already had thousands of dollars of debt? Medicaid had paid thousands of dollars for medical care to return Rodgers to as close as possible to the physical condition prior to her disabling accident. Rodgers's mentor in undergrad was the late John J. Arnold, Esq. In his philosophy classes, he taught that we have a duty to ourselves to see that we are educated. Rodgers intends in good faith to pay her student loans as agreed until the Department of Education no longer requires payment. She has no intention of filing bankruptcy.

Rodgers obtained paralegal training so she could help support her family. At the time she still had a daughter in high school. Rodgers found herself in a dead-end job 65 miles from home and she wasn't getting paid anything but mileage checks. The mileage checks kept insurance on the car, but were not enough to keep her 1998 Chevrolet running for long. A 2015 used car loan application was denied and Miller told Rodgers that the mileage checks were reimbursements and not income. Rodgers knew it would be a matter of time before she was without a car again. Rodgers had hoped to leave the Miller Law office on good terms in order to get a recommendation.

When one looks at the verification form Miller signed for the NCBE in 2017, it is evident

that the volunteer work had ended in July 2014. Perhaps he saw this volunteer work as an unpaid internship, but this is a category mistake just as when he tried to classify Shaw & Miller employees as subcontractors in 2012. The office work that Rodgers did after graduation from the paralegal program was work done as a paralegal, not an internship.

On cross-examination when a panel member asked Rodgers about her financing of law school. Applicant testified that she had tried to get funding without relying on student loans. *Trans.,*

During the May 14, 2019 Panel hearing, Rodgers felt pressed for time to get through everything that needed covered. Instead of asking for needed break during either of the 3 hour sessions, she continued on answering questions. She did not explain that she had qualified for Bureau of Vocational Rehabilitation (BVR) services due to her IEP and disability, but due to being under a doctor's care, she was not approved for funding the last time she applied. Rodgers had completed a year of physical therapy at Ohio State Medical Center to regain use of her left arm following the car-truck accident caused by Birkhimer. Rodgers does **not** offer this as an excuse, but to explain that the frequent trips to Columbus made aware that she could navigate back and forth to Columbus to become a paralegal. After the 2010 car-truck accident, Rodgers was diagnosed with traumatic brain injury. Rodgers does not offer this as an excuse, but to explain that by graduating with high honors in 2014 from the paralegal program and by working as a paralegal for a while, she found that her condition returned to normal. Since she was familiar with Capital University Law School, she thought she could earn more per hour in future employment by becoming an attorney and decided to apply for the $10,000 paralegal scholarship for law school.

Another factor to consider is whether the public was harmed by Cynthia Rodgers's actions. As Rodgers mentioned in the panel hearing, all of Rodgers's student loans will be forgiven with public service. Further research into the forgiveness of loans shows that this can

be done in only 10 years of public service. (Rodgers had part of her Perkins loans from nursing school forgiven in 1986 after 5 years of employment with Musk. County Childrens' Services.)

Miller paid toward the wage he owed Rodgers for about the last 9 months of employment as his paralegal which has improved her financial situation and will be counted as income in the annual student loan percentage of income plan. Although the *Miller* lawsuit was still pending against Applicant at the time the Hearing Panel' s Report, the matter has since been settled and dismissed. *Applicant's Motion to Supplement the Record.*

A third factor to be considered is any other sanctions imposed. Rodgers submitted her application in November 2016. She had spent months preparing for the July 2019 bar exam. She did not get the opportunity to take it with her classmates after receiving the July 15, 2019 letter that her character and fitness review had not been completed yet. Although she received a public service scholarship toward her Themis bar review, she had paid $1400 for it. This involved many hours daily in preparation for the exam.

A fourth factor to be considered is whether Applicant is remorseful for her conduct and whether she has learned from her mistakes. Merriam Webster' s Dictionary simple definition of remorse: "a gnawing distress arising from a sense of guilt for past wrongs," Applicant has expressed her remorse to the panel that she had filed *JLH Auto* against several parties, when one would have sufficed. Looking back there was no need to make the complaint so detailed or to include defendants who were not liable, so it would have been best to just include the salesman. Now that Rodgers knows she had no authority to handle the bench trial pro se along with all that followed in that case, the appeal and the two other estate cases, she plans to apologize to defendants as she has wasted their time. Rodgers should have talked to more attorneys and perhaps she would have been alerted earlier. Applicant has wasted her own time which she can not get back, thinking it was her duty to do as much as she could for her father's estate.

Rodgers knows now to make sure there is an understanding with a law firm before she accepts employment. The work with Miller was just going to be temporary two days a week. Rodgers knew from her past work as a substitute teacher that she was not able to work a 40-hour week and should have said No when Miller wanted her to work full-time after her first day. Eventually there were 40+ hour weeks due to trials. Rodgers is disappointed that it did not work out, but she could not afford to work without a paycheck.

Rodgers knew she would have a chance to end all reliance on government programs by going to law school and getting her J.D. Student loans are usually always manageable under the percentage of income plan as long as one controls their other bills.

Rodgers testified that if she had to do things over again, she would dismiss the "farm" case instead of going on with the bench trial. Rodgers expressed remorse that and that she has made rookie mistakes such as forgetting to sign a complaint and adding too many defendants to the *JLH Auto* case.

Rodgers did not know until reading the July 17 panel Report that all of the pro se work she had been allowed to do as the administrator of her father's estate was considered UPL violations. Did no one around her know the UPL applied to administrator's back then? How could she have wasted so much of her life on cases that did not matter in the end? Rodgers spent money on paper, ink, copies and postage for a case that is a nullity. Rodgers will work with the UPL Board to see that all filings and decisions made in cases where she appeared pro se, as an administrator are stricken.

Rodgers has learned from her rookie mistakes and her work as a licensed legal intern has indicated she is able to pay close attention to detail, complete legal research and practice law under supervision for ten months. After reading the Report and Recommendation, Rodgers went through the civil cases again to see if she had committed any unauthorized practice of law violations. It took a while to see what the panel was referring to, but Rodgers sees in her

recently completed WestLaw research that the only way Rodgers could have represented the estate pro se was if she were the only heir.

In addition, Rodgers now sees that ten years ago she could not use the Power of Attorney form signed by siblings to include them in the case against *Buckeye Union Drilling*. Rodgers immediately dismissed the case after receiving the defendant's answer and saw the word "sham". Rodgers had worked hard preparing the case, but was uneducated in the law and did not read the "Answer" like she would in 2019. Instead, seeing the word "sham" upset her because the claim that the E. Coli in the water well was serious. No harm was done to the rights of others because it was dismissed so quickly. Rodgers paid the cost of the water well testing and filing fees and was not paid for her work on any of the estate cases.

Rodgers has told several attorneys that she consulted about this document that now she gets it. She did not understand at the time of the hearing why the panel members were so concerned with her prior litigation. Now, after reading the report, Rodgers realizes the panel was right. Under UPL laws, Rodgers was not permitted to represent her father's estate or her siblings in court pro se no matter is there is one sibling or eight siblings. Even though it has been over nine years ago since Rodgers filed a "Notice of Appeal", the shock of this news is numbing. Rodgers contacted the board of unauthorized practice of law on Friday, September 27, 2019, so they can take any appropriate action.

To be remorseful, one must feel guilty that they did something wrong while knowing what they were doing was wrong. Rodgers is sorry that the Court will need to expend time and resources to investigate this matter. Rodgers agrees to pay for the UPL investigation into this matter.

Applicant's self-report to the board of unauthorized practice of law is evidence of her understanding of the law regarding pro se administrator's now. Rodgers had no access to WestLaw in 2006. She was not a paralegal. None of the attorneys assisting Rodgers ever

mentioned the limitations on being a pro se administrator. She realizes now that she wasted many years of her life handling her father's estate without the backing of the law. The only good that came of it all is that she learned from participating in the bench trial, the filings, the decisions and the oral arguments.

Rodgers knew how to defend herself as an individual in 2008. She had remembered her father had told her that his attorney wanted her to know about a special clause he added to the deed from her father to her uncle. This enabled Rodgers to file a counterclaim when her uncle filed a complaint against her in 2008. Rodgers timely filed an "Answer" and "Counterclaim" to the complaint. By answering the complaint as an individual, Rodgers managed to make a claim as an heir of the grantor of the farm. Rodgers had been informed that for a second time that her uncle's name was in the *Coshocton Tribune* newspaper for failure to pay the farm taxes and mentioned the breach of the Deed clause in her counterclaim.

Rodgers has since learned in law school that since the "Agreement" regarding the past and future taxes was included in the Deed, the grantor kept a reversionary future interest. Since Rodgers's counterclaim was made as an individual on the reversionary interest, as an heir to the grantor, and since the claim was made before her uncle sold the property for over $225,000, Rodgers retains an ownership interest in the farm. Rodgers has since contacted a real estate attorney regarding the matter.

A fifth factor to consider is whether there is evidence that Applicant's behavior has changed. Rodgers has informed family members that she has learned that the law did not allow administrators to file cases pro se. It seems that most courts dismiss pro se administrator these cases. Rodgers thought that different counties just had different policies.

Rodgers has been aware that her grandfather's estate has been pending in Akron since 1955. When advised by the probate court will settle the estate after Rodgers has an attorney file a notice

of appearance, Rodgers has patiently waited until law school was finished so she could have time to help an attorney on this matter. There are complicated issues regarding eminent domain that require proper administration and a real estate attorney for the 147 acres that need to be partitioned in Holmes County, a lake home, rental properties, along with gas and oil wells. That court had tried to reach the original administrator by mail, but she had moved to Cleveland and then left the state in 1967. Rodgers has since contacted a real estate attorney to see if he will handle this matter.

A third example of change of behavior of Applicant is her admission to UPL board that she now realizes that she has violated laws against UPL.

A fourth example of the change of behavior of Applicant is the claim that was made to Eitel's prior to the filing of the small claims case is evidence that she had attempted to settle the Eitel matter out of court for a year prior to filing the lawsuit. The panel was concerned that Rodgers might be too quick to sue. (See Bd.File#21,p. 20)

A fifth example of the change of behavior of Applicant is that she now obtains the advice of an attorney when she is not sure of a filing. She contacted Attorney Miller prior to the 2015 filing of the *Genesis Healthcare* complaint. In that case, she had intended to obtain an "Affidavit of Merit" from her surgeon Dr. Bishop at Ohio State. (Bd.File #26, p. 26) Rodgers was not aware that doctors who completed "Affidavits of Merit" could not be the same doctor who had performed the surgery. Rodgers had also contacted an attorney in 2019 when she was not sure how to file a property damage complaint in small claims. (See Griffith contract attached, Exhibit 14)

All of the above factors should be taken into consideration when determining the wait time to impose upon Applicant. This Honorable Court's precedent is also a factor to determine the sanction or wait time to impose. Although this Honorable Court has held that the wait time for a violation typical sanction in a bar examination application is a 6 month to 18 month

delay in taking the bar examination, unless mitigating factors warrant a departure from the typical sanction. *Disciplinary Counsel v. Potter,* 126 Ohio St.3d 50, 2010-Ohio- 2521, 930 N.E.2d 307 1 10,which quoted from *Disciplinary Counsel v. Rohrer,* 124 Ohio St.3d 65, 2009-Ohio-593-, 919 N.E.2d 180145 and *Disciplinary Counsel v. Carroll,* 106 Ohio St.3d 84, 2005-Ohio-3805, 831 N.E.2d 1000113.

Even Bar applicants who have been found to have engaged in dishonesty, fraud, deceit or misrepresentation in violation of rules have received less than a five year suspension. In *Warren* Coun*ty. Bar Assn. v. Clifton,* Slip Op. 2016-Ohio-5587, Attorney Clifton's alteration of a will and filing same with the court knowing that the will was false, resulted in a public reprimand for Attorney Clifton. In *Toledo Bar Assn. v. DeMarco,* 144 Ohio St.3d 248, 41 N.E.3d 1237, 2015- Ohio-4549, for repeated, multiple false statements to a court in violation of Prof. Cond. R. 8,4c, Attorney DeMarco was sanctioned with one-year suspension with 6 months stayed.

Applicant now sees from the July 17, 2019 report that the bench trial and the appeals related to her father's estate and the other two cases related to the family farm were violations of UPL. Rodgers honestly believed that she had an obligation as administrator of her father's estate to include the farm and the thoroughbred horses in the estate inventory. It was not until the 2006 testimony of her uncle that she was aware that her uncle claimed there was a partnership related to the racehorses. Rodgers relied on the Jockey Club documents that listed her father as the sole owner. Rodgers does not offer excuses for her failure, but relied on advice of counsel who gave trial tactics and handed over documents to use in the 2006 trial.

As a result of the July 17, 2019 report and WestLaw research, Rodgers is certain that all of her pro se filings in her father's estate fall under UPL from 2006 to 2010. Although this did not occur recently, Rodgers has tried to forget that emotional time in her life.

Rodgers would not have participated in a trial, filed motions or appealed a matter once being told it was not allowed. A shorter wait period would take into account all of the factors listed above, and serves the purpose of protecting the public while sending a message to all bar applicants and attorneys.

III CONCLUSION

Based upon all of the mitigating factors, a shorter wait period of Cynthia Rodgers in sitting for the bar examination will both protect the public and send the message that the Court takes decade old violations of UPL seriously. Based upon the forgoing, applicant Cynthia Rodgers respectfully requests that she be allowed to take the July 2020 bar examination.

Respectfully submitted,

/s/ Cynthia M. Rodgers
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PROOF OF SERVICE

I hereby certify that I have served a copy of the foregoing on Jillian B. Von Gunten, Attorney for Muskingum County Bar Association and Gina White Palmer, Attorney, Bar Admissions, Supreme Court of Ohio, by electronic means this 30th day of September, 2019.

/s/ Cynthia M. Rodgers
Cynthia M. Rodgers